

2006

SESSION LAWS

OF THE

STATE OF WASHINGTON

REGULAR SESSION
FIFTY-NINTH LEGISLATURE
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Code Reviser

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**WASHINGTON SESSION LAWS
GENERAL INFORMATION**

1. EDITIONS AVAILABLE.

- (a) *General Information.* The session laws are printed successively in two editions:
 - (i) a temporary pamphlet edition consisting of a series of one or more paper bound books, which are published as soon as possible following the session, at random dates as accumulated; followed by
 - (ii) a permanent hardbound edition containing the accumulation of all laws adopted in the legislative session. Both editions contain a subject index and tables indicating Revised Code of Washington sections affected.
- (b) *Where and how obtained - price.* Both the temporary and permanent session laws may be ordered from the Statute Law Committee, Pritchard Building, P.O. Box 40552, Olympia, Washington 98504-0552. The temporary pamphlet edition costs \$21.68 per set (\$20.00 plus \$1.68 for state and local sales tax at 8.4%). The permanent edition costs \$37.94 per volume (\$35.00 plus \$2.94 for state and local sales tax at 8.4%). All orders must be accompanied by payment.

2. PRINTING STYLE - INDICATION OF NEW OR DELETED MATTER

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

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

3. PARTIAL VETOES

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

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

5. EFFECTIVE DATE OF LAWS

- (a) The state Constitution provides that unless otherwise qualified, the laws of any session take effect ninety days after adjournment sine die. The Secretary of State has determined the pertinent date for the Laws of the 2006 regular session to be June 7, 2006 (midnight June 6th).
- (b) Laws that carry an emergency clause take effect immediately upon approval by the Governor.
- (c) Laws that prescribe an effective date take effect upon that date.

6. INDEX AND TABLES

A cumulative index and tables of all 2006 laws may be found at the back of the final pamphlet edition and the permanent hardbound edition.

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CHAPTER 1

[Initiative 900]

PERFORMANCE AUDITS OF GOVERNMENT ENTITIES

AN ACT Relating to performance audits of governmental entities; amending RCW 82.08.020 and 43.88.160; adding new sections to chapter 43.09 RCW; adding a new section to chapter 82.12 RCW; creating new sections; and providing an effective date.

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

POLICIES AND PURPOSES

NEW SECTION. Sec. 1. It is essential that state and local governments establish credibility with the taxpayers by implementing long-overdue performance audits to ensure accountability and guarantee that tax dollars are spent as cost-effectively as possible. Are politicians spending our current tax revenues as cost-effectively as possible? Voters don't know because politicians have repeatedly blocked our state auditor from conducting independent, comprehensive performance audits on state and local governments, agencies, programs, and accounts. Currently, Washington is the only state in the nation that prohibits the independently elected state auditor from doing the job he or she was hired to do without explicit legislative permission. This handicap is costing the taxpayers billions of dollars in potential savings. Thankfully, this common sense initiative remedies this egregious failure of politicians to enact this reform. It is absurd for politicians to unilaterally impose tax increases or to seek voter approval for tax increases without first learning if we're getting the biggest bang for the buck from our current tax revenues. This measure requires the state auditor to conduct independent, comprehensive performance audits on state and local governments, agencies, programs, and accounts. This act dedicates a portion of the state's existing sales and use tax (1/100th of 1%) to fund these comprehensive performance audits. Similar performance reviews in Texas have saved taxpayers there nine billion dollars out of nineteen billion dollars in identified savings over the past decade. The performance audits required by this common sense initiative will identify solutions to our public policy problems, saving the taxpayers billions of dollars.

**REQUIRING INDEPENDENT, COMPREHENSIVE PERFORMANCE
AUDITS OF STATE AND LOCAL GOVERNMENTS, AGENCIES,
PROGRAMS, AND ACCOUNTS**

NEW SECTION. Sec. 2. A new section is added to chapter 43.09 RCW to read as follows:

In addition to audits authorized under RCW 43.88.160, the state auditor shall conduct independent, comprehensive performance audits of state government and each of its agencies, accounts, and programs; local governments and each of their agencies, accounts, and programs; state and local education governmental entities and each of their agencies, accounts, and programs; state and local transportation governmental entities and each of their agencies, accounts, and programs; and other governmental entities, agencies, accounts, and programs. The term "government" means an agency, department, office, officer, board, commission, bureau, division, institution, or institution of higher

education. This includes individual agencies and programs, as well as those programs and activities that cross agency lines. "Government" includes all elective and nonelective offices in the executive branch and includes the judicial and legislative branches. The state auditor shall review and analyze the economy, efficiency, and effectiveness of the policies, management, fiscal affairs, and operations of state and local governments, agencies, programs, and accounts. These performance audits shall be conducted in accordance with the United States general accounting office government auditing standards. The scope for each performance audit shall not be limited and shall include nine specific elements: (1) identification of cost savings; (2) identification of services that can be reduced or eliminated; (3) identification of programs or services that can be transferred to the private sector; (4) analysis of gaps or overlaps in programs or services and recommendations to correct gaps or overlaps; (5) feasibility of pooling information technology systems within the department; (6) analysis of the roles and functions of the department, and recommendations to change or eliminate departmental roles or functions; (7) recommendations for statutory or regulatory changes that may be necessary for the department to properly carry out its functions; (8) analysis of departmental performance data, performance measures, and self-assessment systems; and (9) identification of best practices. The state auditor may contract out any performance audits. For counties and cities, the audit may be conducted as part of audits otherwise required by state law. Each audit report shall be submitted to the corresponding legislative body or legislative bodies and made available to the public on or before thirty days after the completion of each audit or each follow-up audit. On or before thirty days after the performance audit is made public, the corresponding legislative body or legislative bodies shall hold at least one public hearing to consider the findings of the audit and shall receive comments from the public. The state auditor is authorized to issue subpoenas to governmental entities for required documents, memos, and budgets to conduct the performance audits. The state auditor may, at any time, conduct a performance audit to determine not only the efficiency, but also the effectiveness, of any government agency, account, or program. No legislative body, officeholder, or employee may impede or restrict the authority or the actions of the state auditor to conduct independent, comprehensive performance audits. To the greatest extent possible, the state auditor shall instruct and advise the appropriate governmental body on a step-by-step remedy to whatever ineffectiveness and inefficiency is discovered in the audited entity. For performance audits of state government and its agencies, programs, and accounts, the legislature must consider the state auditor reports in connection with the legislative appropriations process. An annual report will be submitted by the joint legislative audit and review committee by July 1st of each year detailing the status of the legislative implementation of the state auditor's recommendations. Justification must be provided for recommendations not implemented. Details of other corrective action must be provided as well. For performance audits of local governments and their agencies, programs, and accounts, the corresponding legislative body must consider the state auditor reports in connection with its spending practices. An annual report will be submitted by the legislative body by July 1st of each year detailing the status of the legislative implementation of the state auditor's recommendations. Justification must be provided for recommendations not

implemented. Details of other corrective action must be provided as well. The people encourage the state auditor to aggressively pursue the largest, costliest governmental entities first but to pursue all governmental entities in due course. Follow-up performance audits on any state and local government, agency, account, and program may be conducted when determined necessary by the state auditor. Revenues from the Performance Audits of Government Account, created in section 5 of this act, shall be used for the cost of the audits.

**DEDICATING A PORTION OF THE STATE'S EXISTING SALES
AND USE TAX (1/100TH OF 1%) TO FUND
THE PERFORMANCE AUDITS**

Sec. 3. RCW 82.08.020 and 2003 c 361 s 301 are each amended to read as follows:

(1) There is levied and there shall be collected a tax on each retail sale in this state equal to six and five-tenths percent of the selling price.

(2) There is levied and there shall be collected an additional tax on each retail car rental, regardless of whether the vehicle is licensed in this state, equal to five and nine-tenths percent of the selling price. The revenue collected under this subsection shall be deposited in the multimodal transportation account created in RCW 47.66.070.

(3) Beginning July 1, 2003, there is levied and collected an additional tax of three-tenths of one percent of the selling price on each retail sale of a motor vehicle in this state, other than retail car rentals taxed under subsection (2) of this section. The revenue collected under this subsection shall be deposited in the multimodal transportation account created in RCW 47.66.070.

(4) For purposes of subsection (3) of this section, "motor vehicle" has the meaning provided in RCW 46.04.320, but does not include farm tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181, off-road and nonhighway vehicles as defined in RCW 46.09.020, and snowmobiles as defined in RCW 46.10.010.

(5) Beginning on December 8, 2005, 0.16 percent of the taxes collected under subsection (1) of this section shall be dedicated to funding comprehensive performance audits required under section 2 of this act. The revenue identified in this subsection shall be deposited in the Performance Audits of Government Account created in section 5 of this act.

~~(6)~~ (6) The taxes imposed under this chapter shall apply to successive retail sales of the same property.

~~((6))~~ (7) The rates provided in this section apply to taxes imposed under chapter 82.12 RCW as provided in RCW 82.12.020.

NEW SECTION. **Sec. 4.** A new section is added to chapter 82.12 RCW to read as follows:

Beginning on December 8, 2005, 0.16 percent of the taxes collected under RCW 82.12.020 based on the rate in RCW 82.08.020(1) shall be dedicated to funding comprehensive performance audits under section 2 of this act. Revenue identified in this section shall be deposited in the Performance Audits of Government Account created in section 5 of this act.

**CREATING THE PERFORMANCE AUDITS
OF GOVERNMENT ACCOUNT**

NEW SECTION. **Sec. 5.** A new section is added to chapter 43.09 RCW to read as follows:

The Performance Audits of Government Account is hereby created in the custody of the state treasurer. Revenue identified in RCW 82.08.020(5) and section 4 of this act shall be deposited in the account. Money in the account shall be used to fund the performance audits and follow-up performance audits under section 2 of this act and shall be expended by the state auditor in accordance with this act. Only the state auditor or the state auditor's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

Sec. 6. RCW 43.88.160 and 2002 c 260 s 1 are each amended to read as follows:

This section sets forth the major fiscal duties and responsibilities of officers and agencies of the executive branch. The regulations issued by the governor pursuant to this chapter shall provide for a comprehensive, orderly basis for fiscal management and control, including efficient accounting and reporting therefor, for the executive branch of the state government and may include, in addition, such requirements as will generally promote more efficient public management in the state.

(1) Governor; director of financial management. The governor, through the director of financial management, shall devise and supervise a modern and complete accounting system for each agency to the end that all revenues, expenditures, receipts, disbursements, resources, and obligations of the state shall be properly and systematically accounted for. The accounting system shall include the development of accurate, timely records and reports of all financial affairs of the state. The system shall also provide for central accounts in the office of financial management at the level of detail deemed necessary by the director to perform central financial management. The director of financial management shall adopt and periodically update an accounting procedures manual. Any agency maintaining its own accounting and reporting system shall comply with the updated accounting procedures manual and the rules of the director adopted under this chapter. An agency may receive a waiver from complying with this requirement if the waiver is approved by the director. Waivers expire at the end of the fiscal biennium for which they are granted. The director shall forward notice of waivers granted to the appropriate legislative fiscal committees. The director of financial management may require such financial, statistical, and other reports as the director deems necessary from all agencies covering any period.

(2) Except as provided in chapter 43.88C RCW, the director of financial management is responsible for quarterly reporting of primary operating budget drivers such as applicable workloads, caseload estimates, and appropriate unit cost data. These reports shall be transmitted to the legislative fiscal committees or by electronic means to the legislative evaluation and accountability program committee. Quarterly reports shall include actual monthly data and the variance

between actual and estimated data to date. The reports shall also include estimates of these items for the remainder of the budget period.

(3) The director of financial management shall report at least annually to the appropriate legislative committees regarding the status of all appropriated capital projects, including transportation projects, showing significant cost overruns or underruns. If funds are shifted from one project to another, the office of financial management shall also reflect this in the annual variance report. Once a project is complete, the report shall provide a final summary showing estimated start and completion dates of each project phase compared to actual dates, estimated costs of each project phase compared to actual costs, and whether or not there are any outstanding liabilities or unsettled claims at the time of completion.

(4) In addition, the director of financial management, as agent of the governor, shall:

(a) Develop and maintain a system of internal controls and internal audits comprising methods and procedures to be adopted by each agency that will safeguard its assets, check the accuracy and reliability of its accounting data, promote operational efficiency, and encourage adherence to prescribed managerial policies for accounting and financial controls. The system developed by the director shall include criteria for determining the scope and comprehensiveness of internal controls required by classes of agencies, depending on the level of resources at risk.

Each agency head or authorized designee shall be assigned the responsibility and authority for establishing and maintaining internal audits following the standards of internal auditing of the institute of internal auditors;

(b) Make surveys and analyses of agencies with the object of determining better methods and increased effectiveness in the use of manpower and materials; and the director shall authorize expenditures for employee training to the end that the state may benefit from training facilities made available to state employees;

(c) Establish policies for allowing the contracting of child care services;

(d) Report to the governor with regard to duplication of effort or lack of coordination among agencies;

(e) Review any pay and classification plans, and changes thereunder, developed by any agency for their fiscal impact: PROVIDED, That none of the provisions of this subsection shall affect merit systems of personnel management now existing or hereafter established by statute relating to the fixing of qualifications requirements for recruitment, appointment, or promotion of employees of any agency. The director shall advise and confer with agencies including appropriate standing committees of the legislature as may be designated by the speaker of the house and the president of the senate regarding the fiscal impact of such plans and may amend or alter the plans, except that for the following agencies no amendment or alteration of the plans may be made without the approval of the agency concerned: Agencies headed by elective officials;

(f) Fix the number and classes of positions or authorized employee years of employment for each agency and during the fiscal period amend the determinations previously fixed by the director except that the director shall not

be empowered to fix the number or the classes for the following: Agencies headed by elective officials;

(g) Adopt rules to effectuate provisions contained in (a) through (f) of this subsection.

(5) The treasurer shall:

(a) Receive, keep, and disburse all public funds of the state not expressly required by law to be received, kept, and disbursed by some other persons: PROVIDED, That this subsection shall not apply to those public funds of the institutions of higher learning which are not subject to appropriation;

(b) Receive, disburse, or transfer public funds under the treasurer's supervision or custody;

(c) Keep a correct and current account of all moneys received and disbursed by the treasurer, classified by fund or account;

(d) Coordinate agencies' acceptance and use of credit cards and other payment methods, if the agencies have received authorization under RCW 43.41.180;

(e) Perform such other duties as may be required by law or by regulations issued pursuant to this law.

It shall be unlawful for the treasurer to disburse public funds in the treasury except upon forms or by alternative means duly prescribed by the director of financial management. These forms or alternative means shall provide for authentication and certification by the agency head or the agency head's designee that the services have been rendered or the materials have been furnished; or, in the case of loans or grants, that the loans or grants are authorized by law; or, in the case of payments for periodic maintenance services to be performed on state owned equipment, that a written contract for such periodic maintenance services is currently in effect; and the treasurer shall not be liable under the treasurer's surety bond for erroneous or improper payments so made. When services are lawfully paid for in advance of full performance by any private individual or business entity other than equipment maintenance providers or as provided for by RCW 42.24.035, such individual or entity other than central stores rendering such services shall make a cash deposit or furnish surety bond coverage to the state as shall be fixed in an amount by law, or if not fixed by law, then in such amounts as shall be fixed by the director of the department of general administration but in no case shall such required cash deposit or surety bond be less than an amount which will fully indemnify the state against any and all losses on account of breach of promise to fully perform such services. No payments shall be made in advance for any equipment maintenance services to be performed more than twelve months after such payment. Any such bond so furnished shall be conditioned that the person, firm or corporation receiving the advance payment will apply it toward performance of the contract. The responsibility for recovery of erroneous or improper payments made under this section shall lie with the agency head or the agency head's designee in accordance with regulations issued pursuant to this chapter. Nothing in this section shall be construed to permit a public body to advance funds to a private service provider pursuant to a grant or loan before services have been rendered or material furnished.

(6) The state auditor shall:

(a) Report to the legislature the results of current post audits that have been made of the financial transactions of each agency; to this end the auditor may, in the auditor's discretion, examine the books and accounts of any agency, official, or employee charged with the receipt, custody, or safekeeping of public funds. Where feasible in conducting examinations, the auditor shall utilize data and findings from the internal control system prescribed by the office of financial management. The current post audit of each agency may include a section on recommendations to the legislature as provided in (c) of this subsection.

(b) Give information to the legislature, whenever required, upon any subject relating to the financial affairs of the state.

(c) Make the auditor's official report on or before the thirty-first of December which precedes the meeting of the legislature. The report shall be for the last complete fiscal period and shall include determinations as to whether agencies, in making expenditures, complied with the laws of this state. The state auditor is authorized to perform or participate in performance verifications and performance audits as expressly authorized by the legislature in the omnibus biennial appropriations acts or in the performance audit work plan approved by the joint legislative audit and review committee. The state auditor, upon completing an audit for legal and financial compliance under chapter 43.09 RCW or a performance verification, may report to the joint legislative audit and review committee or other appropriate committees of the legislature, in a manner prescribed by the joint legislative audit and review committee, on facts relating to the management or performance of governmental programs where such facts are discovered incidental to the legal and financial audit or performance verification. The auditor may make such a report to a legislative committee only if the auditor has determined that the agency has been given an opportunity and has failed to resolve the management or performance issues raised by the auditor. If the auditor makes a report to a legislative committee, the agency may submit to the committee a response to the report. This subsection (6) shall not be construed to authorize the auditor to allocate other than de minimis resources to performance audits except as expressly authorized in the appropriations acts or in the performance audit work plan. The results of a performance audit conducted by the state auditor that has been requested by the joint legislative audit and review committee must only be transmitted to the joint legislative audit and review committee.

(d) Be empowered to take exception to specific expenditures that have been incurred by any agency or to take exception to other practices related in any way to the agency's financial transactions and to cause such exceptions to be made a matter of public record, including disclosure to the agency concerned and to the director of financial management. It shall be the duty of the director of financial management to cause corrective action to be taken within six months, such action to include, as appropriate, the withholding of funds as provided in RCW 43.88.110. The director of financial management shall annually report by December 31st the status of audit resolution to the appropriate committees of the legislature, the state auditor, and the attorney general. The director of financial management shall include in the audit resolution report actions taken as a result of an audit including, but not limited to, types of personnel actions, costs and types of litigation, and value of recouped goods or services.

(e) Promptly report any irregularities to the attorney general.

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(f) Investigate improper governmental activity under chapter 42.40 RCW.

(g) In addition to the authority given to the state auditor in this subsection (6), the state auditor is authorized to conduct performance audits identified in section 2 of this act. Nothing in this subsection (6) shall limit, impede, or restrict the state auditor from conducting performance audits identified in section 2 of this act.

(7) The joint legislative audit and review committee may:

(a) Make post audits of the financial transactions of any agency and management surveys and program reviews as provided for in chapter 44.28 RCW as well as performance audits and program evaluations. To this end the joint committee may in its discretion examine the books, accounts, and other records of any agency, official, or employee.

(b) Give information to the legislature or any legislative committee whenever required upon any subject relating to the performance and management of state agencies.

(c) Make a report to the legislature which shall include at least the following:

(i) Determinations as to the extent to which agencies in making expenditures have complied with the will of the legislature and in this connection, may take exception to specific expenditures or financial practices of any agencies; and

(ii) Such plans as it deems expedient for the support of the state's credit, for lessening expenditures, for promoting frugality and economy in agency affairs, and generally for an improved level of fiscal management.

CONSTRUCTION CLAUSE

NEW SECTION. Sec. 7. The provisions of this act are to be liberally construed to effectuate the intent, policies, and purposes of this act.

SEVERABILITY CLAUSE

NEW SECTION. Sec. 8. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

MISCELLANEOUS

NEW SECTION. Sec. 9. Part headings used in this act are not part of the law.

EFFECTIVE DATE

NEW SECTION. Sec. 10. This act shall be called the Performance Audits of Government Act and takes effect December 8, 2005.

Originally filed in Office of Secretary of State January 10, 2005.

Approved by the People of the State of Washington in the General Election on November 8, 2005.

CHAPTER 2

[Initiative 901]

CLEAN INDOOR AIR ACT

AN ACT Relating to the prohibition of smoking in public places and places of employment; amending RCW 70.160.020, 70.160.030, 70.160.050, and 70.160.070; adding new sections to chapter 70.160 RCW; creating a new section; and repealing RCW 70.160.010, 70.160.040, and 70.160.900.

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

NEW SECTION. Sec. 1. A new section is added to chapter 70.160 RCW to read as follows:

INTENT AND FINDINGS. The people of the state of Washington recognize that exposure to second-hand smoke is known to cause cancer in humans. Second-hand smoke is a known cause of other diseases including pneumonia, asthma, bronchitis, and heart disease. Citizens are often exposed to second-hand smoke in the workplace, and are likely to develop chronic, potentially fatal diseases as a result of such exposure. In order to protect the health and welfare of all citizens, including workers in their places of employment, it is necessary to prohibit smoking in public places and workplaces.

Sec. 2. RCW 70.160.020 and 1985 c 236 s 2 are each amended to read as follows:

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

(1) "Smoke" or "smoking" means the carrying or smoking of any kind of lighted pipe, cigar, cigarette, or any other lighted smoking equipment.

(2) "Public place" means that portion of any building or vehicle used by and open to the public, regardless of whether the building or vehicle is owned in whole or in part by private persons or entities, the state of Washington, or other public entity, and regardless of whether a fee is charged for admission, and includes a presumptively reasonable minimum distance, as set forth in section 6 of this act, of twenty-five feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited. A public place does not include a private residence unless the private residence is used to provide licensed child care, foster care, adult care, or other similar social service care on the premises.

Public places include, but are not limited to: Schools, elevators, public conveyances or transportation facilities, museums, concert halls, theaters, auditoriums, exhibition halls, indoor sports arenas, hospitals, nursing homes, health care facilities or clinics, enclosed shopping centers, retail stores, retail service establishments, financial institutions, educational facilities, ticket areas, public hearing facilities, state legislative chambers and immediately adjacent hallways, public restrooms, libraries, restaurants, waiting areas, lobbies, (~~and~~ reception areas) bars, taverns, bowling alleys, skating rinks, casinos, reception areas, and no less than seventy-five percent of the sleeping quarters within a hotel or motel that are rented to guests. A public place does not include a private residence. This chapter is not intended to restrict smoking in private facilities which are occasionally open to the public except upon the occasions when the facility is open to the public.

(3) (~~"Restaurant" means any building, structure, or area used, maintained, or advertised as, or held out to the public to be, an enclosure where meals are made available to be consumed on the premises, for consideration of payment.~~) "Place of employment" means any area under the control of a public or private employer which employees are required to pass through during the course of employment, including, but not limited to: Entrances and exits to the places of employment, and including a presumptively reasonable minimum distance, as set forth in section 6 of this act, of twenty-five feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited; work areas; restrooms; conference and classrooms; break rooms and cafeterias; and other common areas. A private residence or home-based business, unless used to provide licensed child care, foster care, adult care, or other similar social service care on the premises, is not a place of employment.

Sec. 3. RCW 70.160.030 and 1985 c 236 s 3 are each amended to read as follows:

No person may smoke in a public place (~~(except in designated smoking areas)) or in any place of employment.~~

Sec. 4. RCW 70.160.050 and 1985 c 236 s 5 are each amended to read as follows:

Owners, or in the case of a leased or rented space the lessee or other person in charge, of a place regulated under this chapter shall (~~(make every reasonable effort to))~~ prohibit smoking in public places (~~(by posting))~~ and places of employment and shall post signs prohibiting ((or permitting)) smoking as appropriate under this chapter. Signs shall be posted conspicuously at each building entrance. In the case of retail stores and retail service establishments, signs shall be posted conspicuously at each entrance and in prominent locations throughout the place. (~~(The boundary between a nonsmoking area and a smoking permitted area shall be clearly designated so that persons may differentiate between the two areas.))~~)

Sec. 5. RCW 70.160.070 and 1985 c 236 s 7 are each amended to read as follows:

(1) Any person intentionally violating this chapter by smoking in a public place (~~(not designated as a smoking area))~~ or place of employment, or any person removing, defacing, or destroying a sign required by this chapter, is subject to a civil fine of up to one hundred dollars. Any person passing by or through a public place while on a public sidewalk or public right of way has not intentionally violated this chapter. Local law enforcement agencies shall enforce this section by issuing a notice of infraction to be assessed in the same manner as traffic infractions. The provisions contained in chapter 46.63 RCW for the disposition of traffic infractions apply to the disposition of infractions for violation of this subsection except as follows:

(a) The provisions in chapter 46.63 RCW relating to the provision of records to the department of licensing in accordance with RCW 46.20.270 are not applicable to this chapter; and

(b) The provisions in chapter 46.63 RCW relating to the imposition of sanctions against a person's driver's license or vehicle license are not applicable to this chapter.

The form for the notice of infraction for a violation of this subsection shall be prescribed by rule of the supreme court.

(2) When violations of RCW (~~(70.160.040 or)~~) 70.160.050 occur, a warning shall first be given to the owner or other person in charge. Any subsequent violation is subject to a civil fine of up to one hundred dollars. Each day upon which a violation occurs or is permitted to continue constitutes a separate violation.

(3) Local (~~(fire)~~) health departments (~~(or fire districts)~~) shall enforce RCW (~~(70.160.040 or)~~) 70.160.050 regarding the duties of owners or persons in control of public places(~~(, and local health departments shall enforce RCW 70.160.040 or 70.160.050 regarding the duties of owners of restaurants)~~) and places of employment by either of the following actions:

(a) Serving notice requiring the correction of any violation; or

(b) Calling upon the city or town attorney or county prosecutor or local health department attorney to maintain an action for an injunction to enforce RCW (~~(70.160.040 and)~~) 70.160.050, to correct a violation, and to assess and recover a civil penalty for the violation.

NEW SECTION. Sec. 6. A new section is added to chapter 70.160 RCW to read as follows:

PRESUMPTIVELY REASONABLE DISTANCE. Smoking is prohibited within a presumptively reasonable minimum distance of twenty-five feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited so as to ensure that tobacco smoke does not enter the area through entrances, exits, open windows, or other means. Owners, operators, managers, employers, or other persons who own or control a public place or place of employment may seek to rebut the presumption that twenty-five feet is a reasonable minimum distance by making application to the director of the local health department or district in which the public place or place of employment is located. The presumption will be rebutted if the applicant can show by clear and convincing evidence that, given the unique circumstances presented by the location of entrances, exits, windows that open, ventilation intakes, or other factors, smoke will not infiltrate or reach the entrances, exits, open windows, or ventilation intakes or enter into such public place or place of employment and, therefore, the public health and safety will be adequately protected by a lesser distance.

NEW SECTION. Sec. 7. The following acts or parts of acts are each repealed:

(1) RCW 70.160.010 (Legislative intent) and 1985 c 236 s 1;

(2) RCW 70.160.040 (Designation of smoking areas in public places—Exceptions—Restaurant smoking areas—Entire facility or area may be designated as nonsmoking) and 1985 c 236 s 4; and

(3) RCW 70.160.900 (Short title—1985 c 236) and 1985 c 236 s 10.

NEW SECTION. Sec. 8. CAPTIONS NOT LAW. Captions used in this act are not any part of the law.

Originally filed in Office of Secretary of State January 10, 2005.

Approved by the People of the State of Washington in the General Election on November 8, 2005.

CHAPTER 3

[Substitute House Bill 2370]

ENERGY ASSISTANCE

AN ACT Relating to low-income home energy assistance; amending RCW 80.01.080; adding a new section to 2005 c 518 (uncodified); making an appropriation; and declaring an emergency.

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

NEW SECTION. **Sec. 1.** A new section is added to 2005 c 518 (uncodified) to read as follows:

FOR THE UTILITIES AND TRANSPORTATION COMMISSION

Public Service Revolving Account—State

Appropriation. \$7,600,000

The appropriation in this section is subject to the following conditions and limitations: The appropriation is provided solely for transfer to the department of community, trade, and economic development for the low-income home energy assistance program. The department shall not use any of this appropriation for administrative costs.

Sec. 2. RCW 80.01.080 and 2003 1st sp.s. c 25 s 940 are each amended to read as follows:

There is created in the state treasury a public service revolving fund. Regulatory fees payable by all types of public service companies shall be deposited to the credit of the public service revolving fund. Except for expenses payable out of the pipeline safety account, all expense of operation of the Washington utilities and transportation commission shall be payable out of the public service revolving fund.

During the 2003-2005 fiscal biennium, the legislature may transfer from the public service revolving fund to the state general fund such amounts as reflect the excess fund balance of the fund.

Due to the extraordinarily high winter energy costs, during the 2005-2007 fiscal biennium, no more than seven million six hundred thousand dollars, as appropriated in section 1 of this act, shall be payable out of the public service revolving fund to provide energy assistance to customers in accordance with the low-income energy assistance program.

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

Passed by the House January 11, 2006.
Passed by the Senate January 11, 2006.
Approved by the Governor January 12, 2006.
Filed in Office of Secretary of State January 12, 2006.

CHAPTER 4

[Engrossed Substitute House Bill 2661]

HUMAN RIGHTS COMMISSION—SEXUAL ORIENTATION

AN ACT Relating to the jurisdiction of the Washington human rights commission; amending RCW 49.60.010, 49.60.020, 49.60.030, 49.60.040, 49.60.120, 49.60.130, 49.60.175, 49.60.176, 49.60.178, 49.60.180, 49.60.190, 49.60.200, 49.60.215, 49.60.223, 49.60.224, 49.60.225, and 48.30.300; and reenacting and amending RCW 49.60.222.

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

Sec. 1. RCW 49.60.010 and 1997 c 271 s 1 are each amended to read as follows:

This chapter shall be known as the "law against discrimination((²))." It is an exercise of the police power of the state for the protection of the public welfare, health, and peace of the people of this state, and in fulfillment of the provisions of the Constitution of this state concerning civil rights. The legislature hereby finds and declares that practices of discrimination against any of its inhabitants because of race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person are a matter of state concern, that such discrimination threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state. A state agency is herein created with powers with respect to elimination and prevention of discrimination in employment, in credit and insurance transactions, in places of public resort, accommodation, or amusement, and in real property transactions because of race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person; and the commission established hereunder is hereby given general jurisdiction and power for such purposes.

Sec. 2. RCW 49.60.020 and 1993 c 510 s 2 are each amended to read as follows:

The provisions of this chapter shall be construed liberally for the accomplishment of the purposes thereof. Nothing contained in this chapter shall be deemed to repeal any of the provisions of any other law of this state relating to discrimination because of race, color, creed, national origin, sex, marital status, sexual orientation, age, or the presence of any sensory, mental, or physical disability, other than a law which purports to require or permit doing any act which is an unfair practice under this chapter. Nor shall anything herein contained be construed to deny the right to any person to institute any action or pursue any civil or criminal remedy based upon an alleged violation of his or her civil rights. This chapter shall not be construed to endorse any specific belief, practice, behavior, or orientation. Inclusion of sexual orientation in this chapter shall not be construed to modify or supersede state law relating to marriage.

Sec. 3. RCW 49.60.030 and 1997 c 271 s 2 are each amended to read as follows:

(1) The right to be free from discrimination because of race, creed, color, national origin, sex, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person is recognized as and declared to be a civil right. This right shall include, but not be limited to:

(a) The right to obtain and hold employment without discrimination;

(b) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement;

(c) The right to engage in real estate transactions without discrimination, including discrimination against families with children;

(d) The right to engage in credit transactions without discrimination;

(e) The right to engage in insurance transactions or transactions with health maintenance organizations without discrimination: PROVIDED, That a practice which is not unlawful under RCW 48.30.300, 48.44.220, or 48.46.370 does not constitute an unfair practice for the purposes of this subparagraph; and

(f) The right to engage in commerce free from any discriminatory boycotts or blacklists. Discriminatory boycotts or blacklists for purposes of this section shall be defined as the formation or execution of any express or implied agreement, understanding, policy or contractual arrangement for economic benefit between any persons which is not specifically authorized by the laws of the United States and which is required or imposed, either directly or indirectly, overtly or covertly, by a foreign government or foreign person in order to restrict, condition, prohibit, or interfere with or in order to exclude any person or persons from any business relationship on the basis of race, color, creed, religion, sex, sexual orientation, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a disabled person, or national origin or lawful business relationship: PROVIDED HOWEVER, That nothing herein contained shall prohibit the use of boycotts as authorized by law pertaining to labor disputes and unfair labor practices.

(2) Any person deeming himself or herself injured by any act in violation of this chapter shall have a civil action in a court of competent jurisdiction to enjoin further violations, or to recover the actual damages sustained by the person, or both, together with the cost of suit including reasonable attorneys' fees or any other appropriate remedy authorized by this chapter or the United States Civil Rights Act of 1964 as amended, or the Federal Fair Housing Amendments Act of 1988 (42 U.S.C. Sec. 3601 et seq.).

(3) Except for any unfair practice committed by an employer against an employee or a prospective employee, or any unfair practice in a real estate transaction which is the basis for relief specified in the amendments to RCW 49.60.225 contained in chapter 69, Laws of 1993, any unfair practice prohibited by this chapter which is committed in the course of trade or commerce as defined in the Consumer Protection Act, chapter 19.86 RCW, is, for the purpose of applying that chapter, a matter affecting the public interest, is not reasonable in relation to the development and preservation of business, and is an unfair or deceptive act in trade or commerce.

Sec. 4. RCW 49.60.040 and 1997 c 271 s 3 are each amended to read as follows:

~~((As used in this chapter:))~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Person" includes one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers, or any group of persons; it includes any owner, lessee, proprietor, manager, agent, or employee, whether one or more natural persons; and further includes any political or civil subdivisions of the state and any agency or instrumentality of the state or of any political or civil subdivision thereof;

(2) "Commission" means the Washington state human rights commission;

(3) "Employer" includes any person acting in the interest of an employer, directly or indirectly, who employs eight or more persons, and does not include any religious or sectarian organization not organized for private profit;

(4) "Employee" does not include any individual employed by his or her parents, spouse, or child, or in the domestic service of any person;

(5) "Labor organization" includes any organization which exists for the purpose, in whole or in part, of dealing with employers concerning grievances or terms or conditions of employment, or for other mutual aid or protection in connection with employment;

(6) "Employment agency" includes any person undertaking with or without compensation to recruit, procure, refer, or place employees for an employer;

(7) "Marital status" means the legal status of being married, single, separated, divorced, or widowed;

(8) "National origin" includes "ancestry";

(9) "Full enjoyment of" includes the right to purchase any service, commodity, or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement, without acts directly or indirectly causing persons of any particular race, creed, color, sex, sexual orientation, national origin, or with any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a disabled person, to be treated as not welcome, accepted, desired, or solicited;

(10) "Any place of public resort, accommodation, assemblage, or amusement" includes, but is not limited to, any place, licensed or unlicensed, kept for gain, hire, or reward, or where charges are made for admission, service, occupancy, or use of any property or facilities, whether conducted for the entertainment, housing, or lodging of transient guests, or for the benefit, use, or accommodation of those seeking health, recreation, or rest, or for the burial or other disposition of human remains, or for the sale of goods, merchandise, services, or personal property, or for the rendering of personal services, or for public conveyance or transportation on land, water, or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports, or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation, or public purposes, or public halls, public elevators, and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or educational institution, or schools of special instruction, or nursery schools, or day care centers or children's camps: PROVIDED, That nothing contained in this definition shall be construed to include or apply to any institute, bona fide club, or place of accommodation, which is by its nature distinctly private, including fraternal organizations, though where public use is permitted that use shall be covered by this chapter; nor shall anything contained in this definition apply to any educational facility, columbarium, crematory, mausoleum, or cemetery operated or maintained by a bona fide religious or sectarian institution;

(11) "Real property" includes buildings, structures, dwellings, real estate, lands, tenements, leaseholds, interests in real estate cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest therein;

(12) "Real estate transaction" includes the sale, appraisal, brokering, exchange, purchase, rental, or lease of real property, transacting or applying for a real estate loan, or the provision of brokerage services;

(13) "Dwelling" means any building, structure, or portion thereof that is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land that is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof;

(14) "Sex" means gender;

(15) "Sexual orientation" means heterosexuality, homosexuality, bisexuality, and gender expression or identity. As used in this definition, "gender expression or identity" means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth;

(16) "Aggrieved person" means any person who: (a) Claims to have been injured by an unfair practice in a real estate transaction; or (b) believes that he or she will be injured by an unfair practice in a real estate transaction that is about to occur;

~~((16))~~ (17) "Complainant" means the person who files a complaint in a real estate transaction;

~~((17))~~ (18) "Respondent" means any person accused in a complaint or amended complaint of an unfair practice in a real estate transaction;

~~((18))~~ (19) "Credit transaction" includes any open or closed end credit transaction, whether in the nature of a loan, retail installment transaction, credit card issue or charge, or otherwise, and whether for personal or for business purposes, in which a service, finance, or interest charge is imposed, or which provides for repayment in scheduled payments, when such credit is extended in the regular course of any trade or commerce, including but not limited to transactions by banks, savings and loan associations or other financial lending institutions of whatever nature, stock brokers, or by a merchant or mercantile establishment which as part of its ordinary business permits or provides that payment for purchases of property or service therefrom may be deferred;

~~((19))~~ (20) "Families with children status" means one or more individuals who have not attained the age of eighteen years being domiciled with a parent or another person having legal custody of such individual or individuals, or with the designee of such parent or other person having such legal custody, with the written permission of such parent or other person. Families with children status also applies to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen years;

~~((20))~~ (21) "Covered multifamily dwelling" means: (a) Buildings consisting of four or more dwelling units if such buildings have one or more elevators; and (b) ground floor dwelling units in other buildings consisting of four or more dwelling units;

~~((21))~~ (22) "Premises" means the interior or exterior spaces, parts, components, or elements of a building, including individual dwelling units and the public and common use areas of a building;

~~((22))~~ (23) "Dog guide" means a dog that is trained for the purpose of guiding blind persons or a dog that is trained for the purpose of assisting hearing impaired persons;

~~((23))~~ (24) "Service animal" means an animal that is trained for the purpose of assisting or accommodating a disabled person's sensory, mental, or physical disability.

Sec. 5. RCW 49.60.120 and 1997 c 271 s 4 are each amended to read as follows:

The commission shall have the functions, powers, and duties:

(1) To appoint an executive director and chief examiner, and such investigators, examiners, clerks, and other employees and agents as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.

(2) To obtain upon request and utilize the services of all governmental departments and agencies.

(3) To adopt, ~~(promulgate,)~~ amend, and rescind suitable rules ~~((and regulations))~~ to carry out the provisions of this chapter, and the policies and practices of the commission in connection therewith.

(4) To receive, impartially investigate, and pass upon complaints alleging unfair practices as defined in this chapter.

(5) To issue such publications and ~~((such))~~ results of investigations and research as in its judgment will tend to promote good will and minimize or eliminate discrimination because of sex, sexual orientation, race, creed, color, national origin, marital status, age, or the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a disabled person.

(6) To make such technical studies as are appropriate to effectuate the purposes and policies of this chapter and to publish and distribute the reports of such studies.

(7) To cooperate and act jointly or by division of labor with the United States or other states, with other Washington state agencies, commissions, and other government entities, and with political subdivisions of the state of Washington and their respective human rights agencies to carry out the purposes of this chapter. However, the powers which may be exercised by the commission under this subsection permit investigations and complaint dispositions only if the investigations are designed to reveal, or the complaint deals only with, allegations which, if proven, would constitute unfair practices under this chapter. The commission may perform such services for these agencies and be reimbursed therefor.

(8) To foster good relations between minority and majority population groups of the state through seminars, conferences, educational programs, and other intergroup relations activities.

Sec. 6. RCW 49.60.130 and 1997 c 271 s 5 are each amended to read as follows:

The commission has power to create such advisory agencies and conciliation councils, local, regional, or statewide, as in its judgment will aid in effectuating the purposes of this chapter. The commission may empower them to study the problems of discrimination in all or specific fields of human relationships or in specific instances of discrimination because of sex, race, creed, color, national origin, marital status, sexual orientation, age, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person; to foster through community effort or otherwise good will, cooperation, and conciliation among the groups and elements of the population of the state, and to make recommendations to the commission for the development of policies and procedures in general and in specific instances, and for programs of formal and informal education which the commission may recommend to the appropriate state agency.

Such advisory agencies and conciliation councils shall be composed of representative citizens, serving without pay, but with reimbursement for travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended, and the commission may make provision for technical and clerical assistance to such agencies and councils and for the expenses of such assistance. The commission may use organizations specifically experienced in dealing with questions of discrimination.

Sec. 7. RCW 49.60.175 and 1997 c 271 s 7 are each amended to read as follows:

It shall be an unfair practice to use the sex, race, creed, color, national origin, marital status, sexual orientation, or the presence of any sensory, mental, or physical disability of any person, or the use of a trained dog guide or service animal by a disabled person, concerning an application for credit in any credit transaction to determine the credit worthiness of an applicant.

Sec. 8. RCW 49.60.176 and 1997 c 271 s 8 are each amended to read as follows:

(1) It is an unfair practice for any person whether acting for himself, herself, or another in connection with any credit transaction because of race, creed, color, national origin, sex, marital status, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person:

- (a) To deny credit to any person;
- (b) To increase the charges or fees for or collateral required to secure any credit extended to any person;
- (c) To restrict the amount or use of credit extended or to impose different terms or conditions with respect to the credit extended to any person or any item or service related thereto;
- (d) To attempt to do any of the unfair practices defined in this section.

(2) Nothing in this section shall prohibit any party to a credit transaction from considering the credit history of any individual applicant.

(3) Further, nothing in this section shall prohibit any party to a credit transaction from considering the application of the community property law to the individual case or from taking reasonable action thereon.

Sec. 9. RCW 49.60.178 and 1997 c 271 s 9 are each amended to read as follows:

It is an unfair practice for any person whether acting for himself, herself, or another in connection with an insurance transaction or transaction with a health maintenance organization to cancel or fail or refuse to issue or renew insurance or a health maintenance agreement to any person because of sex, marital status, sexual orientation, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person: PROVIDED, That a practice which is not unlawful under RCW 48.30.300, 48.44.220, or 48.46.370 does not constitute an unfair practice for the purposes of this section. For the purposes of this section, "insurance transaction" is defined in RCW 48.01.060, health maintenance agreement is defined in RCW 48.46.020, and "health maintenance organization" is defined in RCW 48.46.020.

The fact that such unfair practice may also be a violation of chapter 48.30, 48.44, or 48.46 RCW does not constitute a defense to an action brought under this section.

The insurance commissioner, under RCW 48.30.300, and the human rights commission, under chapter 49.60 RCW, shall have concurrent jurisdiction under this section and shall enter into a working agreement as to procedure to be followed in complaints under this section.

Sec. 10. RCW 49.60.180 and 1997 c 271 s 10 are each amended to read as follows:

It is an unfair practice for any employer:

(1) To refuse to hire any person because of age, sex, marital status, sexual orientation, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person, unless based upon a bona fide occupational qualification: PROVIDED, That the prohibition against discrimination because of such disability shall not apply if the particular disability prevents the proper performance of the particular worker involved: PROVIDED, That this section shall not be construed to require an employer to establish employment goals or quotas based on sexual orientation.

(2) To discharge or bar any person from employment because of age, sex, marital status, sexual orientation, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person.

(3) To discriminate against any person in compensation or in other terms or conditions of employment because of age, sex, marital status, sexual orientation, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person: PROVIDED, That it shall not be an unfair practice for an employer to segregate washrooms or locker facilities on the basis of sex, or to base other terms and conditions of employment on the sex of employees where the commission by regulation or ruling in a particular instance has found the employment practice to be appropriate for the practical realization of equality of opportunity between the sexes.

(4) To print, or circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment, or to make any inquiry in connection with prospective employment, which expresses any limitation, specification, or discrimination as to age, sex, marital

status, sexual orientation, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person, or any intent to make any such limitation, specification, or discrimination, unless based upon a bona fide occupational qualification: PROVIDED, Nothing contained herein shall prohibit advertising in a foreign language.

Sec. 11. RCW 49.60.190 and 1997 c 271 s 11 are each amended to read as follows:

It is an unfair practice for any labor union or labor organization:

(1) To deny membership and full membership rights and privileges to any person because of age, sex, marital status, sexual orientation, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person.

(2) To expel from membership any person because of age, sex, marital status, sexual orientation, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person.

(3) To discriminate against any member, employer, employee, or other person to whom a duty of representation is owed because of age, sex, marital status, sexual orientation, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person.

Sec. 12. RCW 49.60.200 and 1997 c 271 s 12 are each amended to read as follows:

It is an unfair practice for any employment agency to fail or refuse to classify properly or refer for employment, or otherwise to discriminate against, an individual because of age, sex, marital status, sexual orientation, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person, or to print or circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment, or to make any inquiry in connection with prospective employment, which expresses any limitation, specification or discrimination as to age, sex, race, sexual orientation, creed, color, or national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person, or any intent to make any such limitation, specification, or discrimination, unless based upon a bona fide occupational qualification: PROVIDED, Nothing contained herein shall prohibit advertising in a foreign language.

Sec. 13. RCW 49.60.215 and 1997 c 271 s 13 are each amended to read as follows:

It shall be an unfair practice for any person or the person's agent or employee to commit an act which directly or indirectly results in any distinction, restriction, or discrimination, or the requiring of any person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from any person the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any place of public resort, accommodation, assemblage, or amusement, except for conditions and limitations established by

law and applicable to all persons, regardless of race, creed, color, national origin, sexual orientation, sex, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a disabled person: PROVIDED, That this section shall not be construed to require structural changes, modifications, or additions to make any place accessible to a disabled person except as otherwise required by law: PROVIDED, That behavior or actions constituting a risk to property or other persons can be grounds for refusal and shall not constitute an unfair practice.

Sec. 14. RCW 49.60.222 and 1997 c 400 s 3 and 1997 c 271 s 14 are each reenacted and amended to read as follows:

(1) It is an unfair practice for any person, whether acting for himself, herself, or another, because of sex, marital status, sexual orientation, race, creed, color, national origin, families with children status, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a disabled person:

(a) To refuse to engage in a real estate transaction with a person;

(b) To discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith;

(c) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person;

(d) To refuse to negotiate for a real estate transaction with a person;

(e) To represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or to fail to bring a property listing to his or her attention, or to refuse to permit the person to inspect real property;

(f) To discriminate in the sale or rental, or to otherwise make unavailable or deny a dwelling, to any person; or to a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or to any person associated with the person buying or renting;

(g) To make, print, circulate, post, or mail, or cause to be so made or published a statement, advertisement, or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto;

(h) To offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith;

(i) To expel a person from occupancy of real property;

(j) To discriminate in the course of negotiating, executing, or financing a real estate transaction whether by mortgage, deed of trust, contract, or other instrument imposing a lien or other security in real property, or in negotiating or executing any item or service related thereto including issuance of title insurance, mortgage insurance, loan guarantee, or other aspect of the transaction. Nothing in this section shall limit the effect of RCW 49.60.176 relating to unfair practices in credit transactions; or

(k) To attempt to do any of the unfair practices defined in this section.

(2) For the purposes of this chapter discrimination based on the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a blind, deaf, or physically disabled person includes:

(a) A refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the dwelling, except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the dwelling to the condition that existed before the modification, reasonable wear and tear excepted;

(b) To refuse to make reasonable accommodation in rules, policies, practices, or services when such accommodations may be necessary to afford a person with the presence of any sensory, mental, or physical disability and/or the use of a trained dog guide or service animal by a blind, deaf, or physically disabled person equal opportunity to use and enjoy a dwelling; or

(c) To fail to design and construct covered multifamily dwellings and premises in conformance with the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3601 et seq.) and all other applicable laws or regulations pertaining to access by persons with any sensory, mental, or physical disability or use of a trained dog guide or service animal. Whenever the requirements of applicable laws or regulations differ, the requirements which require greater accessibility for persons with any sensory, mental, or physical disability shall govern.

Nothing in (a) or (b) of this subsection shall apply to: (i) A single-family house rented or leased by the owner if the owner does not own or have an interest in the proceeds of the rental or lease of more than three such single-family houses at one time, the rental or lease occurred without the use of a real estate broker or salesperson, as defined in RCW 18.85.010, and the rental or lease occurred without the publication, posting, or mailing of any advertisement, sign, or statement in violation of subsection (1)(g) of this section; or (ii) rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other if the owner maintains and occupies one of the rooms or units as his or her residence.

(3) Notwithstanding any other provision of this chapter, it shall not be an unfair practice or a denial of civil rights for any public or private educational institution to separate the sexes or give preference to or limit use of dormitories, residence halls, or other student housing to persons of one sex or to make distinctions on the basis of marital or families with children status.

(4) Except pursuant to subsection (2)(a) of this section, this section shall not be construed to require structural changes, modifications, or additions to make facilities accessible to a disabled person except as otherwise required by law. Nothing in this section affects the rights, responsibilities, and remedies of landlords and tenants pursuant to chapter 59.18 or 59.20 RCW, including the right to post and enforce reasonable rules of conduct and safety for all tenants and their guests, provided that chapters 59.18 and 59.20 RCW are only affected to the extent they are inconsistent with the nondiscrimination requirements of this chapter. Nothing in this section limits the applicability of any reasonable federal, state, or local restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(5) Notwithstanding any other provision of this chapter, it shall not be an unfair practice for any public establishment providing for accommodations offered for the full enjoyment of transient guests as defined by RCW 9.91.010(1)(c) to make distinctions on the basis of families with children status. Nothing in this section shall limit the effect of RCW 49.60.215 relating to unfair practices in places of public accommodation.

(6) Nothing in this chapter prohibiting discrimination based on families with children status applies to housing for older persons as defined by the federal fair housing amendments act of 1988, 42 U.S.C. Sec. 3607(b)(1) through (3), as amended by the housing for older persons act of 1995, P.L. 104-76, as enacted on December 28, 1995. Nothing in this chapter authorizes requirements for housing for older persons different than the requirements in the federal fair housing amendments act of 1988, 42 U.S.C. Sec. 3607(b)(1) through (3), as amended by the housing for older persons act of 1995, P.L. 104-76, as enacted on December 28, 1995.

(7) Nothing in this chapter shall apply to real estate transactions involving the sharing of a dwelling unit, or rental or sublease of a portion of a dwelling unit, when the dwelling unit is to be occupied by the owner or sublessor. For purposes of this section, "dwelling unit" has the same meaning as in RCW 59.18.030.

Sec. 15. RCW 49.60.223 and 1997 c 271 s 15 are each amended to read as follows:

It is an unfair practice for any person, for profit, to induce or attempt to induce any person to sell or rent any real property by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, creed, color, sex, national origin, sexual orientation, families with children status, or with any sensory, mental, or physical disability and/or the use of a trained dog guide or service animal by a blind, deaf, or physically disabled person.

Sec. 16. RCW 49.60.224 and 1997 c 271 s 16 are each amended to read as follows:

(1) Every provision in a written instrument relating to real property which purports to forbid or restrict the conveyance, encumbrance, occupancy, or lease thereof to individuals of a specified race, creed, color, sex, national origin, sexual orientation, families with children status, or with any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a blind, deaf, or physically disabled person, and every condition, restriction, or prohibition, including a right of entry or possibility of reverter, which directly or indirectly limits the use or occupancy of real property on the basis of race, creed, color, sex, national origin, sexual orientation, families with children status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a blind, deaf, or physically disabled person is void.

(2) It is an unfair practice to insert in a written instrument relating to real property a provision that is void under this section or to honor or attempt to honor such a provision in the chain of title.

Sec. 17. RCW 49.60.225 and 1997 c 271 s 17 are each amended to read as follows:

(1) When a reasonable cause determination has been made under RCW 49.60.240 that an unfair practice in a real estate transaction has been committed and a finding has been made that the respondent has engaged in any unfair practice under RCW 49.60.250, the administrative law judge shall promptly issue an order for such relief suffered by the aggrieved person as may be appropriate, which may include actual damages as provided by the federal fair housing amendments act of 1988 (42 U.S.C. Sec. 3601 et seq.), and injunctive or other equitable relief. Such order may, to further the public interest, assess a civil penalty against the respondent:

(a) In an amount up to ten thousand dollars if the respondent has not been determined to have committed any prior unfair practice in a real estate transaction;

(b) In an amount up to twenty-five thousand dollars if the respondent has been determined to have committed one other unfair practice in a real estate transaction during the five-year period ending on the date of the filing of this charge; or

(c) In an amount up to fifty thousand dollars if the respondent has been determined to have committed two or more unfair practices in a real estate transaction during the seven-year period ending on the date of the filing of this charge, for loss of the right secured by RCW 49.60.010, 49.60.030, 49.60.040, and 49.60.222 through 49.60.224, as now or hereafter amended, to be free from discrimination in real property transactions because of sex, marital status, race, creed, color, national origin, sexual orientation, families with children status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a blind, deaf, or physically disabled person. Enforcement of the order and appeal therefrom by the complainant or respondent may be made as provided in RCW 49.60.260 and 49.60.270. If acts constituting the unfair practice in a real estate transaction that is the object of the charge are determined to have been committed by the same natural person who has been previously determined to have committed acts constituting an unfair practice in a real estate transaction, then the civil penalty of up to fifty thousand dollars may be imposed without regard to the period of time within which any subsequent unfair practice in a real estate transaction occurred. All civil penalties assessed under this section shall be paid into the state treasury and credited to the general fund.

(2) Such order shall not affect any contract, sale, conveyance, encumbrance, or lease consummated before the issuance of an order that involves a bona fide purchaser, encumbrancer, or tenant who does not have actual notice of the charge filed under this chapter.

(3) Notwithstanding any other provision of this chapter, persons awarded damages under this section may not receive additional damages pursuant to RCW 49.60.250.

Sec. 18. RCW 48.30.300 and 2005 c 223 s 19 are each amended to read as follows:

Notwithstanding any provision contained in Title 48 RCW to the contrary:

A person or entity engaged in the business of insurance in this state may not refuse to issue any contract of insurance or cancel or decline to renew such contract because of the sex ((~~or~~)), marital status, or sexual orientation as defined in RCW 49.60.040, or the presence of any sensory, mental, or physical handicap

of the insured or prospective insured. The amount of benefits payable, or any term, rate, condition, or type of coverage may not be restricted, modified, excluded, increased, or reduced on the basis of the sex ~~((or))~~, marital status, or sexual orientation, or be restricted, modified, excluded, or reduced on the basis of the presence of any sensory, mental, or physical handicap of the insured or prospective insured. This subsection does not prohibit fair discrimination on the basis of sex, or marital status, or the presence of any sensory, mental, or physical handicap when bona fide statistical differences in risk or exposure have been substantiated.

Passed by the House January 20, 2006.

Passed by the Senate January 27, 2006.

Approved by the Governor January 31, 2006.

Filed in Office of Secretary of State January 31, 2006.

CHAPTER 5

[Substitute House Bill 2419]

NATIONAL CONFERENCE OF LIEUTENANT GOVERNORS

AN ACT Relating to hosting the national conference of lieutenant governors; amending RCW 42.52.150; creating new sections; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature finds that due to the massive devastation inflicted on the city of New Orleans by hurricane Katrina on August 29, 2005, the city of New Orleans will not be able to meet its obligation to host the national lieutenant governors' association's annual conference scheduled for July 17 through July 19, 2006. As a result of this unfortunate situation, the members of the national lieutenant governors' association officially pressed to have Washington state host the next annual conference in Seattle, Washington, and lieutenant governor Brad Owen has agreed to do so. The legislature further finds, in recognition of the unprecedented situation created by this natural disaster, the high national visibility of this important event, and due to the limited amount of time remaining for planning and fund-raising, it is necessary to initiate fund-raising activities for this national conference as soon as possible.

NEW SECTION. Sec. 2. When soliciting gifts, grants, or donations solely for the purpose of hosting the 2006 official conference of the national lieutenant governors' association to be held in Seattle, Washington, as approved by the lieutenant governor of the state of Washington, the lieutenant governor, and his or her staff designated by the lieutenant governor for this purpose, are presumed not to be in violation of the solicitation, receipt of gift, and conflict of interests with official duties provisions in chapter 42.52 RCW. For the purposes of this section, the national lieutenant governors' association must include among its membership the Washington state lieutenant governor. The solicitation of gifts, grants, or donations for the purpose of hosting the 2006 lieutenant governors' conference is considered an official duty.

Sec. 3. RCW 42.52.150 and 2003 1st sp.s. c 23 s 2 are each amended to read as follows:

(1) No state officer or state employee may accept gifts, other than those specified in subsections (2) and (5) of this section, with an aggregate value in

excess of fifty dollars from a single source in a calendar year or a single gift from multiple sources with a value in excess of fifty dollars. For purposes of this section, "single source" means any person, as defined in RCW 42.52.010, whether acting directly or through any agent or other intermediary, and "single gift" includes any event, item, or group of items used in conjunction with each other or any trip including transportation, lodging, and attendant costs, not excluded from the definition of gift under RCW 42.52.010. The value of gifts given to an officer's or employee's family member or guest shall be attributed to the official or employee for the purpose of determining whether the limit has been exceeded, unless an independent business, family, or social relationship exists between the donor and the family member or guest.

(2) Except as provided in subsection (4) of this section, the following items are presumed not to influence under RCW 42.52.140, and may be accepted without regard to the limit established by subsection (1) of this section:

- (a) Unsolicited flowers, plants, and floral arrangements;
- (b) Unsolicited advertising or promotional items of nominal value, such as pens and note pads;
- (c) Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;
- (d) Unsolicited items received by a state officer or state employee for the purpose of evaluation or review, if the officer or employee has no personal beneficial interest in the eventual use or acquisition of the item by the officer's or employee's agency;
- (e) Informational material, publications, or subscriptions related to the recipient's performance of official duties;
- (f) Food and beverages consumed at hosted receptions where attendance is related to the state officer's or state employee's official duties;
- (g) Gifts, grants, conveyances, bequests, and devises of real or personal property, or both, in trust or otherwise accepted and solicited for deposit in the legislative international trade account created in RCW 44.04.270;
- (h) Gifts, grants, conveyances, bequests, and devises of real or personal property, or both, in trust or otherwise accepted and solicited for the purpose of promoting the expansion of tourism as provided for in RCW 43.330.090;
- (i) Gifts, grants, conveyances, bequests, and devises of real or personal property, or both, solicited on behalf of a national legislative association, 2006 official conference of the national lieutenant governors' association, or host committee for the purpose of hosting an official conference under the circumstances specified in RCW 42.52.820 and section 2, chapter . . . , Laws of 2006 (section 2 of this act). Anything solicited or accepted may only be received by the national association or host committee and may not be commingled with any funds or accounts that are the property of any person;
- (j) Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization; and
- (k) Unsolicited gifts from dignitaries from another state or a foreign country that are intended to be personal in nature.

(3) The presumption in subsection (2) of this section is rebuttable and may be overcome based on the circumstances surrounding the giving and acceptance of the item.

(4) Notwithstanding subsections (2) and (5) of this section, a state officer or state employee of a regulatory agency or of an agency that seeks to acquire goods or services who participates in those regulatory or contractual matters may receive, accept, take, or seek, directly or indirectly, only the following items from a person regulated by the agency or from a person who seeks to provide goods or services to the agency:

(a) Unsolicited advertising or promotional items of nominal value, such as pens and note pads;

(b) Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;

(c) Unsolicited items received by a state officer or state employee for the purpose of evaluation or review, if the officer or employee has no personal beneficial interest in the eventual use or acquisition of the item by the officer's or employee's agency;

(d) Informational material, publications, or subscriptions related to the recipient's performance of official duties;

(e) Food and beverages consumed at hosted receptions where attendance is related to the state officer's or state employee's official duties;

(f) Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization; and

(g) Those items excluded from the definition of gift in RCW 42.52.010 except:

(i) Payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance, or trade mission made in an official capacity;

(ii) Payments for seminars and educational programs sponsored by a bona fide governmental or nonprofit professional, educational, trade, or charitable association or institution; and

(iii) Flowers, plants, and floral arrangements.

(5) A state officer or state employee may accept gifts in the form of food and beverage on infrequent occasions in the ordinary course of meals where attendance by the officer or employee is related to the performance of official duties. Gifts in the form of food and beverage that exceed fifty dollars on a single occasion shall be reported as provided in chapter 42.17 RCW.

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

Passed by the House January 30, 2006.

Passed by the Senate February 1, 2006.

Approved by the Governor February 7, 2006.

Filed in Office of Secretary of State February 7, 2006.

CHAPTER 6

[Engrossed Second Substitute House Bill 2860]

COLUMBIA RIVER BASIN—WATER SUPPLY

AN ACT Relating to water resource management in the Columbia river basin; amending 2005 c 488 s 332 (uncodified); reenacting and amending RCW 43.84.092; adding a new chapter to Title 90

RCW; creating a new section; making appropriations; providing an effective date; and providing an expiration date.

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

NEW SECTION. Sec. 1. (1) The legislature finds that a key priority of water resource management in the Columbia river basin is the development of new water supplies that includes storage and conservation in order to meet the economic and community development needs of people and the instream flow needs of fish.

(2) The legislature therefore declares that a Columbia river basin water supply development program is needed, and directs the department of ecology to aggressively pursue the development of water supplies to benefit both instream and out-of-stream uses.

NEW SECTION. Sec. 2. (1) The Columbia river basin water supply development account is created in the state treasury. The account may receive direct appropriations from the legislature, receipts of any funds pursuant to sections 3 and 4 of this act, or funds from any other sources.

(2)(a) Expenditures from the Columbia river basin water supply development account may be used to assess, plan, and develop new storage, improve or alter operations of existing storage facilities, implement conservation projects, or any other actions designed to provide access to new water supplies within the Columbia river basin for both instream and out-of-stream uses. Except for the development of new storage projects, there shall be no expenditures from this account for water acquisition or transfers from one water resource inventory area to another without specific legislative authority.

(b) Two-thirds of the funds placed in the account shall be used to support the development of new storage facilities; the remaining one-third shall be used for the other purposes listed in this section.

(3)(a) Funds may not be expended from this account for the construction of a new storage facility until the department of ecology evaluates the following:

- (i) Water uses to be served by the facility;
- (ii) The quantity of water necessary to meet those uses;
- (iii) The benefits and costs to the state of meeting those uses, including short-term and long-term economic, cultural, and environmental effects; and
- (iv) Alternative means of supplying water to meet those uses, including the costs of those alternatives and an analysis of the extent to which long-term water supply needs can be met using these alternatives.

(b) The department of ecology may rely on studies and information developed through compliance with other state and federal permit requirements and other sources. The department shall compile its findings and conclusions, and provide a summary of the information it reviewed.

(c) Before finalizing its evaluation under the provisions of this section, the department of ecology shall make the preliminary evaluation available to the public. Public comment may be made to the department within thirty days of the date the preliminary evaluation is made public.

(4) Net water savings achieved through conservation measures funded by the account shall be placed in trust in proportion to the state funding provided to implement a project.

(5) Net water savings achieved through conservation measures funded by the account developed within the boundaries of the federal Columbia river reclamation project and directed to the Odessa subarea to reduce the use of ground water for existing irrigation is exempt from the provisions of subsection (4) of this section.

(6) Moneys in the Columbia river basin water supply development account created in this section may be spent only after appropriation.

(7) Interest earned by deposits in the account will be retained in the account.

NEW SECTION. Sec. 3. (1)(a) Water supplies secured through the development of new storage facilities made possible with funding from the Columbia river basin water supply development account shall be allocated as follows:

(i) Two-thirds of active storage shall be available for appropriation for out-of-stream uses; and

(ii) One-third of active storage shall be available to augment instream flows and shall be managed by the department of ecology. The timing of releases of this water shall be determined by the department of ecology, in cooperation with the department of fish and wildlife and fisheries comanagers, to maximize benefits to salmon and steelhead populations.

(b) Water available for appropriation under (a)(i) of this subsection but not yet appropriated shall be temporarily available to augment instream flows to the extent that it does not impair existing water rights.

(2) Water developed under the provisions of this section to offset out-of-stream uses and for instream flows is deemed adequate mitigation for the issuance of new water rights provided for in subsection (1)(a) of this section and satisfies all consultation requirements under state law related to the issuance of new water rights.

(3) The department of ecology shall focus its efforts to develop water supplies for the Columbia river basin on the following needs:

(a) Alternatives to ground water for agricultural users in the Odessa subarea aquifer;

(b) Sources of water supply for pending water right applications;

(c) A new uninterruptible supply of water for the holders of interruptible water rights on the Columbia river mainstem that are subject to instream flows or other mitigation conditions to protect stream flows; and

(d) New municipal, domestic, industrial, and irrigation water needs within the Columbia river basin.

(4) The one-third/two-thirds allocation of water resources between instream and out-of-stream uses established in this section does not apply to applications for changes or transfers of existing water rights in the Columbia river basin.

NEW SECTION. Sec. 4. (1) The department of ecology may enter into voluntary regional agreements for the purpose of providing new water for out-of-stream use, streamlining the application process, and protecting instream flow.

(2) Such agreements shall ensure that:

(a) For water rights issued from the Columbia river mainstem, there is no negative impact on Columbia river mainstem instream flows in the months of

July and August as a result of the new appropriations issued under the agreement;

(b) For water rights issued from the lower Snake river mainstem, there is no negative impact on Snake river mainstem instream flows from April through August as a result of the new appropriations issued under the agreement; and

(c) Efforts are made to harmonize such agreements with watershed plans adopted under the authority of chapter 90.82 RCW that are applicable to the area covered by the agreement.

(3) The protection of instream flow as set forth in subsection (2) of this section is adequate for purposes of mitigating instream flow impacts resulting from any appropriations for out-of-stream use made under a voluntary regional agreement, and the only applicable consultation provisions under state law regarding instream flow impacts shall be those set forth in subsection (4) of this section.

(4) Before executing a voluntary agreement under this section, the department of ecology shall:

(a) Provide a sixty-day period for consultation with county legislative authorities and watershed planning groups with jurisdiction over the area where the water rights included in the agreement are located, the department of fish and wildlife, and affected tribal governments, and federal agencies. The department of fish and wildlife shall provide written comments within that time period. The consultation process for voluntary regional agreements developed under the provisions of this section is deemed adequate for the issuance of new water rights provided for in this section and satisfies all consultation requirements under state law related to the issuance of new water rights; and

(b) Provide a thirty-day public review and comment period for a draft agreement, and publish a summary of any public comments received. The thirty-day review period shall not begin until after the department of ecology has concluded its consultation under (a) of this subsection and the comments that have been received by the department are made available to the public.

(5) The provisions of subsection (4) of this section satisfy all applicable consultation requirements under state law.

(6) The provisions of this section and any voluntary regional agreements developed under such provisions may not be relied upon by the department of ecology as a precedent, standard, or model that must be followed in any other voluntary regional agreements.

(7) Nothing in this section may be interpreted or administered in a manner that precludes the processing of water right applications under chapter 90.03 or 90.44 RCW that are not included in a voluntary regional agreement.

(8) Nothing in this section may be interpreted or administered in a manner that impairs or diminishes a valid water right or a habitat conservation plan approved for purposes of compliance with the federal endangered species act.

(9) The department of ecology shall monitor and evaluate the water allocated to instream and out-of-stream uses under this section, evaluate the program, and provide an interim report to the appropriate committees of the legislature by June 30, 2008. A final report shall be provided to the appropriate committees of the legislature by June 30, 2011.

(10) If the department of ecology executes a voluntary agreement under this section that includes water rights appropriated from the lower Snake river

mainstem, the department shall develop aggregate data in accordance with the provisions of section 6 of this act for the lower Snake river mainstem.

(11) Any agreement entered into under this section shall remain in full force and effect through the term of the agreement regardless of the expiration of this section.

(12) The definitions in this subsection apply to this section and section 6 of this act, and may only be used for purposes of implementing these sections.

(a) "Columbia river mainstem" means all water in the Columbia river within the ordinary high water mark of the main channel of the Columbia river between the border of the United States and Canada and the Bonneville dam, and all ground water within one mile of the high water mark.

(b) "Lower Snake river mainstem" means all water in the lower Snake river within the ordinary high water mark of the main channel of the lower Snake river from the head of Ice Harbor pool to the confluence of the Snake and Columbia rivers, and all ground water within one mile of the high water mark.

(13) This section expires June 30, 2012.

NEW SECTION. Sec. 5. (1) To support the development of new water supplies in the Columbia river and to protect instream flow, the department of ecology shall work with all interested parties, including interested county legislative authorities and watershed planning groups, adjacent to the Columbia river, and affected tribal governments, to develop a Columbia river water supply inventory and a long-term water supply and demand forecast. The inventory must include:

(a) A list of conservation projects that have been implemented under this chapter and the amount of water conservation they have achieved; and

(b) A list of potential water supply and storage projects in the Columbia river basin, including estimates of:

(i) Cost per acre-foot;

(ii) Benefit to fish and other instream needs;

(iii) Benefit to out-of-stream needs; and

(iv) Environmental and cultural impacts.

(2) The department of ecology shall complete the first Columbia river water supply inventory by November 15, 2006, and shall update the inventory annually thereafter.

(3) The department of ecology shall complete the first Columbia river long-term water supply and demand forecast by November 15, 2006, and shall update the report every five years thereafter.

NEW SECTION. Sec. 6. (1) In order to better understand current water use and instream flows in the Columbia river mainstem, the department of ecology shall establish and maintain a Columbia river mainstem water resources information system that provides the information necessary for effective mainstem water resource planning and management.

(2) To accomplish the objective in subsection (1) of this section, the department of ecology shall use information compiled by existing local watershed planning groups, federal agencies, the Bonneville power administration, irrigation districts, conservation districts in the basin, and other available sources. The information shall include:

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(a) The total aggregate quantity of water rights issued under state permits and certificates and filed under state claims on the Columbia river mainstem and for ground water within one mile of the mainstem; and

(b) The total aggregate volume of current water use under these rights as metered and reported by water users under current law.

(3) The department of ecology shall publish the aggregate data on the department's web site no later than June 30, 2009, and shall periodically update the data.

(4) For purposes of this section, the definition of Columbia river mainstem in section 4(12) of this act shall apply and the use of the definition is solely limited to the purpose of collecting data to meet the information requirements of this section.

Sec. 7. 2005 c 488 s 332 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF ECOLOGY

Columbia River Initiative (06-2-010)

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

(1) \$6,000,000 is provided solely for feasibility studies related to off-mainstem storage projects and impacts of changing operations at the Potholes reservoir, and grant funding for the purchase and installation of water measuring devices.

(2) Of the amount appropriated in this section, \$10,000,000 (~~may not be expended prior to enactment of state legislation that establishes the policy requirements for a new water resources and water rights management program for the Columbia river mainstem. If such legislation is not enacted prior to June 30, 2006, this amount shall lapse~~) is provided to begin implementation of the Columbia river basin water supply development program in sections 2 through 6 of this act. Within this amount, the department shall support, to the extent that projects are ready to proceed and to the extent that resources allow, the following water supply projects, including, but not limited to: Storage development or storage enhancement projects, projects that provide surface water supply for the Odessa subarea within the boundaries of the Columbia basin federal reclamation project, projects that enhance water supplies for the Walla Walla and Yakima rivers through exchanges and other methods, and investments resulting in water use efficiency. The department shall report progress under this section to the appropriate committees of the legislature by December 1, 2006.

Appropriation:

State Building Construction Account—State	\$16,000,000
Prior Biennia (Expenditures)	\$0
Future Biennia (Projected Costs)	\$52,610,000
TOTAL	\$68,610,000

Sec. 8. RCW 43.84.092 and 2005 c 514 s 1106, 2005 c 353 s 4, 2005 c 339 s 23, 2005 c 314 s 110, 2005 c 312 s 8, and 2005 c 94 s 2 are each reenacted and amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the Columbia river basin water supply development account, the common school construction fund, the county criminal justice assistance account, the county sales and use tax equalization account, the data processing building construction account, the deferred compensation administrative account, the deferred compensation principal account, the department of retirement systems expense account, the developmental disabilities community trust account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the education construction fund, the education legacy trust account, the election account, the emergency reserve fund, The Evergreen State College capital projects account, the federal forest revolving account, the freight mobility investment account, the health services account, the public health services account, the health system capacity account, the personal health services account, the state higher education construction account, the higher education construction account, the highway infrastructure account, the high-occupancy toll lanes operations account, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the

judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the medical aid account, the mobile home park relocation fund, the multimodal transportation account, the municipal criminal justice assistance account, the municipal sales and use tax equalization account, the natural resources deposit account, the oyster reserve land account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public works assistance account, the Puyallup tribal settlement account, the real estate appraiser commission account, the regional transportation investment district account, the resource management cost account, the rural Washington loan fund, the site closure account, the small city pavement and sidewalk account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the transportation infrastructure account, the transportation partnership account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer fire fighters' and reserve officers' relief and pension principal fund, the volunteer fire fighters' and reserve officers' administrative fund, the Washington fruit express account, the Washington judicial retirement system account, the Washington law enforcement officers' and fire fighters' system plan 1 retirement account, the Washington law enforcement officers' and fire fighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts. All earnings to be distributed under this subsection (4)(a) shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(b) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the county arterial preservation account, the department of licensing services account, the essential rail assistance account, the ferry bond retirement fund, the grade crossing protective fund, the high capacity transportation account, the highway bond retirement fund, the highway safety account, the motor vehicle fund, the motorcycle safety education account, the pilotage account, the public transportation systems account, the Puget Sound

capital construction account, the Puget Sound ferry operations account, the recreational vehicle account, the rural arterial trust account, the safety and education account, the special category C account, the state patrol highway account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, and the urban arterial trust account.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

NEW SECTION. Sec. 9. Sections 1 through 6 of this act constitute a new chapter in Title 90 RCW.

NEW SECTION. Sec. 10. This act takes effect July 1, 2006.

NEW SECTION. Sec. 11. If specific authority to issue general obligation bonds of at least two hundred million dollars for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2006, in a bond authorization act, this act is null and void.

Passed by the House February 13, 2006.

Passed by the Senate February 14, 2006.

Approved by the Governor February 16, 2006.

Filed in Office of Secretary of State February 16, 2006.

CHAPTER 7

[House Bill 2424]

FARM FUEL—TAX EXEMPTIONS

AN ACT Relating to excise tax exemptions for users of farm fuel; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; and declaring an emergency.

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

NEW SECTION. Sec. 1. A new section is added to chapter 82.08 RCW to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to sales of diesel fuel, or aircraft fuel as defined in RCW 82.42.010(5), to a farm fuel user for nonhighway use. This exemption is available only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. Fuel used for space or water heating for human habitation is not exempt under this section.

(2) The definitions in RCW 82.04.213 and this subsection apply to this section.

(a) "Diesel fuel" is defined as provided in 26 U.S.C. 4083, as amended or renumbered as of January 1, 2006.

(b) "Farm fuel user" means: (i) A farmer; or (ii) a person who provides horticultural services for farmers, such as soil preparation services, crop cultivation services, and crop harvesting services.

NEW SECTION. Sec. 2. A new section is added to chapter 82.12 RCW to read as follows:

(1) The provisions of this chapter do not apply with respect to the nonhighway use of diesel fuel, or aircraft fuel as defined in RCW 82.42.010(5), by a farm fuel user. Fuel used for space or water heating for human habitation is not exempt under this section.

(2) The definitions in section 1 of this act apply to this section.

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

Passed by the House March 3, 2006.

Passed by the Senate March 3, 2006.

Approved by the Governor March 6, 2006.

Filed in Office of Secretary of State March 6, 2006.

CHAPTER 8

[Second Substitute House Bill 2292]

MEDICAL MALPRACTICE

AN ACT Relating to improving health care by increasing patient safety, reducing medical errors, reforming medical malpractice insurance, and resolving medical malpractice claims fairly without imposing mandatory limits on damage awards or fees; amending RCW 5.64.010, 4.24.260, 18.71.015, 18.130.160, 43.70.075, 43.70.510, 42.56.400, 48.18.290, 48.18.2901, 48.18.100, 48.18.103, 48.19.043, 48.19.060, 4.16.190, 7.70.100, and 7.70.080; reenacting and amending RCW 42.17.310 and 69.41.010; reenacting RCW 4.16.350; adding new sections to chapter 7.70 RCW; adding a new section to chapter 48.18 RCW; adding a new chapter to Title 70 RCW; adding a new chapter to Title 48 RCW; adding a new chapter to Title 7 RCW; creating new sections; prescribing penalties; providing an effective date; and providing an expiration date.

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

NEW SECTION. Sec. 1. The legislature finds that access to safe, affordable health care is one of the most important issues facing the citizens of Washington state. The legislature further finds that the rising cost of medical malpractice insurance has caused some physicians, particularly those in high-risk specialties such as obstetrics and emergency room practice, to be unavailable when and where the citizens need them the most. The answers to these problems are varied and complex, requiring comprehensive solutions that encourage patient safety practices, increase oversight of medical malpractice insurance, and making the civil justice system more understandable, fair, and efficient for all the participants.

It is the intent of the legislature to prioritize patient safety and the prevention of medical errors above all other considerations as legal changes are made to address the problem of high malpractice insurance premiums. Thousands of patients are injured each year as a result of medical errors, many of which can be avoided by supporting health care providers, facilities, and carriers in their efforts to reduce the incidence of those mistakes. It is also the legislature's intent to provide incentives to settle cases before resorting to court, and to provide the option of a more fair, efficient, and streamlined alternative to trials for those for whom settlement negotiations do not work. Finally, it is the intent of the legislature to provide the insurance commissioner with the tools and information necessary to regulate medical malpractice insurance rates and policies so that they are fair to both the insurers and the insured.

PART I - PATIENT SAFETY

Encouraging Patient Safety Through Communications With Patients

Sec. 101. RCW 5.64.010 and 1975-'76 2nd ex.s. c 56 s 3 are each amended to read as follows:

(1) In any civil action against a health care provider for personal injuries which is based upon alleged professional negligence ((and which is against:

~~(1) A person licensed by this state to provide health care or related services, including, but not limited to, a physician, osteopathic physician, dentist, nurse, optometrist, podiatrist, chiropractor, physical therapist, psychologist, pharmacist, optician, physician's assistant, osteopathic physician's assistant, nurse practitioner, or physician's trained mobile intensive care paramedic, including, in the event such person is deceased, his estate or personal representative;~~

~~(2) An employee or agent of a person described in subsection (1) of this section, acting in the course and scope of his employment, including, in the event such employee or agent is deceased, his estate or personal representative;~~
or

~~(3) An entity, whether or not incorporated, facility, or institution employing one or more persons described in subsection (1) of this section, including, but not limited to, a hospital, clinic, health maintenance organization, or nursing home; or an officer, director, employee, or agent thereof acting in the course and scope of his employment, including, in the event such officer, director, employee, or agent is deceased, his estate or personal representative;)), or in any arbitration or mediation proceeding related to such civil action, evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible ((to prove liability for the injury)).~~

(2)(a) In a civil action against a health care provider for personal injuries that is based upon alleged professional negligence, or in any arbitration or mediation proceeding related to such civil action, a statement, affirmation, gesture, or conduct identified in (b) of this subsection is not admissible as evidence if:

(i) It was conveyed by a health care provider to the injured person, or to a person specified in RCW 7.70.065 (1)(a) or (2)(a) within thirty days of the act or omission that is the basis for the allegation of professional negligence or within thirty days of the time the health care provider discovered the act or omission that is the basis for the allegation of professional negligence, whichever period expires later; and

(ii) It relates to the discomfort, pain, suffering, injury, or death of the injured person as the result of the alleged professional negligence.

(b) (a) of this subsection applies to:

(i) Any statement, affirmation, gesture, or conduct expressing apology, fault, sympathy, commiseration, condolence, compassion, or a general sense of benevolence; or

(ii) Any statement or affirmation regarding remedial actions that may be taken to address the act or omission that is the basis for the allegation of negligence.

**Encouraging Reports of Unprofessional Conduct or Lack of
Capacity to Practice Safely**

Sec. 102. RCW 4.24.260 and 1994 sp.s. c 9 s 701 are each amended to read as follows:

~~(Physicians licensed under chapter 18.71 RCW, dentists licensed under chapter 18.32 RCW, and pharmacists licensed under chapter 18.64 RCW)~~ Any member of a health profession listed under RCW 18.130.040 who, in good faith, makes a report, files charges, or presents evidence against another member of ((their)) a health profession based on the claimed ((incompetency or gross misconduct)) unprofessional conduct as provided in RCW 18.130.180 or inability to practice with reasonable skill and safety to consumers by reason of any physical or mental condition as provided in RCW 18.130.170 of such person before the ((medical quality assurance commission established under chapter 18.71 RCW, in a proceeding under chapter 18.32 RCW, or to the board of pharmacy under RCW 18.64.160)) agency, board, or commission responsible for disciplinary activities for the person's profession under chapter 18.130 RCW, shall be immune from civil action for damages arising out of such activities. A person prevailing upon the good faith defense provided for in this section is entitled to recover expenses and reasonable attorneys' fees incurred in establishing the defense.

Medical Quality Assurance Commission Consumer Membership

Sec. 103. RCW 18.71.015 and 1999 c 366 s 4 are each amended to read as follows:

The Washington state medical quality assurance commission is established, consisting of thirteen individuals licensed to practice medicine in the state of Washington under this chapter, two individuals who are licensed as physician assistants under chapter 18.71A RCW, and ~~((four))~~ six individuals who are members of the public. At least two of the public members shall not be from the health care industry. Each congressional district now existing or hereafter created in the state must be represented by at least one physician member of the commission. The terms of office of members of the commission are not affected by changes in congressional district boundaries. Public members of the commission may not be a member of any other health care licensing board or commission, or have a fiduciary obligation to a facility rendering health services regulated by the commission, or have a material or financial interest in the rendering of health services regulated by the commission.

The members of the commission shall be appointed by the governor. Members of the initial commission may be appointed to staggered terms of one to four years, and thereafter all terms of appointment shall be for four years. The governor shall consider such physician and physician assistant members who are recommended for appointment by the appropriate professional associations in the state. In appointing the initial members of the commission, it is the intent of the legislature that, to the extent possible, the existing members of the board of medical examiners and medical disciplinary board repealed under section 336, chapter 9, Laws of 1994 sp. sess. be appointed to the commission. No member may serve more than two consecutive full terms. Each member shall hold office until a successor is appointed.

Each member of the commission must be a citizen of the United States, must be an actual resident of this state, and, if a physician, must have been licensed to practice medicine in this state for at least five years.

The commission shall meet as soon as practicable after appointment and elect officers each year. Meetings shall be held at least four times a year and at such place as the commission determines and at such other times and places as the commission deems necessary. A majority of the commission members appointed and serving constitutes a quorum for the transaction of commission business.

The affirmative vote of a majority of a quorum of the commission is required to carry any motion or resolution, to adopt any rule, or to pass any measure. The commission may appoint panels consisting of at least three members. A quorum for the transaction of any business by a panel is a minimum of three members. A majority vote of a quorum of the panel is required to transact business delegated to it by the commission.

Each member of the commission shall be compensated in accordance with RCW 43.03.265 and in addition thereto shall be reimbursed for travel expenses incurred in carrying out the duties of the commission in accordance with RCW 43.03.050 and 43.03.060. Any such expenses shall be paid from funds appropriated to the department of health.

Whenever the governor is satisfied that a member of a commission has been guilty of neglect of duty, misconduct, or malfeasance or misfeasance in office, the governor shall file with the secretary of state a statement of the causes for and the order of removal from office, and the secretary shall forthwith send a certified copy of the statement of causes and order of removal to the last known post office address of the member.

Vacancies in the membership of the commission shall be filled for the unexpired term by appointment by the governor.

The members of the commission are immune from suit in an action, civil or criminal, based on its disciplinary proceedings or other official acts performed in good faith as members of the commission.

Whenever the workload of the commission requires, the commission may request that the secretary appoint pro tempore members of the commission. When serving, pro tempore members of the commission have all of the powers, duties, and immunities, and are entitled to all of the emoluments, including travel expenses, of regularly appointed members of the commission.

Health Care Provider Discipline

Sec. 104. RCW 18.130.160 and 2001 c 195 s 1 are each amended to read as follows:

Upon a finding, after hearing, that a license holder or applicant has committed unprofessional conduct or is unable to practice with reasonable skill and safety due to a physical or mental condition, the disciplining authority may consider the imposition of sanctions, taking into account any prior findings of fact under RCW 18.130.110, any stipulations to informal disposition under RCW 18.130.172, and any action taken by other in-state or out-of-state disciplining authorities, and issue an order providing for one or any combination of the following:

- (1) Revocation of the license;
- (2) Suspension of the license for a fixed or indefinite term;
- (3) Restriction or limitation of the practice;
- (4) Requiring the satisfactory completion of a specific program of remedial education or treatment;
- (5) The monitoring of the practice by a supervisor approved by the disciplining authority;
- (6) Censure or reprimand;
- (7) Compliance with conditions of probation for a designated period of time;
- (8) Payment of a fine for each violation of this chapter, not to exceed five thousand dollars per violation. Funds received shall be placed in the health professions account;
- (9) Denial of the license request;
- (10) Corrective action;
- (11) Refund of fees billed to and collected from the consumer;
- (12) A surrender of the practitioner's license in lieu of other sanctions, which must be reported to the federal data bank.

Any of the actions under this section may be totally or partly stayed by the disciplining authority. In determining what action is appropriate, the disciplining authority must first consider what sanctions are necessary to protect or compensate the public. Only after such provisions have been made may the disciplining authority consider and include in the order requirements designed to rehabilitate the license holder or applicant. All costs associated with compliance with orders issued under this section are the obligation of the license holder or applicant.

The licensee or applicant may enter into a stipulated disposition of charges that includes one or more of the sanctions of this section, but only after a statement of charges has been issued and the licensee has been afforded the opportunity for a hearing and has elected on the record to forego such a hearing. The stipulation shall either contain one or more specific findings of unprofessional conduct or inability to practice, or a statement by the licensee acknowledging that evidence is sufficient to justify one or more specified findings of unprofessional conduct or inability to practice. The stipulation entered into pursuant to this subsection shall be considered formal disciplinary action for all purposes.

Increasing Patient Safety Through Disclosure and Analysis of Adverse Events

NEW SECTION. **Sec. 105.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adverse health event" or "adverse event" means the list of serious reportable events adopted by the national quality forum in 2002, in its consensus report on serious reportable events in health care. The department shall update the list, through adoption of rules, as subsequent changes are made by the national quality forum. The term does not include an incident.

(2) "Ambulatory surgical facility" means any distinct entity that operates exclusively for the purpose of providing surgical services to patients not

requiring hospitalization, whether or not the facility is certified under Title XVIII of the federal social security act.

(3) "Childbirth center" means a facility licensed under chapter 18.46 RCW.

(4) "Correctional medical facility" means a part or unit of a correctional facility operated by the department of corrections under chapter 72.10 RCW that provides medical services for lengths of stay in excess of twenty-four hours to offenders.

(5) "Department" means the department of health.

(6) "Health care worker" means an employee, independent contractor, licensee, or other individual who is directly involved in the delivery of health services in a medical facility.

(7) "Hospital" means a facility licensed under chapter 70.41 RCW.

(8) "Incident" means an event, occurrence, or situation involving the clinical care of a patient in a medical facility that:

(a) Results in unanticipated injury to a patient that is not related to the natural course of the patient's illness or underlying condition and does not constitute an adverse event; or

(b) Could have injured the patient but did not either cause an unanticipated injury or require the delivery of additional health care services to the patient.

"Incident" does not include an adverse event.

(9) "Independent entity" means that entity that the department of health contracts with under section 108 of this act to receive notifications and reports of adverse events and incidents, and carry out the activities specified in section 108 of this act.

(10) "Medical facility" means a childbirth center, hospital, psychiatric hospital, or correctional medical facility. An ambulatory surgical facility shall be considered a medical facility for purposes of this chapter upon the effective date of any requirement for state registration or licensure of ambulatory surgical facilities.

(11) "Psychiatric hospital" means a hospital facility licensed as a psychiatric hospital under chapter 71.12 RCW.

NEW SECTION. Sec. 106. (1) The legislature intends to establish an adverse health events and incident reporting system that is designed to facilitate quality improvement in the health care system, improve patient safety and decrease medical errors in a nonpunitive manner. The reporting system shall not be designed to punish errors by health care practitioners or health care facility employees.

(2) Each medical facility shall notify the department of health regarding the occurrence of any adverse event and file a subsequent report as provided in this section. Notification must be submitted to the department within forty-eight hours of confirmation by the medical facility that an adverse event has occurred. A subsequent report must be submitted to the department within forty-five days after confirmation by the medical facility that an adverse event has occurred. The notification and report shall be submitted to the department using the internet-based system established under section 108(2) of this act.

(3) The notification and report shall be filed in a format specified by the department after consultation with medical facilities and the independent entity. The format shall identify the facility, but shall not include any identifying information for any of the health care professionals, facility employees, or

patients involved. This provision does not modify the duty of a hospital to make a report to the department of health or a disciplinary authority if a licensed practitioner has committed unprofessional conduct as defined in RCW 18.130.180.

(4) As part of the report filed under this section, the medical facility must conduct a root cause analysis of the event, describe the corrective action plan that will be implemented consistent with the findings of the analysis, or provide an explanation of any reasons for not taking corrective action. The department shall adopt rules, in consultation with medical facilities and the independent entity, related to the form and content of the root cause analysis and corrective action plan. In developing the rules, consideration shall be given to existing standards for root cause analysis or corrective action plans adopted by the joint commission on accreditation of health facilities and other national or governmental entities.

(5) If, in the course of investigating a complaint received from an employee of a medical facility, the department determines that the facility has not reported an adverse event or undertaken efforts to investigate the occurrence of an adverse event, the department shall direct the facility to report or to undertake an investigation of the event.

(6) The protections of RCW 43.70.075 apply to reports of adverse events that are submitted in good faith by employees of medical facilities.

NEW SECTION. Sec. 107. (1) The department shall:

(a) Receive and investigate, where necessary, notifications and reports of adverse events, including root cause analyses and corrective action plans submitted as part of reports, and communicate to individual facilities the department's conclusions, if any, regarding an adverse event reported by a facility; and

(b) Adopt rules as necessary to implement this chapter.

(2) The department may enforce the reporting requirements of section 106 of this act using their existing enforcement authority provided in chapter 18.46 RCW for childbirth centers, chapter 70.41 RCW for hospitals, and chapter 71.12 RCW for psychiatric hospitals.

NEW SECTION. Sec. 108. (1) The department shall contract with a qualified, independent entity to receive notifications and reports of adverse events and incidents, and carry out the activities specified in this section. In establishing qualifications for, and choosing the independent entity, the department shall strongly consider the patient safety organization criteria included in the federal patient safety and quality improvement act of 2005, P.L. 109-41, and any regulations adopted to implement this chapter.

(2) The independent entity shall:

(a) In collaboration with the department of health, establish an internet-based system for medical facilities and the health care workers of a medical facility to submit notifications and reports of adverse events and incidents, which shall be accessible twenty-four hours a day, seven days a week. The system shall be a portal to report both adverse events and incidents, and notifications and reports of adverse events shall be immediately transmitted to the department. The system shall be a secure system that protects the confidentiality of personal health information and provider and facility specific

information submitted in notifications and reports, including appropriate encryption and an accurate means of authenticating the identify of users of the system;

(b) Collect, analyze, and evaluate data regarding notifications and reports of adverse events and incidents, including the identification of performance indicators and patterns in frequency or severity at certain medical facilities or in certain regions of the state;

(c) Develop recommendations for changes in health care practices and procedures, which may be instituted for the purpose of reducing the number or severity of adverse events and incidents;

(d) Directly advise reporting medical facilities of immediate changes that can be instituted to reduce adverse events or incidents;

(e) Issue recommendations to medical facilities on a facility-specific or on a statewide basis regarding changes, trends, and improvements in health care practices and procedures for the purpose of reducing the number and severity of adverse events or incidents. Prior to issuing recommendations, consideration shall be given to the following factors: Expectation of improved quality of care, implementation feasibility, other relevant implementation practices, and the cost impact to patients, payers, and medical facilities. Statewide recommendations shall be issued to medical facilities on a continuing basis and shall be published and posted on a publicly accessible web site. The recommendations made to medical facilities under this section shall not be considered mandatory for licensure purposes unless they are adopted by the department as rules pursuant to chapter 34.05 RCW; and

(f) Monitor implementation of reporting systems addressing adverse events or their equivalent in other states and make recommendations to the governor and the legislature as necessary for modifications to this chapter to keep the system as nearly consistent as possible with similar systems in other states.

(3) The independent entity shall report no later than January 1, 2008, and annually thereafter to the governor and the legislature on the activities under this chapter in the preceding year. The report shall include:

(a) The number of adverse events and incidents reported by medical facilities on a geographical basis and their outcomes;

(b) The information derived from the data collected, including any recognized trends concerning patient safety; and

(c) Recommendations for statutory or regulatory changes that may help improve patient safety in the state.

The annual report shall be made available for public inspection and shall be posted on the department's and the independent entity's web site.

(4) The independent entity shall conduct all activities under this section in a manner that preserves the confidentiality of facilities, documents, materials, or information made confidential by section 110 of this act.

(5) Medical facilities and health care workers may report incidents to the independent entity. The report shall be filed in a format specified by the independent entity, after consultation with the department and medical facilities, and shall identify the facility but shall not include any identifying information for any of the health care professionals, facility employees, or patients involved. This provision does not modify the duty of a hospital to make a report to the department or a disciplinary authority if a licensed practitioner has committed

unprofessional conduct as defined in RCW 18.130.180. The protections of RCW 43.70.075 apply to reports of incidents that are submitted in good faith by employees of medical facilities.

Sec. 109. RCW 43.70.075 and 1995 c 265 s 19 are each amended to read as follows:

(1) The identity of a whistleblower who complains, in good faith, to the department of health about the improper quality of care by a health care provider, or in a health care facility, as defined in RCW 43.72.010, or who submits a notification or report of an adverse event or an incident, in good faith, to the department of health under section 106 of this act or to the independent entity under section 108 of this act, shall remain confidential. The provisions of RCW 4.24.500 through 4.24.520, providing certain protections to persons who communicate to government agencies, shall apply to complaints and notifications or reports of adverse events or incidents filed under this section. The identity of the whistleblower shall remain confidential unless the department determines that the complaint or notification or report of the adverse event or incident was not made in good faith. An employee who is a whistleblower, as defined in this section, and who as a result of being a whistleblower has been subjected to workplace reprisal or retaliatory action has the remedies provided under chapter 49.60 RCW.

(2)(a) "Improper quality of care" means any practice, procedure, action, or failure to act that violates any state law or rule of the applicable state health licensing authority under Title 18 or chapters 70.41, 70.96A, 70.127, 70.175, 71.05, 71.12, and 71.24 RCW, and enforced by the department of health. Each health disciplinary authority as defined in RCW 18.130.040 may, with consultation and interdisciplinary coordination provided by the state department of health, adopt rules defining accepted standards of practice for their profession that shall further define improper quality of care. Improper quality of care shall not include good faith personnel actions related to employee performance or actions taken according to established terms and conditions of employment.

(b) "Reprisal or retaliatory action" means but is not limited to: Denial of adequate staff to perform duties; frequent staff changes; frequent and undesirable office changes; refusal to assign meaningful work; unwarranted and unsubstantiated report of misconduct pursuant to Title 18 RCW; letters of reprimand or unsatisfactory performance evaluations; demotion; reduction in pay; denial of promotion; suspension; dismissal; denial of employment; and a supervisor or superior encouraging coworkers to behave in a hostile manner toward the whistleblower.

(c) "Whistleblower" means a consumer, employee, or health care professional who in good faith reports alleged quality of care concerns to the department of health.

(3) Nothing in this section prohibits a health care facility from making any decision exercising its authority to terminate, suspend, or discipline an employee who engages in workplace reprisal or retaliatory action against a whistleblower.

(4) The department shall adopt rules to implement procedures for filing, investigation, and resolution of whistleblower complaints that are integrated with complaint procedures under Title 18 RCW for health professionals or health care facilities.

NEW SECTION. Sec. 110. (1) When a notification or report of an adverse event or incident under section 106 or 108 of this act is made by or through a coordinated quality improvement program under RCW 43.70.510 or 70.41.200, or by a peer review committee under RCW 4.24.250, information and documents, including complaints and incident reports, created specifically for and collected and maintained by a quality improvement committee for the purpose of preparing a notification or report of an adverse event or incident, and the notification or report itself, shall be subject to the confidentiality protections of those laws and RCW 42.17.310(1)(hh) and 42.56.360(1)(c).

(2) When a notification or report of an adverse event or incident made by a health care worker under section 106 or 108 of this act uses information and documents, including complaints and incident reports, created specifically for and collected and maintained by a quality improvement committee under RCW 43.70.510 or 70.41.200 or a peer review committee under RCW 4.24.250, the notification or report itself and the information or documents used for the purpose of preparing the notification or report, shall be subject to the confidentiality protections of those laws and RCW 42.17.310(1)(hh) and 42.56.360(1)(c).

Sec. 111. RCW 42.17.310 and 2005 c 424 s 16, 2005 c 349 s 1, 2005 c 312 s 6, 2005 c 284 s 1, 2005 c 172 s 13, and 2005 c 33 s 4 are each reenacted and amended to read as follows:

(1) The following are exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(e) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

(f) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.

(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(h) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(k) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

(l) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.

(m) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (i) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (ii) highway construction or improvement as required by RCW 47.28.070.

(n) Railroad company contracts filed prior to July 28, 1991, with the utilities and transportation commission under RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to export projects pursuant to RCW 43.23.035.

(p) Financial disclosures filed by private vocational schools under chapters 28B.85 and 28C.10 RCW.

(q) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095.

(r) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency.

(s) Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department.

(t) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

(u) The residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, Social Security numbers, and emergency contact information of employees or volunteers of a public agency, and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, Social Security numbers, and emergency contact information of dependents of employees or volunteers of a public agency, which are held by any public agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers of any public agency. For purposes of this subsection, "employees" includes independent provider home care workers as defined in RCW 74.39A.240.

(v) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers, except that this information may be released to the division of child support or the agency or firm providing child support enforcement for another state under Title IV-D of the federal social security act, for the establishment, enforcement, or modification of a support order.

(w)(i) The federal social security number of individuals governed under chapter 18.130 RCW maintained in the files of the department of health, except this exemption does not apply to requests made directly to the department from federal, state, and local agencies of government, and national and state licensing, credentialing, investigatory, disciplinary, and examination organizations; (ii) the current residential address and current residential telephone number of a health care provider governed under chapter 18.130 RCW maintained in the files of the department, if the provider requests that this information be withheld from public inspection and copying, and provides to the department an accurate alternate or business address and business telephone number. On or after January 1, 1995, the current residential address and residential telephone number of a health care provider governed under RCW 18.130.040 maintained in the files of the department shall automatically be withheld from public inspection and copying unless the provider specifically requests the information be released, and except as provided for under RCW 42.17.260(9).

(x) Information obtained by the board of pharmacy as provided in RCW 69.45.090.

(y) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420.

(z) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW.

(aa) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information.

(bb) Financial and valuable trade information under RCW 51.36.120.

(cc) Client records maintained by an agency that is a domestic violence program as defined in RCW 70.123.020 or 70.123.075 or a rape crisis center as defined in RCW 70.125.030.

(dd) Information that identifies a person who, while an agency employee:
(i) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and (ii) requests his or her identity or any identifying information not be disclosed.

(ee) Investigative records compiled by an employing agency conducting a current investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment.

(ff) Business related information protected from public inspection and copying under RCW 15.86.110.

(gg) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW.

(hh) Information and documents created specifically for, and collected and maintained by, a quality improvement committee pursuant to RCW 43.70.510 or 70.41.200, by a peer review committee under RCW 4.24.250, or by a quality assurance committee pursuant to RCW 74.42.640 or 18.20.390, and notifications or reports of adverse events or incidents made under section 106 or 108 of this act, regardless of which agency is in possession of the information and documents.

(ii) Personal information in files maintained in a data base created under RCW 43.07.360.

(jj) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010.

(kk) Names of individuals residing in emergency or transitional housing that are furnished to the department of revenue or a county assessor in order to substantiate a claim for property tax exemption under RCW 84.36.043.

(ll) The names, residential addresses, residential telephone numbers, and other individually identifiable records held by an agency in relation to a vanpool, carpool, or other ride-sharing program or service. However, these records may be disclosed to other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides.

(mm) The personally identifying information of current or former participants or applicants in a paratransit or other transit service operated for the benefit of persons with disabilities or elderly persons.

(nn) The personally identifying information of persons who acquire and use transit passes and other fare payment media including, but not limited to, stored value smart cards and magnetic strip cards, except that an agency may disclose this information to a person, employer, educational institution, or other entity that is responsible, in whole or in part, for payment of the cost of acquiring or using a transit pass or other fare payment media, or to the news media when reporting on public transportation or public safety. This information may also be

disclosed at the agency's discretion to governmental agencies or groups concerned with public transportation or public safety.

(oo) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310. If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this section as exempt from disclosure. If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality.

(pp) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110.

(qq) Financial and commercial information supplied by or on behalf of a person, firm, corporation, or entity under chapter 28B.95 RCW relating to the purchase or sale of tuition units and contracts for the purchase of multiple tuition units.

(rr) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020, which have been transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval pursuant to RCW 40.14.070(2)(b).

(ss) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by other law.

(tt) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a horse racing license submitted pursuant to RCW 67.16.260(1)(b), liquor license, gambling license, or lottery retail license.

(uu) Records maintained by the employment security department and subject to chapter 50.13 RCW if provided to another individual or organization for operational, research, or evaluation purposes.

(vv) Individually identifiable information received by the work force training and education coordinating board for research or evaluation purposes.

(ww) Those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct of government or of the general civilian population of the state or the United States and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety, consisting of:

(i) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in

preparation of or essential to the assessments, or to the response or deployment plans; and

(ii) Records not subject to public disclosure under federal law that are shared by federal or international agencies, and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for acts of terrorism.

(xx) Commercial fishing catch data from logbooks required to be provided to the department of fish and wildlife under RCW 77.12.047, when the data identifies specific catch location, timing, or methodology and the release of which would result in unfair competitive disadvantage to the commercial fisher providing the catch data. However, this information may be released to government agencies concerned with the management of fish and wildlife resources.

(yy) Sensitive wildlife data obtained by the department of fish and wildlife. However, sensitive wildlife data may be released to government agencies concerned with the management of fish and wildlife resources. Sensitive wildlife data includes:

(i) The nesting sites or specific locations of endangered species designated under RCW 77.12.020, or threatened or sensitive species classified by rule of the department of fish and wildlife;

(ii) Radio frequencies used in, or locational data generated by, telemetry studies; or

(iii) Other location data that could compromise the viability of a specific fish or wildlife population, and where at least one of the following criteria are met:

(A) The species has a known commercial or black market value;

(B) There is a history of malicious take of that species; or

(C) There is a known demand to visit, take, or disturb, and the species behavior or ecology renders it especially vulnerable or the species has an extremely limited distribution and concentration.

(zz) The personally identifying information of persons who acquire recreational licenses under RCW 77.32.010 or commercial licenses under chapter 77.65 or 77.70 RCW, except name, address of contact used by the department, and type of license, endorsement, or tag. However, the department of fish and wildlife may disclose personally identifying information to:

(i) Government agencies concerned with the management of fish and wildlife resources;

(ii) The department of social and health services, child support division, and to the department of licensing in order to implement RCW 77.32.014 and 46.20.291; and

(iii) Law enforcement agencies for the purpose of firearm possession enforcement under RCW 9.41.040.

(aaa)(i) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have not been commingled with other recorded documents. These records will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding that veteran's general power of attorney, or to anyone else designated in writing by that veteran to receive the records.

(ii) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have been commingled with other records, if the veteran has recorded a "request for exemption from public disclosure of discharge papers" with the county auditor. If such a request has been recorded, these records may be released only to the veteran filing the papers, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(iii) Discharge papers of a veteran filed at the office of the county auditor after June 30, 2002, are not public records, but will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(iv) For the purposes of this subsection (1)(aaa), next of kin of deceased veterans have the same rights to full access to the record. Next of kin are the veteran's widow or widower who has not remarried, son, daughter, father, mother, brother, and sister.

(bbb) Those portions of records containing specific and unique vulnerability assessments or specific and unique emergency and escape response plans at a city, county, or state adult or juvenile correctional facility, the public disclosure of which would have a substantial likelihood of threatening the security of a city, county, or state adult or juvenile correctional facility or any individual's safety.

(ccc) Information compiled by school districts or schools in the development of their comprehensive safe school plans pursuant to RCW 28A.320.125, to the extent that they identify specific vulnerabilities of school districts and each individual school.

(ddd) Information regarding the infrastructure and security of computer and telecommunications networks, consisting of security passwords, security access codes and programs, access codes for secure software applications, security and service recovery plans, security risk assessments, and security test results to the extent that they identify specific system vulnerabilities.

(eee) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW.

(fff) Proprietary data, trade secrets, or other information that relates to: (i) A vendor's unique methods of conducting business; (ii) data unique to the product or services of the vendor; or (iii) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011.

(ggg) The personally identifying information of persons who acquire and use transponders or other technology to facilitate payment of tolls. This information may be disclosed in aggregate form as long as the data does not contain any personally identifying information. For these purposes aggregate

data may include the census tract of the account holder as long as any individual personally identifying information is not released. Personally identifying information may be released to law enforcement agencies only for toll enforcement purposes. Personally identifying information may be released to law enforcement agencies for other purposes only if the request is accompanied by a court order.

(hhh) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery of, grants under chapter 43.350 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information.

(iii) Records of mediation communications that are privileged under chapter 7.07 RCW.

(2) Except for information described in subsection (1)(c)(i) of this section and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this section are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records exempt under the provisions of this section may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

Sec. 112. RCW 42.56.360 and 2005 c 274 s 416 are each amended to read as follows:

(1) The following health care information is exempt from disclosure under this chapter:

(a) Information obtained by the board of pharmacy as provided in RCW 69.45.090;

(b) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420;

(c) Information and documents created specifically for, and collected and maintained by a quality improvement committee under RCW 43.70.510 or 70.41.200, or by a peer review committee under RCW 4.24.250, and notifications or reports of adverse events or incidents made under section 106 or 108 of this act, regardless of which agency is in possession of the information and documents;

(d)(i) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in

connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310;

(ii) If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this subsection (1)(d) as exempt from disclosure;

(iii) If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality;

(e) Records of the entity obtained in an action under RCW 18.71.300 through 18.71.340;

(f) Except for published statistical compilations and reports relating to the infant mortality review studies that do not identify individual cases and sources of information, any records or documents obtained, prepared, or maintained by the local health department for the purposes of an infant mortality review conducted by the department of health under RCW 70.05.170; and

(g) Complaints filed under chapter 18.130 RCW after July 27, 1997, to the extent provided in RCW 18.130.095(1).

(2) Chapter 70.02 RCW applies to public inspection and copying of health care information of patients.

Coordinated Quality Improvement Programs

Sec. 113. RCW 43.70.510 and 2004 c 145 s 2 are each amended to read as follows:

(1)(a) Health care institutions and medical facilities, other than hospitals, that are licensed by the department, professional societies or organizations, health care service contractors, health maintenance organizations, health carriers approved pursuant to chapter 48.43 RCW, and any other person or entity providing health care coverage under chapter 48.42 RCW that is subject to the jurisdiction and regulation of any state agency or any subdivision thereof may maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice as set forth in RCW 70.41.200.

(b) All such programs shall comply with the requirements of RCW 70.41.200(1) (a), (c), (d), (e), (f), (g), and (h) as modified to reflect the structural organization of the institution, facility, professional societies or organizations, health care service contractors, health maintenance organizations, health carriers, or any other person or entity providing health care coverage under chapter 48.42 RCW that is subject to the jurisdiction and regulation of any state agency or any subdivision thereof, unless an alternative quality improvement program substantially equivalent to RCW 70.41.200(1)(a) is developed. All such programs, whether complying with the requirement set forth in RCW 70.41.200(1)(a) or in the form of an alternative program, must be approved by the department before the discovery limitations provided in subsections (3) and (4) of this section and the exemption under RCW 42.17.310(1)(hh) and subsection (5) of this section shall apply. In reviewing plans submitted by

licensed entities that are associated with physicians' offices, the department shall ensure that the exemption under RCW 42.17.310(1)(hh) and the discovery limitations of this section are applied only to information and documents related specifically to quality improvement activities undertaken by the licensed entity.

(2) Health care provider groups of five or more providers may maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice as set forth in RCW 70.41.200. For purposes of this section, a health care provider group may be a consortium of providers consisting of five or more providers in total. All such programs shall comply with the requirements of RCW 70.41.200(1) (a), (c), (d), (e), (f), (g), and (h) as modified to reflect the structural organization of the health care provider group. All such programs must be approved by the department before the discovery limitations provided in subsections (3) and (4) of this section and the exemption under RCW 42.17.310(1)(hh) and subsection (5) of this section shall apply.

(3) Any person who, in substantial good faith, provides information to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on the quality improvement committee shall not be subject to an action for civil damages or other relief as a result of such activity. Any person or entity participating in a coordinated quality improvement program that, in substantial good faith, shares information or documents with one or more other programs, committees, or boards under subsection (6) of this section is not subject to an action for civil damages or other relief as a result of the activity or its consequences. For the purposes of this section, sharing information is presumed to be in substantial good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading.

(4) Information and documents, including complaints and incident reports, created specifically for, and collected, and maintained by a quality improvement committee are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts that form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action challenging the termination of a contract by a state agency with any entity maintaining a coordinated quality improvement program under this section if the termination was on the basis of quality of care concerns, introduction into evidence of information created,

collected, or maintained by the quality improvement committees of the subject entity, which may be under terms of a protective order as specified by the court; (e) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any and the reasons for the restrictions; or (f) in any civil action, discovery and introduction into evidence of the patient's medical records required by rule of the department of health to be made regarding the care and treatment received.

(5) Information and documents created specifically for, and collected and maintained by a quality improvement committee are exempt from disclosure under chapter 42.17 RCW.

(6) A coordinated quality improvement program may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by a quality improvement committee or a peer review committee under RCW 4.24.250 with one or more other coordinated quality improvement programs maintained in accordance with this section or with RCW 70.41.200 or a peer review committee under RCW 4.24.250, for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program to another coordinated quality improvement program or a peer review committee under RCW 4.24.250 and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (4) of this section and RCW 4.24.250.

(7) The department of health shall adopt rules as are necessary to implement this section.

Prescription Legibility

NEW SECTION. Sec. 114. The legislature finds that prescription drug errors occur because the pharmacist or nurse cannot read the prescription from the physician or other provider with prescriptive authority. The legislature further finds that legible prescriptions can prevent these errors.

Sec. 115. RCW 69.41.010 and 2003 c 257 s 2 and 2003 c 140 s 11 are each reenacted and amended to read as follows:

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

(1) "Administer" means the direct application of a legend drug whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) A practitioner; or

(b) The patient or research subject at the direction of the practitioner.

(2) "Community-based care settings" include: Community residential programs for the developmentally disabled, certified by the department of social

and health services under chapter 71A.12 RCW; adult family homes licensed under chapter 70.128 RCW; and boarding homes licensed under chapter 18.20 RCW. Community-based care settings do not include acute care or skilled nursing facilities.

(3) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a legend drug, whether or not there is an agency relationship.

(4) "Department" means the department of health.

(5) "Dispense" means the interpretation of a prescription or order for a legend drug and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(6) "Dispenser" means a practitioner who dispenses.

(7) "Distribute" means to deliver other than by administering or dispensing a legend drug.

(8) "Distributor" means a person who distributes.

(9) "Drug" means:

(a) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(c) Substances (other than food, minerals or vitamins) intended to affect the structure or any function of the body of man or animals; and

(d) Substances intended for use as a component of any article specified in (a), (b), or (c) of this subsection. It does not include devices or their components, parts, or accessories.

(10) "Electronic communication of prescription information" means the communication of prescription information by computer, or the transmission of an exact visual image of a prescription by facsimile, or other electronic means for original prescription information or prescription refill information for a legend drug between an authorized practitioner and a pharmacy or the transfer of prescription information for a legend drug from one pharmacy to another pharmacy.

(11) "In-home care settings" include an individual's place of temporary and permanent residence, but does not include acute care or skilled nursing facilities, and does not include community-based care settings.

(12) "Legend drugs" means any drugs which are required by state law or regulation of the state board of pharmacy to be dispensed on prescription only or are restricted to use by practitioners only.

(13) "Legible prescription" means a prescription or medication order issued by a practitioner that is capable of being read and understood by the pharmacist filling the prescription or the nurse or other practitioner implementing the medication order. A prescription must be hand printed, typewritten, or electronically generated.

(14) "Medication assistance" means assistance rendered by a nonpractitioner to an individual residing in a community-based care setting or in-home care setting to facilitate the individual's self-administration of a legend drug or controlled substance. It includes reminding or coaching the individual,

handing the medication container to the individual, opening the individual's medication container, using an enabler, or placing the medication in the individual's hand, and such other means of medication assistance as defined by rule adopted by the department. A nonpractitioner may help in the preparation of legend drugs or controlled substances for self-administration where a practitioner has determined and communicated orally or by written direction that such medication preparation assistance is necessary and appropriate. Medication assistance shall not include assistance with intravenous medications or injectable medications, except prefilled insulin syringes.

(15) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(16) "Practitioner" means:

(a) A physician under chapter 18.71 RCW, an osteopathic physician or an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a registered nurse, advanced registered nurse practitioner, or licensed practical nurse under chapter 18.79 RCW, an optometrist under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010, an osteopathic physician assistant under chapter 18.57A RCW, a physician assistant under chapter 18.71A RCW, a naturopath licensed under chapter 18.36A RCW, a pharmacist under chapter 18.64 RCW, or, when acting under the required supervision of a dentist licensed under chapter 18.32 RCW, a dental hygienist licensed under chapter 18.29 RCW;

(b) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a legend drug in the course of professional practice or research in this state; and

(c) A physician licensed to practice medicine and surgery or a physician licensed to practice osteopathic medicine and surgery in any state, or province of Canada, which shares a common border with the state of Washington.

(17) "Secretary" means the secretary of health or the secretary's designee.

PART II - INSURANCE INDUSTRY REFORM

Medical Malpractice Closed Claim Reporting

NEW SECTION. **Sec. 201.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Claim" means a demand for monetary damages for injury or death caused by medical malpractice, and a voluntary indemnity payment for injury or death caused by medical malpractice made in the absence of a demand for monetary damages.

(2) "Claimant" means a person, including a decedent's estate, who is seeking or has sought monetary damages for injury or death caused by medical malpractice.

(3) "Closed claim" means a claim that has been settled or otherwise disposed of by the insuring entity, self-insurer, facility, or provider. A claim may be closed with or without an indemnity payment to a claimant.

(4) "Commissioner" means the insurance commissioner.

(5) "Economic damages" has the same meaning as in RCW 4.56.250(1)(a).

(6) "Health care facility" or "facility" means a clinic, diagnostic center, hospital, laboratory, mental health center, nursing home, office, surgical facility, treatment facility, or similar place where a health care provider provides health care to patients, and includes entities described in RCW 7.70.020(3).

(7) "Health care provider" or "provider" has the same meaning as in RCW 7.70.020 (1) and (2).

(8) "Insuring entity" means:

(a) An insurer;

(b) A joint underwriting association;

(c) A risk retention group; or

(d) An unauthorized insurer that provides surplus lines coverage.

(9) "Medical malpractice" means an actual or alleged negligent act, error, or omission in providing or failing to provide health care services that is actionable under chapter 7.70 RCW.

(10) "Noneconomic damages" has the same meaning as in RCW 4.56.250(1)(b).

(11) "Self-insurer" means any health care provider, facility, or other individual or entity that assumes operational or financial risk for claims of medical malpractice.

NEW SECTION. Sec. 202. (1) For claims closed on or after January 1, 2008:

(a) Every insuring entity or self-insurer that provides medical malpractice insurance to any facility or provider in Washington state must report each medical malpractice closed claim to the commissioner.

(b) If a claim is not covered by an insuring entity or self-insurer, the facility or provider named in the claim must report it to the commissioner after a final claim disposition has occurred due to a court proceeding or a settlement by the parties. Instances in which a claim may not be covered by an insuring entity or self-insurer include, but are not limited to, situations in which the:

(i) Facility or provider did not buy insurance or maintained a self-insured retention that was larger than the final judgment or settlement;

(ii) Claim was denied by an insuring entity or self-insurer because it did not fall within the scope of the insurance coverage agreement; or

(iii) Annual aggregate coverage limits had been exhausted by other claim payments.

(2) Beginning in 2009, reports required under subsection (1) of this section must be filed by March 1st, and include data for all claims closed in the preceding calendar year and any adjustments to data reported in prior years. The commissioner may adopt rules that require insuring entities, self-insurers, facilities, or providers to file closed claim data electronically.

(3) The commissioner may impose a fine of up to two hundred fifty dollars per day against any insuring entity that violates the requirements of this section.

(4) The department of health, department of licensing or department of social and health services may require a provider or facility to take corrective action to assure compliance with the requirements of this section.

NEW SECTION. Sec. 203. Reports required under section 202 of this act must contain the following information in a form and coding protocol prescribed by the commissioner that, to the extent possible and still fulfill the purposes of this chapter, are consistent with the format for data reported to the national practitioner data bank:

- (1) Claim and incident identifiers, including:
 - (a) A claim identifier assigned to the claim by the insuring entity, self-insurer, facility, or provider; and
 - (b) An incident identifier if companion claims have been made by a claimant. For the purposes of this section, "companion claims" are separate claims involving the same incident of medical malpractice made against other providers or facilities;
- (2) The medical specialty of the provider who was primarily responsible for the incident of medical malpractice that led to the claim;
- (3) The type of health care facility where the medical malpractice incident occurred;
- (4) The primary location within a facility where the medical malpractice incident occurred;
- (5) The geographic location, by city and county, where the medical malpractice incident occurred;
- (6) The injured person's sex and age on the incident date;
- (7) The severity of malpractice injury using the national practitioner data bank severity scale;
- (8) The dates of:
 - (a) The incident that was the proximate cause of the claim;
 - (b) Notice to the insuring entity, self-insurer, facility, or provider;
 - (c) Suit, if filed;
 - (d) Final indemnity payment, if any; and
 - (e) Final action by the insuring entity, self-insurer, facility, or provider to close the claim;
- (9) Settlement information that identifies the timing and final method of claim disposition, including:
 - (a) Claims settled by the parties;
 - (b) Claims disposed of by a court, including the date disposed; or
 - (c) Claims disposed of by alternative dispute resolution, such as arbitration, mediation, private trial, and other common dispute resolution methods; and
 - (d) Whether the settlement occurred before or after trial, if a trial occurred;
- (10) Specific information about the indemnity payments and defense expenses, as follows:
 - (a) For claims disposed of by a court that result in a verdict or judgment that itemizes damages:
 - (i) The total verdict or judgment;
 - (ii) If there is more than one defendant, the total indemnity paid by or on behalf of this facility or provider;
 - (iii) Economic damages;
 - (iv) Noneconomic damages; and

(v) Allocated loss adjustment expense, including but not limited to court costs, attorneys' fees, and costs of expert witnesses; and

(b) For claims that do not result in a verdict or judgment that itemizes damages:

(i) The total amount of the settlement;

(ii) If there is more than one defendant, the total indemnity paid by or on behalf of this facility or provider;

(iii) Paid and estimated economic damages; and

(iv) Allocated loss adjustment expense, including but not limited to court costs, attorneys' fees, and costs of expert witnesses;

(11) The reason for the medical malpractice claim. The reporting entity must use the same allegation group and act or omission codes used for mandatory reporting to the national practitioner data bank; and

(12) Any other claim-related data the commissioner determines to be necessary to monitor the medical malpractice marketplace, if such data are reported:

(a) To the national practitioner data bank; or

(b) Voluntarily by members of the physician insurers association of America as part of the association's data-sharing project.

NEW SECTION. Sec. 204. The commissioner must prepare aggregate statistical summaries of closed claims based on data submitted under section 202 of this act.

(1) At a minimum, the commissioner must summarize data by calendar year and calendar/incident year. The commissioner may also decide to display data in other ways if the commissioner:

(a) Protects information as required under section 206(2) of this act; and

(b) Exempts from disclosure data described in RCW 42.56.400(11).

(2) The summaries must be available by April 30th of each year, unless the commissioner notifies legislative committees by March 15th that data are not available and informs the committees when the summaries will be completed.

(3) Information included in an individual closed claim report submitted by an insuring entity, self-insurer, provider, or facility under this chapter is confidential and exempt from public disclosure, and the commissioner must not make these data available to the public.

NEW SECTION. Sec. 205. Beginning in 2010, the commissioner must prepare an annual report that summarizes and analyzes the closed claim reports for medical malpractice filed under sections 202 and 209 of this act and the annual financial reports filed by authorized insurers writing medical malpractice insurance in this state. The commissioner must complete the report by June 30th, unless the commissioner notifies legislative committees by June 1st that data are not available and informs the committees when the summaries will be completed.

(1) The report must include:

(a) An analysis of reported closed claims from prior years for which data are collected. The analysis must show:

(i) Trends in the frequency and severity of claim payments;

(ii) A comparison of economic and noneconomic damages;

(iii) A distribution of allocated loss adjustment expenses and other legal expenses;

(iv) The types of medical malpractice for which claims have been paid; and

(v) Any other information the commissioner finds relevant to trends in medical malpractice closed claims if the commissioner:

(A) Protects information as required under section 206(2) of this act; and

(B) Exempts from disclosure data described in RCW 42.56.400(11);

(b) An analysis of the medical malpractice insurance market in Washington state, including:

(i) An analysis of the financial reports of the authorized insurers with a combined market share of at least ninety percent of direct written medical malpractice premium in Washington state for the prior calendar year;

(ii) A loss ratio analysis of medical malpractice insurance written in Washington state; and

(iii) A profitability analysis of the authorized insurers with a combined market share of at least ninety percent of direct written medical malpractice premium in Washington state for the prior calendar year;

(c) A comparison of loss ratios and the profitability of medical malpractice insurance in Washington state to other states based on financial reports filed with the national association of insurance commissioners and any other source of information the commissioner deems relevant; and

(d) A summary of the rate filings for medical malpractice that have been approved by the commissioner for the prior calendar year, including an analysis of the trend of direct incurred losses as compared to prior years.

(2) The commissioner must post reports required by this section on the internet no later than thirty days after they are due.

(3) The commissioner may adopt rules that require insuring entities and self-insurers required to report under section 202 of this act and subsection (1)(a) of this section to report data related to:

(a) The frequency and severity of closed claims for the reporting period; and

(b) Any other closed claim information that helps the commissioner monitor losses and claim development patterns in the Washington state medical malpractice insurance market.

NEW SECTION. Sec. 206. The commissioner must adopt all rules needed to implement this chapter. The rules must:

(1) Identify which insuring entity or self-insurer has the primary obligation to report a closed claim when more than one insuring entity or self-insurer is providing medical malpractice liability coverage to a single health care provider or a single health care facility that has been named in a claim;

(2) Protect information that, alone or in combination with other data, could result in the ability to identify a claimant, health care provider, health care facility, or self-insurer involved in a particular claim or collection of claims; and

(3) Specify standards and methods for the reporting by claimants, insuring entities, self-insurers, facilities, and providers.

NEW SECTION. Sec. 207. (1) If the national association of insurance commissioners adopts revised model statistical reporting standards for medical malpractice insurance, the commissioner must analyze the new reporting standards and report this information to the legislature, as follows:

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(a) An analysis of any differences between the model reporting standards and:

- (i) Sections 201 through 206 of this act; and
- (ii) Any statistical plans that the commissioner has adopted under RCW 48.19.370; and
- (b) Recommendations, if any, about legislative changes necessary to implement the model reporting standards.

(2) The commissioner must submit the report required under subsection (1) of this section to the following legislative committees by the first day of December in the year after the national association of insurance commissioners adopts new model medical malpractice reporting standards:

- (a) The house of representatives committees on health care; financial institutions and insurance; and judiciary; and
- (b) The senate committees on health and long-term care; financial institutions, housing and consumer protection; and judiciary.

NEW SECTION. Sec. 208. This chapter does not amend or modify the statistical reporting requirements that apply to insurers under RCW 48.19.370.

NEW SECTION. Sec. 209. A new section is added to chapter 7.70 RCW to read as follows:

- (1) As used in this section:
 - (a) "Claim" has the same meaning as in section 201(1) of this act.
 - (b) "Claimant" has the same meaning as in section 201(2) of this act.
 - (c) "Commissioner" has the same meaning as in section 201(4) of this act.
 - (d) "Medical malpractice" has the same meaning as in section 201(9) of this act.

(2)(a) For claims settled or otherwise disposed of on or after January 1, 2008, the claimant or his or her attorney must report data to the commissioner if any action filed under this chapter results in a final:

- (i) Judgment in any amount;
- (ii) Settlement or payment in any amount; or
- (iii) Disposition resulting in no indemnity payment.
- (b) As used in this subsection, "data" means:
 - (i) The date of the incident of medical malpractice that was the principal cause of the action;
 - (ii) The principal county in which the incident of medical malpractice occurred;
 - (iii) The date of suit, if filed;
 - (iv) The injured person's sex and age on the incident date; and
 - (v) Specific information about the disposition, judgment, or settlement, including:
 - (A) The date and amount of any judgment or settlement;
 - (B) Court costs;
 - (C) Attorneys' fees; and
 - (D) Costs of expert witnesses.

Sec. 210. RCW 42.56.400 and 2005 c 274 s 420 are each amended to read as follows:

The following information relating to insurance and financial institutions is exempt from disclosure under this chapter:

(1) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110;

(2) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW;

(3) The names and individual identification data of all viators regulated by the insurance commissioner under chapter 48.102 RCW;

(4) Information provided under RCW 48.30A.045 through 48.30A.060;

(5) Information provided under RCW 48.05.510 through 48.05.535, 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600 through 48.46.625;

(6) Information gathered under chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business;

(7) Examination reports and information obtained by the department of financial institutions from banks under RCW 30.04.075, from savings banks under RCW 32.04.220, from savings and loan associations under RCW 33.04.110, from credit unions under RCW 31.12.565, from check cashers and sellers under RCW 31.45.030(3), and from securities brokers and investment advisers under RCW 21.20.100, all of which is confidential and privileged information;

(8) Information provided to the insurance commissioner under RCW 48.110.040(3);

(9) Documents, materials, or information obtained by the insurance commissioner under RCW 48.02.065, all of which are confidential and privileged; (~~and~~)

(10) Confidential proprietary and trade secret information provided to the commissioner under RCW 48.31C.020 through 48.31C.050 and 48.31C.070; and

(11) Data filed under sections 202, 203, 205, and 209 of this act that, alone or in combination with any other data, may reveal the identity of a claimant, health care provider, health care facility, insuring entity, or self-insurer involved in a particular claim or a collection of claims. For the purposes of this subsection:

(a) "Claimant" has the same meaning as in section 201(2) of this act.

(b) "Health care facility" has the same meaning as in section 201(6) of this act.

(c) "Health care provider" has the same meaning as in section 201(7) of this act.

(d) "Insuring entity" has the same meaning as in section 201(8) of this act.

(e) "Self-insurer" has the same meaning as in section 201(11) of this act.

Underwriting Standards

NEW SECTION. Sec. 211. A new section is added to chapter 48.18 RCW to read as follows:

- (1) For the purposes of this section:
- (a) "Affiliate" has the same meaning as in RCW 48.31B.005(1).
 - (b) "Claim" means a demand for monetary damages by a claimant.
 - (c) "Claimant" means a person, including a decedent's estate, who is seeking or has sought monetary damages for injury or death caused by medical malpractice.
 - (d) "Tier" has the same meaning as in RCW 48.18.545(1)(h).
 - (e) "Underwrite" or "underwriting" means the process of selecting, rejecting, or pricing a risk, and includes each of these activities:
 - (i) Evaluation, selection, and classification of risk, including placing a risk with an affiliate insurer that has higher rates and/or rating plan components that will result in higher premiums;
 - (ii) Application of classification plans, rates, rating rules, and rating tiers to an insured risk; and
 - (iii) Determining eligibility for:
 - (A) Insurance coverage provisions;
 - (B) Higher policy limits; or
 - (C) Premium payment plans.
- (2) During each underwriting process, an insurer may consider the following factors only in combination with other substantive underwriting factors:
- (a) An insured has inquired about the nature or scope of coverage under a medical malpractice insurance policy;
 - (b) An insured has notified their insurer about an incident that may be covered under the terms of their medical malpractice insurance policy, and that incident does not result in a claim; or
 - (c) A claim made against an insured was closed by the insurer without payment. An insurer may consider the effect of multiple claims if they have a significant effect on the insured's risk profile.
- (3) If any underwriting activity related to the insured's risk profile results in higher premiums as described under subsection (1)(e) (i) and (ii) of this section or reduced coverage as described under subsection (1)(e)(iii) of this section, the insurer must provide written notice to the insured, in clear and simple language, that describes the significant risk factors which led to the underwriting action. The commissioner must adopt rules that define the components of a risk profile that require notice under this subsection.

Sec. 212. RCW 48.18.290 and 1997 c 85 s 1 are each amended to read as follows:

(1) Cancellation by the insurer of any policy which by its terms is cancellable at the option of the insurer, or of any binder based on such policy which does not contain a clearly stated expiration date, may be effected as to any interest only upon compliance with the following:

(a) ~~(Written notice of such cancellation, accompanied by the actual reason therefor, must be actually delivered or mailed to the named insured not less than forty five days prior to the effective date of the cancellation except for cancellation of insurance policies for nonpayment of premiums, which notice shall be not less than ten days prior to such date and except for cancellation of fire insurance policies under chapter 48.53 RCW, which notice shall not be less than five days prior to such date;)~~ For all insurance policies other than medical

malpractice insurance policies or fire insurance policies canceled under RCW 48.53.040:

(i) The insurer must deliver or mail written notice of cancellation to the named insured at least forty-five days before the effective date of the cancellation; and

(ii) The cancellation notice must include the insurer's actual reason for canceling the policy.

(b) For medical malpractice insurance policies:

(i) The insurer must deliver or mail written notice of the cancellation to the named insured at least ninety days before the effective date of the cancellation; and

(ii) The cancellation notice must include the insurer's actual reason for canceling the policy and describe the significant risk factors that led to the insurer's underwriting action, as defined under section 211(1)(e) of this act.

(c) If an insurer cancels a policy described under (a) or (b) of this subsection for nonpayment of premium, the insurer must deliver or mail the cancellation notice to the named insured at least ten days before the effective date of the cancellation.

(d) If an insurer cancels a fire insurance policy under RCW 48.53.040, the insurer must deliver or mail the cancellation notice to the named insured at least five days before the effective date of the cancellation.

(e) Like notice must also be so delivered or mailed to each mortgagee, pledgee, or other person shown by the policy to have an interest in any loss which may occur thereunder. For purposes of this subsection (1)(~~(b)~~) (e), "delivered" includes electronic transmittal, facsimile, or personal delivery.

(2) The mailing of any such notice shall be effected by depositing it in a sealed envelope, directed to the addressee at his or her last address as known to the insurer or as shown by the insurer's records, with proper prepaid postage affixed, in a letter depository of the United States post office. The insurer shall retain in its records any such item so mailed, together with its envelope, which was returned by the post office upon failure to find, or deliver the mailing to, the addressee.

(3) The affidavit of the individual making or supervising such a mailing, shall constitute prima facie evidence of such facts of the mailing as are therein affirmed.

(4) The portion of any premium paid to the insurer on account of the policy, unearned because of the cancellation and in amount as computed on the pro rata basis, must be actually paid to the insured or other person entitled thereto as shown by the policy or by any endorsement thereon, or be mailed to the insured or such person as soon as possible, and no later than forty-five days after the date of notice of cancellation to the insured for homeowners', dwelling fire, and private passenger auto. Any such payment may be made by cash, or by check, bank draft, or money order.

(5) This section shall not apply to contracts of life or disability insurance without provision for cancellation prior to the date to which premiums have been paid, or to contracts of insurance procured under the provisions of chapter 48.15 RCW.

Sec. 213. RCW 48.18.2901 and 2002 c 347 s 1 are each amended to read as follows:

(1) Each insurer ~~((shall be required to))~~ must renew any ~~((contract of))~~ insurance policy subject to RCW 48.18.290 unless one of the following situations exists:

~~((The insurer gives the named insured at least forty-five days' notice in writing as provided for in RCW 48.18.290, that it proposes to refuse to renew the insurance contract upon its expiration date; and sets forth in that writing the actual reason for refusing to renew))~~ (i) For all insurance policies subject to RCW 48.18.290(1)(a):

(A) The insurer must deliver or mail written notice of nonrenewal to the named insured at least forty-five days before the expiration date of the policy; and

(B) The notice must include the insurer's actual reason for refusing to renew the policy.

(ii) For medical malpractice insurance policies subject to RCW 48.18.290(1)(b):

(A) The insurer must deliver or mail written notice of the nonrenewal to the named insured at least ninety days before the expiration date of the policy; and

(B) The notice must include the insurer's actual reason for refusing to renew the policy and describe the significant risk factors that led to the insurer's underwriting action, as defined under section 211(1)(e) of this act;

(b) At least twenty days prior to its expiration date, the insurer has communicated, either directly or through its agent, its willingness to renew in writing to the named insured and has included in that writing a statement of the amount of the premium or portion thereof required to be paid by the insured to renew the policy, and the insured fails to discharge when due his or her obligation in connection with the payment of such premium or portion thereof;

(c) The insured has procured equivalent coverage prior to the expiration of the policy period;

(d) The contract is evidenced by a written binder containing a clearly stated expiration date which has expired according to its terms; or

(e) The contract clearly states that it is not renewable, and is for a specific line, subclassification, or type of coverage that is not offered on a renewable basis. This subsection (1)(e) does not restrict the authority of the insurance commissioner under this code.

(2) Any insurer failing to include in the notice required by subsection (1)(b) of this section the amount of any increased premium resulting from a change of rates and an explanation of any change in the contract provisions shall renew the policy if so required by that subsection according to the rates and contract provisions applicable to the expiring policy. However, renewal based on the rates and contract provisions applicable to the expiring policy shall not prevent the insurer from making changes in the rates and/or contract provisions of the policy once during the term of its renewal after at least twenty days' advance notice of such change has been given to the named insured.

(3) Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal, or with respect to cancellation of fire policies under chapter 48.53 RCW.

(4) "Renewal" or "to renew" means the issuance and delivery by an insurer of a contract of insurance replacing at the end of the contract period a contract of

insurance previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of a contract beyond its policy period or term. However, (a) any contract of insurance with a policy period or term of six months or less whether or not made continuous for successive terms upon the payment of additional premiums shall for the purpose of RCW 48.18.290 and 48.18.293 through 48.18.295 be considered as if written for a policy period or term of six months; and (b) any policy written for a term longer than one year or any policy with no fixed expiration date, shall, for the purpose of RCW 48.18.290 and 48.18.293 through 48.18.295, be considered as if written for successive policy periods or terms of one year.

(5) A midterm blanket reduction in rate, approved by the commissioner, for medical malpractice insurance shall not be considered a renewal for purposes of this section.

Prior Approval of Medical Malpractice Insurance Rates

Sec. 214. RCW 48.18.100 and 2005 c 223 s 8 are each amended to read as follows:

(1) No insurance policy form or application form where written application is required and is to be attached to the policy, or printed life or disability rider or endorsement form may be issued, delivered, or used unless it has been filed with and approved by the commissioner. This section does not apply to:

- (a) Surety bond forms;
- (b) Forms filed under RCW 48.18.103;
- (c) Forms exempted from filing requirements by the commissioner under RCW 48.18.103;
- (d) Manuscript policies, riders, or endorsements of unique character designed for and used with relation to insurance upon a particular subject; or
- (e) Contracts of insurance procured under the provisions of chapter 48.15 RCW.

(2) Every such filing containing a certification, in a form approved by the commissioner, by either the chief executive officer of the insurer or by an actuary who is a member of the American academy of actuaries, attesting that the filing complies with Title 48 RCW and Title 284 of the Washington Administrative Code, may be used by the insurer immediately after filing with the commissioner. The commissioner may order an insurer to cease using a certified form upon the grounds set forth in RCW 48.18.110. This subsection does not apply to certain types of policy forms designated by the commissioner by rule.

(3) Except as provided in RCW 48.18.103, every filing that does not contain a certification pursuant to subsection (2) of this section must be made not less than thirty days in advance of issuance, delivery, or use. At the expiration of the thirty days, the filed form shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the commissioner. The commissioner may extend by not more than an additional fifteen days the period within which he or she may affirmatively approve or disapprove any form, by giving notice of the extension before expiration of the initial thirty-day period. At the expiration of the period that has been extended, and in the absence of prior affirmative approval or disapproval, the form shall be deemed approved.

The commissioner may withdraw any approval at any time for cause. By approval of any form for immediate use, the commissioner may waive any unexpired portion of the initial thirty-day waiting period.

(4) The commissioner's order disapproving any form or withdrawing a previous approval must state the grounds for disapproval.

(5) No form may knowingly be issued or delivered as to which the commissioner's approval does not then exist.

(6) The commissioner may, by rule, exempt from the requirements of this section any class or type of insurance policy forms if filing and approval is not desirable or necessary for the protection of the public.

(7) Every member or subscriber to a rating organization must adhere to the form filings made on its behalf by the organization. Deviations from the organization are permitted only when filed with the commissioner in accordance with this chapter.

(8) Medical malpractice insurance form filings are subject to the provisions of this section.

Sec. 215. RCW 48.18.103 and 2005 c 223 s 9 are each amended to read as follows:

(1) It is the intent of the legislature to assist the purchasers of commercial property casualty insurance by allowing policies to be issued more expeditiously and provide a more competitive market for forms.

(2) Commercial property casualty policies may be issued prior to filing the forms.

(3) All commercial property casualty forms must be filed with the commissioner within thirty days after an insurer issues any policy using them. This subsection does not apply to:

(a) Types or classes of forms that the commissioner exempts from filing by rule; and

(b) Manuscript policies, riders, or endorsements of unique character designed for and used with relation to insurance upon a particular subject.

(4) If, within thirty days after a commercial property casualty form has been filed, the commissioner finds that the form does not meet the requirements of this chapter, the commissioner shall disapprove the form and give notice to the insurer or rating organization that made the filing, specifying how the form fails to meet the requirements and stating when, within a reasonable period thereafter, the form shall be deemed no longer effective. The commissioner may extend the time for review an additional fifteen days by giving notice to the insurer prior to the expiration of the original thirty-day period.

(5) Upon a final determination of a disapproval of a policy form under subsection (4) of this section, the insurer must amend any previously issued disapproved form by endorsement to comply with the commissioner's disapproval.

(6) For purposes of this section, "commercial property casualty" means insurance pertaining to a business, profession, occupation, nonprofit organization, or public entity for the lines of property and casualty insurance defined in RCW 48.11.040, 48.11.050, 48.11.060, or 48.11.070, but does not mean medical malpractice insurance.

(7) Except as provided in subsection (5) of this section, the disapproval shall not affect any contract made or issued prior to the expiration of the period set forth in the notice of disapproval.

(8) Every member or subscriber to a rating organization must adhere to the form filings made on its behalf by the organization. An insurer may deviate from forms filed on its behalf by an organization only if the insurer files the forms with the commissioner in accordance with this chapter.

(9) In the event a hearing is held on the actions of the commissioner under subsection (4) of this section, the burden of proof shall be on the commissioner.

Sec. 216. RCW 48.19.043 and 2003 c 248 s 7 are each amended to read as follows:

(1) It is the intent of the legislature to assist the purchasers of commercial property casualty insurance by allowing policies to be issued more expeditiously and provide a more competitive market for rates.

(2) Notwithstanding the provisions of RCW 48.19.040(1), commercial property casualty policies may be issued prior to filing the rates. All commercial property casualty rates shall be filed with the commissioner within thirty days after an insurer issues any policy using them.

(3) If, within thirty days after a commercial property casualty rate has been filed, the commissioner finds that the rate does not meet the requirements of this chapter, the commissioner shall disapprove the filing and give notice to the insurer or rating organization that made the filing, specifying how the filing fails to meet the requirements and stating when, within a reasonable period thereafter, the filing shall be deemed no longer effective. The commissioner may extend the time for review another fifteen days by giving notice to the insurer prior to the expiration of the original thirty-day period.

(4) Upon a final determination of a disapproval of a rate filing under subsection (3) of this section, the insurer shall issue an endorsement changing the rate to comply with the commissioner's disapproval from the date the rate is no longer effective.

(5) For purposes of this section, "commercial property casualty" means insurance pertaining to a business, profession, occupation, nonprofit organization, or public entity for the lines of property and casualty insurance defined in RCW 48.11.040, 48.11.050, 48.11.060, or 48.11.070, but does not mean medical malpractice insurance.

(6) Except as provided in subsection (4) of this section, the disapproval shall not affect any contract made or issued prior to the expiration of the period set forth in the notice of disapproval.

(7) In the event a hearing is held on the actions of the commissioner under subsection (3) of this section, the burden of proof is on the commissioner.

Sec. 217. RCW 48.19.060 and 1997 c 428 s 4 are each amended to read as follows:

(1) The commissioner shall review a filing as soon as reasonably possible after made, to determine whether it meets the requirements of this chapter.

(2) Except as provided in RCW 48.19.070 and 48.19.043:

(a) No such filing shall become effective within thirty days after the date of filing with the commissioner, which period may be extended by the commissioner for an additional period not to exceed fifteen days if he or she

gives notice within such waiting period to the insurer or rating organization which made the filing that he or she needs such additional time for the consideration of the filing. The commissioner may, upon application and for cause shown, waive such waiting period or part thereof as to a filing that he or she has not disapproved.

(b) A filing shall be deemed to meet the requirements of this chapter unless disapproved by the commissioner within the waiting period or any extension thereof.

(3) Medical malpractice insurance rate filings are subject to the provisions of this section.

PART III - HEALTH CARE LIABILITY REFORM

Statutes of Limitations and Repose

NEW SECTION. Sec. 301. The purpose of this section and section 302 of this act is to respond to the court's decision in *DeYoung v. Providence Medical Center*, 136 Wn.2d 136 (1998), by expressly stating the legislature's rationale for the eight-year statute of repose in RCW 4.16.350.

The legislature recognizes that the eight-year statute of repose alone may not solve the crisis in the medical insurance industry. However, to the extent that the eight-year statute of repose has an effect on medical malpractice insurance, that effect will tend to reduce rather than increase the cost of malpractice insurance.

Whether or not the statute of repose has the actual effect of reducing insurance costs, the legislature finds it will provide protection against claims, however few, that are stale, based on untrustworthy evidence, or that place undue burdens on defendants.

In accordance with the court's opinion in *DeYoung*, the legislature further finds that compelling even one defendant to answer a stale claim is a substantial wrong, and setting an outer limit to the operation of the discovery rule is an appropriate aim.

The legislature further finds that an eight-year statute of repose is a reasonable time period in light of the need to balance the interests of injured plaintiffs and the health care industry.

The legislature intends to reenact RCW 4.16.350 with respect to the eight-year statute of repose and specifically set forth for the court the legislature's legitimate rationale for adopting the eight-year statute of repose. The legislature further intends that the eight-year statute of repose reenacted by section 302 of this act be applied to actions commenced on or after the effective date of this section.

Sec. 302. RCW 4.16.350 and 1998 c 147 s 1 are each reenacted to read as follows:

Any civil action for damages for injury occurring as a result of health care which is provided after June 25, 1976 against:

(1) A person licensed by this state to provide health care or related services, including, but not limited to, a physician, osteopathic physician, dentist, nurse, optometrist, podiatric physician and surgeon, chiropractor, physical therapist, psychologist, pharmacist, optician, physician's assistant, osteopathic physician's

assistant, nurse practitioner, or physician's trained mobile intensive care paramedic, including, in the event such person is deceased, his estate or personal representative;

(2) An employee or agent of a person described in subsection (1) of this section, acting in the course and scope of his employment, including, in the event such employee or agent is deceased, his estate or personal representative; or

(3) An entity, whether or not incorporated, facility, or institution employing one or more persons described in subsection (1) of this section, including, but not limited to, a hospital, clinic, health maintenance organization, or nursing home; or an officer, director, employee, or agent thereof acting in the course and scope of his employment, including, in the event such officer, director, employee, or agent is deceased, his estate or personal representative;

based upon alleged professional negligence shall be commenced within three years of the act or omission alleged to have caused the injury or condition, or one year of the time the patient or his representative discovered or reasonably should have discovered that the injury or condition was caused by said act or omission, whichever period expires later, except that in no event shall an action be commenced more than eight years after said act or omission: PROVIDED, That the time for commencement of an action is tolled upon proof of fraud, intentional concealment, or the presence of a foreign body not intended to have a therapeutic or diagnostic purpose or effect, until the date the patient or the patient's representative has actual knowledge of the act of fraud or concealment, or of the presence of the foreign body; the patient or the patient's representative has one year from the date of the actual knowledge in which to commence a civil action for damages.

For purposes of this section, notwithstanding RCW 4.16.190, the knowledge of a custodial parent or guardian shall be imputed to a person under the age of eighteen years, and such imputed knowledge shall operate to bar the claim of such minor to the same extent that the claim of an adult would be barred under this section. Any action not commenced in accordance with this section shall be barred.

For purposes of this section, with respect to care provided after June 25, 1976, and before August 1, 1986, the knowledge of a custodial parent or guardian shall be imputed as of April 29, 1987, to persons under the age of eighteen years.

This section does not apply to a civil action based on intentional conduct brought against those individuals or entities specified in this section by a person for recovery of damages for injury occurring as a result of childhood sexual abuse as defined in RCW 4.16.340(5).

Sec. 303. RCW 4.16.190 and 1993 c 232 s 1 are each amended to read as follows:

(1) Unless otherwise provided in this section, if a person entitled to bring an action mentioned in this chapter, except for a penalty or forfeiture, or against a sheriff or other officer, for an escape, be at the time the cause of action accrued either under the age of eighteen years, or incompetent or disabled to such a degree that he or she cannot understand the nature of the proceedings, such incompetency or disability as determined according to chapter 11.88 RCW, or

imprisoned on a criminal charge prior to sentencing, the time of such disability shall not be a part of the time limited for the commencement of action.

(2) Subsection (1) of this section with respect to a person under the age of eighteen years does not apply to the time limited for the commencement of an action under RCW 4.16.350.

Certificate of Merit

NEW SECTION. Sec. 304. A new section is added to chapter 7.70 RCW to read as follows:

(1) In an action against an individual health care provider under this chapter for personal injury or wrongful death in which the injury is alleged to have been caused by an act or omission that violates the accepted standard of care, the plaintiff must file a certificate of merit at the time of commencing the action. If the action is commenced within forty-five days prior to the expiration of the applicable statute of limitations, the plaintiff must file the certificate of merit no later than forty-five days after commencing the action.

(2) The certificate of merit must be executed by a health care provider who meets the qualifications of an expert in the action. If there is more than one defendant in the action, the person commencing the action must file a certificate of merit for each defendant.

(3) The certificate of merit must contain a statement that the person executing the certificate of merit believes, based on the information known at the time of executing the certificate of merit, that there is a reasonable probability that the defendant's conduct did not follow the accepted standard of care required to be exercised by the defendant.

(4) Upon motion of the plaintiff, the court may grant an additional period of time to file the certificate of merit, not to exceed ninety days, if the court finds there is good cause for the extension.

(5)(a) Failure to file a certificate of merit that complies with the requirements of this section is grounds for dismissal of the case.

(b) If a case is dismissed for failure to file a certificate of merit that complies with the requirements of this section, the filing of the claim against the health care provider shall not be used against the health care provider in professional liability insurance rate setting, personal credit history, or professional licensing and credentialing.

Voluntary Arbitration

NEW SECTION. Sec. 305. This chapter applies to any cause of action for damages for personal injury or wrongful death based on alleged professional negligence in the provision of health care where all parties to the action have agreed to submit the dispute to arbitration under this chapter in accordance with the requirements of section 306 of this act.

NEW SECTION. Sec. 306. (1) Parties in an action covered under section 305 of this act may elect to submit the dispute to arbitration under this chapter in accordance with the requirements in this section.

(a) A claimant may elect to submit the dispute to arbitration under this chapter by including such election in the complaint filed at the commencement

of the action. A defendant may elect to submit the dispute to arbitration under this chapter by including such election in the defendant's answer to the complaint. The dispute will be submitted to arbitration under this chapter only if all parties to the action elect to submit the dispute to arbitration.

(b) If the parties do not initially elect to submit the dispute to arbitration in accordance with (a) of this subsection, the parties may make such an election at any time during the pendency of the action by filing a stipulation with the court in which all parties to the action agree to submit the dispute to arbitration under this chapter.

(2) A party that does not initially elect to submit a dispute to arbitration under this chapter must file a declaration with the court that meets the following requirements:

(a) In the case of a claimant, the declaration must be filed at the time of commencing the action and must state that the attorney representing the claimant presented the claimant with a copy of the provisions of this chapter before commencing the action and that the claimant elected not to submit the dispute to arbitration under this chapter; and

(b) In the case of a defendant, the declaration must be filed at the time of filing the answer and must state that the attorney representing the defendant presented the defendant with a copy of the provisions of this chapter before filing the defendant's answer and that the defendant elected not to submit the dispute to arbitration under this chapter.

NEW SECTION. Sec. 307. (1) An arbitrator shall be selected by agreement of the parties no later than forty-five days after: (a) The date all defendants elected arbitration in the answer where the parties elected arbitration in the initial complaint and answer; or (b) the date of the stipulation where the parties agreed to enter into arbitration after the commencement of the action through a stipulation filed with the court. The parties may agree to select more than one arbitrator to conduct the arbitration.

(2) If the parties are unable to agree to an arbitrator by the time specified in subsection (1) of this section, each side may submit the names of three arbitrators to the court, and the court shall select an arbitrator from among the submitted names within fifteen days of being notified that the parties are unable to agree to an arbitrator. If none of the parties submit any names of potential arbitrators, the court shall select an arbitrator.

NEW SECTION. Sec. 308. The arbitrator may conduct the arbitration in such manner as the arbitrator considers appropriate so as to aid in the fair and expeditious disposition of the proceeding subject to the requirements of this section and section 309 of this act.

(1)(a) Except as provided in (b) of this subsection, each party is entitled to two experts on the issue of liability, two experts on the issue of damages, and one rebuttal expert.

(b) Where there are multiple parties on one side, the arbitrator shall determine the number of experts that are allowed based on the minimum number of experts necessary to ensure a fair and economic resolution of the action.

(2)(a) Unless the arbitrator determines that exceptional circumstances require additional discovery, each party is entitled to the following discovery from any other party:

- (i) Twenty-five interrogatories, including subparts;
- (ii) Ten requests for admission; and
- (iii) In accordance with applicable court rules:
 - (A) Requests for production of documents and things, and for entry upon land for inspection and other purposes; and
 - (B) Requests for physical and mental examinations of persons.
- (b) The parties shall be entitled to the following depositions:
 - (i) Depositions of parties and any expert that a party expects to call as a witness. Except by order of the arbitrator for good cause shown, the length of the deposition of a party or an expert witness shall be limited to four hours.
 - (ii) Depositions of other witnesses. Unless the arbitrator determines that exceptional circumstances require additional depositions, the total number of depositions of persons who are not parties or expert witnesses is limited to five depositions per side, each of which may last no longer than two hours in length. In the deposition of a fact witness, each side is entitled to examine for one hour of the deposition.
- (3) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena must be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

NEW SECTION. Sec. 309. (1) An arbitration under this chapter shall be conducted according to the time frames specified in this section. The time frames provided in this section run from the date all defendants have agreed to arbitration in their answers where the parties elected arbitration in the initial complaint and answer, and from the date of the execution of the stipulation where the parties agreed to enter into arbitration after the commencement of the action through a stipulation filed with the court. The arbitrator shall issue a case scheduling order in every case specifying the dates by which the requirements of (b) through (f) of this subsection must be completed.

(a) Within forty-five days, the claimant shall provide stipulations for all relevant medical records to the defendants.

(b) Within one hundred twenty days, the claimant shall disclose to the defendants the names and curriculum vitae or other documentation of qualifications of any expert the claimant expects to call as a witness.

(c) Within one hundred forty days, each defendant shall disclose to the claimants the names and curriculum vitae or other documentation of qualifications of any expert the defendant expects to call as a witness.

(d) Within one hundred sixty days, each party shall disclose to the other parties the name and curriculum vitae or other documentation of qualifications of any rebuttal expert the party expects to call as a witness.

(e) Within two hundred forty days, all discovery shall be completed.

(f) Within two hundred seventy days, the arbitration hearing shall commence subject to the limited authority of the arbitrator to extend this deadline under subsection (2) of this section.

(2) It is the express public policy of the legislature that arbitration hearings under this chapter be commenced no later than twelve months after the parties elect to submit the dispute to arbitration. The arbitrator may grant a continuance

of the commencement of the arbitration hearing to a date more than twelve months after the parties elect to submit the dispute to arbitration only where a party shows that exceptional circumstances create an undue and unavoidable hardship on the party.

NEW SECTION. Sec. 310. (1) The arbitrator shall issue a decision in writing and signed by the arbitrator within fourteen days after the completion of the arbitration hearing and shall promptly deliver a copy of the decision to each of the parties or their attorneys.

(2) The arbitrator may not make an award of damages under this chapter that exceeds one million dollars for both economic and noneconomic damages.

(3) The arbitrator may not make an award of damages under this chapter under a theory of ostensible agency liability.

(4) With or without the request of a party, the arbitrator shall review the reasonableness of each party's attorneys' fees taking into account the factors enumerated in RCW 4.24.005.

(5) The fees and expenses of the arbitrator shall be paid by the nonprevailing parties.

NEW SECTION. Sec. 311. After a party to the arbitration proceeding receives notice of a decision, the party may file a motion with the court for a judgment in accordance with the decision, at which time the court shall issue such a judgment unless the decision is modified, corrected, or vacated as provided in section 312 of this act.

NEW SECTION. Sec. 312. There is no right to a trial de novo on an appeal of the arbitrator's decision. An appeal of the arbitrator's decision is limited to the bases for appeal provided in RCW 7.04A.230(1) (a) through (d) and 7.04A.240, or equivalent provisions in a successor statute.

NEW SECTION. Sec. 313. The provisions of chapter 7.04A RCW do not apply to arbitrations conducted under this chapter except to the extent specifically provided in this chapter.

Mandatory Mediation

Sec. 314. RCW 7.70.100 and 1993 c 492 s 419 are each amended to read as follows:

(1) No action based upon a health care provider's professional negligence may be commenced unless the defendant has been given at least ninety days' notice of the intention to commence the action. If the notice is served within ninety days of the expiration of the applicable statute of limitations, the time for the commencement of the action must be extended ninety days from the service of the notice.

(2) The provisions of subsection (1) of this section are not applicable with respect to any defendant whose name is unknown to the plaintiff at the time of filing the complaint and who is identified therein by a fictitious name.

(3) After the filing of the ninety-day presuit notice, and before a superior court trial, all causes of action, whether based in tort, contract, or otherwise, for damages arising from injury occurring as a result of health care provided after July 1, 1993, shall be subject to mandatory mediation prior to trial except as provided in subsection (6) of this section.

~~((2))~~ (4) The supreme court shall by rule adopt procedures to implement mandatory mediation of actions under this chapter. ~~The ((rules shall)) implementation contemplates the adoption of rules by the supreme court which will require mandatory mediation without exception unless subsection (6) of this section applies. The rules on mandatory mediation shall~~ address, at a minimum:

(a) Procedures for the appointment of, and qualifications of, mediators. A mediator shall have experience or expertise related to actions arising from injury occurring as a result of health care, and be a member of the state bar association who has been admitted to the bar for a minimum of five years or who is a retired judge. The parties may stipulate to a nonlawyer mediator. The court may prescribe additional qualifications of mediators;

(b) Appropriate limits on the amount or manner of compensation of mediators;

(c) The number of days following the filing of a claim under this chapter within which a mediator must be selected;

(d) The method by which a mediator is selected. The rule shall provide for designation of a mediator by the superior court if the parties are unable to agree upon a mediator;

(e) The number of days following the selection of a mediator within which a mediation conference must be held;

(f) A means by which mediation of an action under this chapter may be waived by a mediator who has determined that the claim is not appropriate for mediation; and

(g) Any other matters deemed necessary by the court.

~~((3))~~ (5) Mediators shall not impose discovery schedules upon the parties.

(6) The mandatory mediation requirement of subsection (4) of this section does not apply to an action subject to mandatory arbitration under chapter 7.06 RCW or to an action in which the parties have agreed, subsequent to the arisal of the claim, to submit the claim to arbitration under chapter 7.04A or 7.— (sections 305 through 313 of this act) RCW.

(7) The implementation also contemplates the adoption of a rule by the supreme court for procedures for the parties to certify to the court the manner of mediation used by the parties to comply with this section.

Collateral Sources

Sec. 315. RCW 7.70.080 and 1975-'76 2nd ex.s. c 56 s 13 are each amended to read as follows:

Any party may present evidence to the trier of fact that the ~~((patient)) plaintiff~~ has already been compensated for the injury complained of from any source except the assets of the ~~((patient, his)) plaintiff, the plaintiff's representative, or ((his)) the plaintiff's immediate family((, or insurance purchased with such assets)).~~ In the event such evidence is admitted, the plaintiff may present evidence of an obligation to repay such compensation and evidence of any amount paid by the plaintiff, or his or her representative or immediate family, to secure the right to the compensation. ~~((Insurance bargained for or provided on behalf of an employee shall be considered insurance purchased with the assets of the employee.))~~ Compensation as used in this section shall mean payment of money or other property to or on behalf of the

~~((patient))~~ plaintiff, rendering of services to the ~~((patient))~~ plaintiff free of charge to the ~~((patient))~~ plaintiff, or indemnification of expenses incurred by or on behalf of the ~~((patient))~~ plaintiff. Notwithstanding this section, evidence of compensation by a defendant health care provider may be offered only by that provider.

Preventing Frivolous Lawsuits

NEW SECTION. Sec. 316. A new section is added to chapter 7.70 RCW to read as follows:

In any action under this section, an attorney that has drafted, or assisted in drafting and filing an action, counterclaim, cross-claim, third-party claim, or a defense to a claim, upon signature and filing, certifies that to the best of the party's or attorney's knowledge, information, and belief, formed after reasonable inquiry it is not frivolous, and is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause frivolous litigation. If an action is signed and filed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the action, counterclaim, cross-claim, third-party claim, or a defense to a claim, including a reasonable attorney fee. The procedures governing the enforcement of RCW 4.84.185 shall apply to this section.

PART IV - MISCELLANEOUS PROVISIONS

NEW SECTION. Sec. 401. Part headings and subheadings used in this act are not any part of the law.

NEW SECTION. Sec. 402. (1) Sections 105 through 108 and 110 of this act constitute a new chapter in Title 70 RCW.

(2) Sections 201 through 208 of this act constitute a new chapter in Title 48 RCW.

(3) Sections 305 through 313 of this act constitute a new chapter in Title 7 RCW.

NEW SECTION. Sec. 403. Sections 211, 212, and 213 of this act apply to insurance policies issued or renewed on or after January 1, 2007.

NEW SECTION. Sec. 404. Section 111 of this act expires July 1, 2006.

NEW SECTION. Sec. 405. Sections 112 and 210 of this act take effect July 1, 2006.

NEW SECTION. Sec. 406. If specific funding for the purposes of sections 105 through 112 of this act, referencing sections 105 through 112 of this act by bill or chapter number and section numbers, is not provided by June 30, 2006, in the omnibus appropriations act, sections 105 through 112 of this act are null and void.

NEW SECTION. Sec. 407. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed by the House February 28, 2006.

Passed by the Senate February 22, 2006.

Approved by the Governor March 6, 2006.

Filed in Office of Secretary of State March 6, 2006.

CHAPTER 9

[Substitute House Bill 2333]

HOME CARE AGENCY WORKERS

AN ACT Relating to parity for home care agency workers; adding a new section to chapter 74.39A RCW; creating a new section; providing an effective date; and providing an expiration date.

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

NEW SECTION. Sec. 1. A new section is added to chapter 74.39A RCW to read as follows:

(1) The department shall create a formula that converts the cost of the increase in wages and benefits negotiated and funded in the contract for individual providers of home care services pursuant to RCW 74.39A.270 and 74.39A.300, into a per-hour amount, excluding those benefits defined in subsection (2) of this section. That per-hour amount shall be added to the statewide home care agency vendor rate and shall be used exclusively for improving the wages and benefits of home care agency workers who provide direct care. The formula shall account for:

(a) All types of wages, benefits, and compensation negotiated and funded each biennium, including but not limited to:

- (i) Regular wages;
- (ii) Benefit pay, such as vacation, sick, and holiday pay;
- (iii) Taxes on wages/benefit pay; and
- (iv) Mileage; and

(b) The increase in the average cost of worker's compensation for home care agencies and application of the increases identified in (a) of this subsection to all hours required to be paid, including travel time, of direct service workers under the wage and hour laws and associated employer taxes.

(2) The contribution rate for health care benefits, including but not limited to medical, dental, and vision benefits, for eligible agency home care workers shall be paid by the department to home care agencies at the same rate as negotiated and funded in the collective bargaining agreement for individual providers of home care services.

NEW SECTION. Sec. 2. For the fiscal year ending June 30, 2007, the per-hour amount added to the home care agency vendor rate pursuant to section 1(1)(a) of this act shall be limited to the cost of: (1) A \$0.02 per-hour increase in wages, plus the employer share of unemployment and social security taxes on the amount of the increase; and (2) the cost of annual leave benefits negotiated and funded for individual providers of home care services. This section expires June 30, 2007.

NEW SECTION. Sec. 3. This act takes effect July 1, 2006.

Passed by the House February 8, 2006.
 Passed by the Senate February 24, 2006.
 Approved by the Governor March 7, 2006.
 Filed in Office of Secretary of State March 7, 2006.

CHAPTER 10

[Substitute House Bill 2976]

WESTERN WASHINGTON UNIVERSITY—COLLECTIVE BARGAINING

AN ACT Relating to implementing a collective bargaining agreement with Western Washington University; amending 2005 c 518 s 963 (uncodified); and declaring an emergency.

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

Sec. 1. 2005 c 518 s 963 (uncodified) is amended to read as follows:

COLLECTIVE BARGAINING AGREEMENT—((WPEA)) PSE/PROFESSIONAL ((LOCAL 365 UNIT C)) TECHNICAL EMPLOYEES—WESTERN WASHINGTON UNIVERSITY. Budget amounts reflect the collective bargaining agreement reached between the Western Washington University and the public school employees of Washington ((Public Employees Association bargaining unit C)) professional technical employees under the personnel system reform act of 2002. For employees covered under this agreement, provisions include a 3.2% salary increase effective retroactive to July 1, 2005. Provisions also include a 1.6% increase effective July 1, 2006, until June 30, 2007, and for implementation of the department of personnel 2002 salary survey for classes more than 25% below market rates.

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

Passed by the House February 9, 2006.
 Passed by the Senate February 24, 2006.
 Approved by the Governor March 7, 2006.
 Filed in Office of Secretary of State March 7, 2006.

CHAPTER 11

[House Bill 2364]

USE TAX—CREDIT UNIONS

AN ACT Relating to use tax owed by converting or merging credit unions when converting or merging a federal, foreign, or out-of-state credit union into a state charter; and adding a new section to chapter 82.12 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 82.12 RCW to read as follows:

(1) This chapter does not apply to state credit unions with respect to the use of any article of tangible personal property, service defined as a retail sale in RCW 82.04.050 (2)(a) or (3)(a), or extended warranty, acquired from a federal credit union, foreign credit union, or out-of-state credit union as a result of a merger or conversion.

(2) For purposes of this section, the following definitions apply:

(a) "Federal credit union" means a credit union organized and operating under the laws of the United States.

(b) "Foreign credit union" means a credit union organized and operating under the laws of another country or other foreign jurisdiction.

(c) "Out-of-state credit union" means a credit union organized and operating under the laws of another state or United States territory or possession.

(d) "State credit union" means a credit union organized and operating under the laws of this state.

Passed by the House February 11, 2006.

Passed by the Senate February 24, 2006.

Approved by the Governor March 7, 2006.

Filed in Office of Secretary of State March 7, 2006.

CHAPTER 12

[Engrossed House Bill 3278]

UNEMPLOYMENT INSURANCE—DISQUALIFICATION

AN ACT Relating to making adjustments in the unemployment insurance system to enhance benefit and tax equity; reenacting RCW 50.20.050; and creating a new section.

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

Sec. 1. RCW 50.20.050 and 2003 2nd sp.s. c 4 s 4 are each reenacted to read as follows:

(1) With respect to claims that have an effective date before January 4, 2004:

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

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

(i) The duration of the work;

(ii) The extent of direction and control by the employer over the work; and

(iii) The level of skill required for the work in light of the individual's training and experience.

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

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

(ii) The separation was because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if the claimant took all reasonable precautions, in accordance with any regulations that the commissioner may prescribe, to protect his or her employment status by having promptly notified the employer of the reason for the absence and by having promptly requested reemployment when again able to assume employment: PROVIDED, That these precautions need not have been taken

when they would have been a futile act, including those instances when the futility of the act was a result of a recognized labor/management dispatch system;

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

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

(c) In determining under this subsection whether an individual has left work voluntarily without good cause, the commissioner shall only consider work-connected factors such as the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness for the work, the individual's ability to perform the work, and such other work connected factors as the commissioner may deem pertinent, including state and national emergencies. Good cause shall not be established for voluntarily leaving work because of its distance from an individual's residence where the distance was known to the individual at the time he or she accepted the employment and where, in the judgment of the department, the distance is customarily traveled by workers in the individual's job classification and labor market, nor because of any other significant work factor which was generally known and present at the time he or she accepted employment, unless the related circumstances have so changed as to amount to a substantial involuntary deterioration of the work factor or unless the commissioner determines that other related circumstances would work an unreasonable hardship on the individual were he or she required to continue in the employment.

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

(2) With respect to claims that have an effective date on or after January 4, 2004:

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

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

- (i) The duration of the work;
- (ii) The extent of direction and control by the employer over the work; and
- (iii) The level of skill required for the work in light of the individual's training and experience.

(b) An individual is not disqualified from benefits under (a) of this subsection when:

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

(ii) The separation was necessary because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if:

(A) The claimant pursued all reasonable alternatives to preserve his or her employment status by requesting a leave of absence, by having promptly notified the employer of the reason for the absence, and by having promptly requested reemployment when again able to assume employment. These alternatives need not be pursued, however, when they would have been a futile act, including those instances when the futility of the act was a result of a recognized labor/management dispatch system; and

(B) The claimant terminated his or her employment status, and is not entitled to be reinstated to the same position or a comparable or similar position;

(iii) He or she: (A) Left work to relocate for the spouse's employment that, due to a mandatory military transfer: (I) Is outside the existing labor market area; and (II) is in Washington or another state that, pursuant to statute, does not consider such an individual to have left work voluntarily without good cause; and (B) remained employed as long as was reasonable prior to the move;

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

(v) The individual's usual compensation was reduced by twenty-five percent or more;

(vi) The individual's usual hours were reduced by twenty-five percent or more;

(vii) The individual's worksite changed, such change caused a material increase in distance or difficulty of travel, and, after the change, the commute was greater than is customary for workers in the individual's job classification and labor market;

(viii) The individual's worksite safety deteriorated, the individual reported such safety deterioration to the employer, and the employer failed to correct the hazards within a reasonable period of time;

(ix) The individual left work because of illegal activities in the individual's worksite, the individual reported such activities to the employer, and the employer failed to end such activities within a reasonable period of time; or

(x) The individual's usual work was changed to work that violates the individual's religious convictions or sincere moral beliefs.

NEW SECTION. Sec. 2. Section 1 of this act applies retroactively to claims that have an effective date on or after January 4, 2004.

Passed by the House March 3, 2006.

Passed by the Senate March 3, 2006.

Approved by the Governor March 8, 2006.

Filed in Office of Secretary of State March 8, 2006.

CHAPTER 13

[Engrossed Substitute Senate Bill 6885]

UNEMPLOYMENT INSURANCE

AN ACT Relating to unemployment insurance; amending RCW 50.20.120, 50.20.050, 50.29.025, 50.29.041, 50.29.021, and 50.16.030; reenacting RCW 50.04.293, 50.04.294, 50.20.010, 50.20.060, 50.20.065, 50.20.066, 50.20.100, 50.20.119, 50.20.240, 50.04.335, 50.16.010, 50.16.015, 50.24.014, 50.20.190, and 50.04.206; creating new sections; and repealing 2005 c 133 s 10 (uncodified).

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

PART I - BENEFIT PROVISIONS

Sec. 1. RCW 50.20.120 and 2005 c 133 s 3 are each amended to read as follows:

(1)(a) Subject to the other provisions of this title, benefits shall be payable to any eligible individual during the individual's benefit year in a maximum amount equal to the lesser of thirty times the weekly benefit amount, as determined in subsection (2) of this section, or one-third of the individual's base year wages under this title: PROVIDED, That as to any week which falls in an extended benefit period as defined in RCW 50.22.010(1), an individual's eligibility for maximum benefits in excess of twenty-six times his or her weekly benefit amount will be subject to the terms and conditions set forth in RCW 50.22.020.

(b) With respect to claims that have an effective date on or after the first Sunday of the calendar month immediately following the month in which the commissioner finds that the state unemployment rate is six and eight-tenths percent or less, benefits shall be payable to any eligible individual during the individual's benefit year in a maximum amount equal to the lesser of twenty-six times the weekly benefit amount, as determined in subsection (2) of this section, or one-third of the individual's base year wages under this title.

(2)(a) For claims with an effective date before January 4, 2004, an individual's weekly benefit amount shall be an amount equal to one twenty-fifth of the average quarterly wages of the individual's total wages during the two quarters of the individual's base year in which such total wages were highest.

(b) With respect to claims with an effective date on or after January 4, 2004, and before January 2, 2005, an individual's weekly benefit amount shall be an amount equal to one twenty-fifth of the average quarterly wages of the individual's total wages during the three quarters of the individual's base year in which such total wages were highest.

(c)(i) With respect to claims with an effective date on or after January 2, 2005, except as provided in (c)(ii) of this subsection, an individual's weekly

benefit amount shall be an amount equal to one percent of the total wages paid in the individual's base year.

(ii) With respect to claims with an effective date on or after the first Sunday following April 22, 2005, ~~((and before July 1, 2007,))~~ an individual's weekly benefit amount shall be an amount equal to three and eighty-five one-hundredths percent of the average quarterly wages of the individual's total wages during the two quarters of the individual's base year in which such total wages were highest.

(3) The maximum and minimum amounts payable weekly shall be determined as of each June 30th to apply to benefit years beginning in the twelve-month period immediately following such June 30th.

(a)(i) With respect to claims that have an effective date before January 4, 2004, the maximum amount payable weekly shall be seventy percent of the "average weekly wage" for the calendar year preceding such June 30th.

(ii) With respect to claims that have an effective date on or after January 4, 2004, the maximum amount payable weekly shall be either four hundred ninety-six dollars or sixty-three percent of the "average weekly wage" for the calendar year preceding such June 30th, whichever is greater.

(b) The minimum amount payable weekly shall be fifteen percent of the "average weekly wage" for the calendar year preceding such June 30th.

(4) If any weekly benefit, maximum benefit, or minimum benefit amount computed herein is not a multiple of one dollar, it shall be reduced to the next lower multiple of one dollar.

Sec. 2. RCW 50.20.050 and 2003 2nd sp.s. c 4 s 4 are each amended to read as follows:

(1) With respect to claims that have an effective date before January 4, 2004:

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

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

(i) The duration of the work;

(ii) The extent of direction and control by the employer over the work; and

(iii) The level of skill required for the work in light of the individual's training and experience.

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

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

(ii) The separation was because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if the claimant took all reasonable precautions, in accordance with any regulations that the commissioner may prescribe, to protect his or her employment status by having promptly notified the employer of the reason for the absence and by

having promptly requested reemployment when again able to assume employment: PROVIDED, That these precautions need not have been taken when they would have been a futile act, including those instances when the futility of the act was a result of a recognized labor/management dispatch system;

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

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

(c) In determining under this subsection whether an individual has left work voluntarily without good cause, the commissioner shall only consider work-connected factors such as the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness for the work, the individual's ability to perform the work, and such other work connected factors as the commissioner may deem pertinent, including state and national emergencies. Good cause shall not be established for voluntarily leaving work because of its distance from an individual's residence where the distance was known to the individual at the time he or she accepted the employment and where, in the judgment of the department, the distance is customarily traveled by workers in the individual's job classification and labor market, nor because of any other significant work factor which was generally known and present at the time he or she accepted employment, unless the related circumstances have so changed as to amount to a substantial involuntary deterioration of the work factor or unless the commissioner determines that other related circumstances would work an unreasonable hardship on the individual were he or she required to continue in the employment.

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

(2) With respect to claims that have an effective date on or after January 4, 2004:

(a) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has left work voluntarily without good cause and thereafter for seven calendar weeks and until he or she has

obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times his or her weekly benefit amount.

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

- (i) The duration of the work;
- (ii) The extent of direction and control by the employer over the work; and
- (iii) The level of skill required for the work in light of the individual's training and experience.

(b) An individual is not disqualified from benefits under (a) of this subsection when:

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

(ii) The separation was necessary because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if:

(A) The claimant pursued all reasonable alternatives to preserve his or her employment status by requesting a leave of absence, by having promptly notified the employer of the reason for the absence, and by having promptly requested reemployment when again able to assume employment. These alternatives need not be pursued, however, when they would have been a futile act, including those instances when the futility of the act was a result of a recognized labor/management dispatch system; and

(B) The claimant terminated his or her employment status, and is not entitled to be reinstated to the same position or a comparable or similar position;

~~(iii)(A) With respect to claims that have an effective date before July 2, 2006, he or she: ((A)) (1) Left work to relocate for the spouse's employment that, due to a mandatory military transfer: ((H)) (1) Is outside the existing labor market area; and ((H)) (2) is in Washington or another state that, pursuant to statute, does not consider such an individual to have left work voluntarily without good cause; and ((B)) (II) remained employed as long as was reasonable prior to the move;~~

~~(B) With respect to claims that have an effective date on or after July 2, 2006, he or she: (1) Left work to relocate for the spouse's employment that, due to a mandatory military transfer, is outside the existing labor market area; and (II) remained employed as long as was reasonable prior to the move;~~

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

(v) The individual's usual compensation was reduced by twenty-five percent or more;

(vi) The individual's usual hours were reduced by twenty-five percent or more;

(vii) The individual's worksite changed, such change caused a material increase in distance or difficulty of travel, and, after the change, the commute was greater than is customary for workers in the individual's job classification and labor market;

(viii) The individual's worksite safety deteriorated, the individual reported such safety deterioration to the employer, and the employer failed to correct the hazards within a reasonable period of time;

(ix) The individual left work because of illegal activities in the individual's worksite, the individual reported such activities to the employer, and the employer failed to end such activities within a reasonable period of time; or

(x) The individual's usual work was changed to work that violates the individual's religious convictions or sincere moral beliefs.

NEW SECTION. Sec. 3. 2005 c 133 s 10 (uncodified) is repealed.

PART II - TAX PROVISIONS

Sec. 4. RCW 50.29.025 and 2005 c 133 s 5 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, the contribution rate for each employer subject to contributions under RCW 50.24.010 shall be determined under this subsection.

(a) A fund balance ratio shall be determined by dividing the balance in the unemployment compensation fund as of the September 30th immediately preceding the rate year by the total remuneration paid by all employers subject to contributions during the second calendar year preceding the rate year and reported to the department by the following March 31st. The division shall be carried to the fourth decimal place with the remaining fraction, if any, disregarded. The fund balance ratio shall be expressed as a percentage.

(b) The interval of the fund balance ratio, expressed as a percentage, shall determine which tax schedule in (e) of this subsection shall be in effect for assigning tax rates for the rate year. The intervals for determining the effective tax schedule shall be:

Interval of the Fund Balance Ratio Expressed as a Percentage	Effective Tax Schedule
2.90 and above	AA
2.10 to 2.89	A
1.70 to 2.09	B
1.40 to 1.69	C
1.00 to 1.39	D
0.70 to 0.99	E
Less than 0.70	F

(c) An array shall be prepared, listing all qualified employers in ascending order of their benefit ratios. The array shall show for each qualified employer: (i) Identification number; (ii) benefit ratio; (iii) taxable payrolls for the four calendar quarters immediately preceding the computation date and reported to the department by the cut-off date; (iv) a cumulative total of taxable payrolls consisting of the employer's taxable payroll plus the taxable payrolls of all other

employers preceding him or her in the array; and (v) the percentage equivalent of the cumulative total of taxable payrolls.

(d) Each employer in the array shall be assigned to one of twenty rate classes according to the percentage intervals of cumulative taxable payrolls set forth in (e) of this subsection: PROVIDED, That if an employer's taxable payroll falls within two or more rate classes, the employer and any other employer with the same benefit ratio shall be assigned to the lowest rate class which includes any portion of the employer's taxable payroll.

(e) Except as provided in RCW 50.29.026, the contribution rate for each employer in the array shall be the rate specified in the following tables for the rate class to which he or she has been assigned, as determined under (d) of this subsection, within the tax schedule which is to be in effect during the rate year:

Percent of Cumulative Taxable Payrolls			Schedules of Contributions Rates for Effective Tax Schedule							
From	To	Rate Class	AA	A	B	C	D	E	F	
0.00	5.00	1	0.47	0.47	0.57	0.97	1.47	1.87	2.47	
5.01	10.00	2	0.47	0.47	0.77	1.17	1.67	2.07	2.67	
10.01	15.00	3	0.57	0.57	0.97	1.37	1.77	2.27	2.87	
15.01	20.00	4	0.57	0.73	1.11	1.51	1.90	2.40	2.98	
20.01	25.00	5	0.72	0.92	1.30	1.70	2.09	2.59	3.08	
25.01	30.00	6	0.91	1.11	1.49	1.89	2.29	2.69	3.18	
30.01	35.00	7	1.00	1.29	1.69	2.08	2.48	2.88	3.27	
35.01	40.00	8	1.19	1.48	1.88	2.27	2.67	3.07	3.47	
40.01	45.00	9	1.37	1.67	2.07	2.47	2.87	3.27	3.66	
45.01	50.00	10	1.56	1.86	2.26	2.66	3.06	3.46	3.86	
50.01	55.00	11	1.84	2.14	2.45	2.85	3.25	3.66	3.95	
55.01	60.00	12	2.03	2.33	2.64	3.04	3.44	3.85	4.15	
60.01	65.00	13	2.22	2.52	2.83	3.23	3.64	4.04	4.34	
65.01	70.00	14	2.40	2.71	3.02	3.43	3.83	4.24	4.54	
70.01	75.00	15	2.68	2.90	3.21	3.62	4.02	4.43	4.63	
75.01	80.00	16	2.87	3.09	3.42	3.81	4.22	4.53	4.73	
80.01	85.00	17	3.27	3.47	3.77	4.17	4.57	4.87	4.97	
85.01	90.00	18	3.67	3.87	4.17	4.57	4.87	4.97	5.17	
90.01	95.00	19	4.07	4.27	4.57	4.97	5.07	5.17	5.37	
95.01	100.00	20	5.40	5.40	5.40	5.40	5.40	5.40	5.40	

(f) The contribution rate for each employer not qualified to be in the array shall be as follows:

(i) Employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due shall be assigned a contribution rate two-tenths higher than that in rate class 20 for the applicable rate year, except employers who have an approved agency-deferred payment contract by September 30 of the previous rate year. If any employer with an approved agency-deferred payment contract fails to make any one of the succeeding

deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the employer's tax rate shall immediately revert to a contribution rate two-tenths higher than that in rate class 20 for the applicable rate year; and

(ii) For all other employers not qualified to be in the array, the contribution rate shall be a rate equal to the average industry rate as determined by the commissioner; however, the rate may not be less than one percent.

(2) Beginning with contributions assessed for rate year 2005, the contribution rate for each employer subject to contributions under RCW 50.24.010 shall be the sum of the array calculation factor rate and the graduated social cost factor rate determined under this subsection, and the solvency surcharge determined under RCW 50.29.041, if any.

(a) The array calculation factor rate shall be determined as follows:

(i) An array shall be prepared, listing all qualified employers in ascending order of their benefit ratios. The array shall show for each qualified employer: (A) Identification number; (B) benefit ratio; and (C) taxable payrolls for the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(ii) Each employer in the array shall be assigned to one of forty rate classes according to his or her benefit ratio as follows, and, except as provided in RCW 50.29.026, the array calculation factor rate for each employer in the array shall be the rate specified in the rate class to which the employer has been assigned:

Benefit Ratio		Rate Class	Rate (percent)
At least	Less than		
	0.000001	1	0.00
0.000001	0.001250	2	0.13
0.001250	0.002500	3	0.25
0.002500	0.003750	4	0.38
0.003750	0.005000	5	0.50
0.005000	0.006250	6	0.63
0.006250	0.007500	7	0.75
0.007500	0.008750	8	0.88
0.008750	0.010000	9	1.00
0.010000	0.011250	10	1.15
0.011250	0.012500	11	1.30
0.012500	0.013750	12	1.45
0.013750	0.015000	13	1.60
0.015000	0.016250	14	1.75
0.016250	0.017500	15	1.90
0.017500	0.018750	16	2.05
0.018750	0.020000	17	2.20
0.020000	0.021250	18	2.35
0.021250	0.022500	19	2.50

0.022500	0.023750	20	2.65
0.023750	0.025000	21	2.80
0.025000	0.026250	22	2.95
0.026250	0.027500	23	3.10
0.027500	0.028750	24	3.25
0.028750	0.030000	25	3.40
0.030000	0.031250	26	3.55
0.031250	0.032500	27	3.70
0.032500	0.033750	28	3.85
0.033750	0.035000	29	4.00
0.035000	0.036250	30	4.15
0.036250	0.037500	31	4.30
0.037500	0.040000	32	4.45
0.040000	0.042500	33	4.60
0.042500	0.045000	34	4.75
0.045000	0.047500	35	4.90
0.047500	0.050000	36	5.05
0.050000	0.052500	37	5.20
0.052500	0.055000	38	5.30
0.055000	0.057500	39	5.35
0.057500		40	5.40

(b) The graduated social cost factor rate shall be determined as follows:

(i)(A) Except as provided in (b)(i)(B)(~~(;)~~) and (C)(~~(; and (D))~~) of this subsection, the commissioner shall calculate the flat social cost factor for a rate year by dividing the total social cost by the total taxable payroll. The division shall be carried to the second decimal place with the remaining fraction disregarded unless it amounts to five hundredths or more, in which case the second decimal place shall be rounded to the next higher digit. The flat social cost factor shall be expressed as a percentage.

(B) If, on the cut-off date, the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide more than ten months of unemployment benefits, the commissioner shall calculate the flat social cost factor for the rate year immediately following the cut-off date by reducing the total social cost by the dollar amount that represents the number of months for which the balance in the unemployment compensation fund on the cut-off date will provide benefits above ten months and dividing the result by the total taxable payroll. However, the calculation under this subsection (2)(b)(i)(B) for a rate year may not result in a flat social cost factor that is more than (~~two-tenths~~) four-tenths lower than the calculation under (b)(i)(A) of this subsection for that rate year.

For the purposes of this subsection, the commissioner shall determine the number of months of unemployment benefits in the unemployment

compensation fund using the benefit cost rate for the average of the three highest calendar benefit cost rates in the twenty consecutive completed calendar years immediately preceding the cut-off date or a period of consecutive calendar years immediately preceding the cut-off date that includes three recessions, if longer.

(C) The minimum flat social cost factor calculated under this subsection (2)(b) shall be six-tenths of one percent, except that if the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide:

(I) At least twelve months but less than fourteen months of unemployment benefits, the minimum shall be five-tenths of one percent; or

(II) At least fourteen months of unemployment benefits, the minimum shall be five-tenths of one percent, except that, for employers in rate class 1, the minimum shall be forty-five hundredths of one percent.

~~((D) With respect to rate year 2007, the flat social cost factor shall be the lesser of:~~

~~(I) The flat social cost factor determined under (b)(i)(A) through (C) of this subsection; or~~

~~(II) The flat social cost factor that would be determined under (b)(i)(A) through (C) of this subsection if RCW 50.20.120(2)(c)(i) had been in effect during the immediately preceding rate year.)~~

(ii)(A) Except as provided in (b)(ii)(B) of this subsection, the graduated social cost factor rate for each employer in the array is the flat social cost factor multiplied by the percentage specified as follows for the rate class to which the employer has been assigned in (a)(ii) of this subsection, except that the sum of an employer's array calculation factor rate and the graduated social cost factor rate may not exceed six and five-tenths percent or, for employers whose North American industry classification system code is within "111," "112," "1141," "115," "3114," "3117," ~~((or))~~ "42448," or "49312," may not exceed six percent through rate year 2007 and may not exceed five and seven-tenths percent for rate year 2008 and thereafter:

(I) Rate class 1 - 78 percent;

(II) Rate class 2 - 82 percent;

(III) Rate class 3 - 86 percent;

(IV) Rate class 4 - 90 percent;

(V) Rate class 5 - 94 percent;

(VI) Rate class 6 - 98 percent;

(VII) Rate class 7 - 102 percent;

(VIII) Rate class 8 - 106 percent;

(IX) Rate class 9 - 110 percent;

(X) Rate class 10 - 114 percent;

(XI) Rate class 11 - 118 percent; and

(XII) Rate classes 12 through 40 - 120 percent.

(B) For contributions assessed beginning July 1, 2005, through ~~((June 30,))~~ December 31, 2007, for employers whose North American industry classification system code is "111," "112," "1141," "115," "3114," "3117," "42448," or "49312," the graduated social cost factor rate is zero.

(iii) For the purposes of this section:

(A) "Total social cost" means(~~(=~~

~~(F) Except as provided in (b)(iii)(A)(II) of this subsection,)~~ the amount calculated by subtracting the array calculation factor contributions paid by all employers with respect to the four consecutive calendar quarters immediately preceding the computation date and paid to the employment security department by the cut-off date from the total unemployment benefits paid to claimants in the same four consecutive calendar quarters. To calculate the flat social cost factor for rate year 2005, the commissioner shall calculate the total social cost using the array calculation factor contributions that would have been required to be paid by all employers in the calculation period if (a) of this subsection had been in effect for the relevant period.

~~((H) For rate year 2007, the amount calculated under (b)(iii)(A)(I) of this subsection reduced by the amount of benefits charged that exceed the contributions paid in the four consecutive calendar quarters immediately preceding the applicable computation date because, as applicable, specified employers are subject to the social cost contributions under (b)(ii)(B) of this subsection, and/or because the social cost factor contributions are paid under (b)(i)(D)(II) of this subsection.))~~

(B) "Total taxable payroll" means the total amount of wages subject to tax, as determined under RCW 50.24.010, for all employers in the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(c) The array calculation factor rate for each employer not qualified to be in the array shall be as follows:

(i) Employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due shall be assigned an array calculation factor rate two-tenths higher than that in rate class 40, except employers who have an approved agency-deferred payment contract by September 30th of the previous rate year. If any employer with an approved agency-deferred payment contract fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the employer's tax rate shall immediately revert to an array calculation factor rate two-tenths higher than that in rate class 40; and

(ii) For all other employers not qualified to be in the array, the array calculation factor rate shall be a rate equal to the average industry array calculation factor rate as determined by the commissioner, plus fifteen percent of that amount; however, the rate may not be less than one percent or more than the array calculation factor rate in rate class 40.

(d) The graduated social cost factor rate for each employer not qualified to be in the array shall be as follows:

(i) For employers whose array calculation factor rate is determined under (c)(i) of this subsection, the social cost factor rate shall be the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection.

(ii) For employers whose array calculation factor rate is determined under (c)(ii) of this subsection, the social cost factor rate shall be a rate equal to the average industry social cost factor rate as determined by the commissioner, plus fifteen percent of that amount, but not more than the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection.

(3) Assignment of employers by the commissioner to industrial classification, for purposes of this section, shall be in accordance with

established classification practices found in the "Standard Industrial Classification Manual" issued by the federal office of management and budget to the third digit provided in the standard industrial classification code, or in the North American industry classification system code.

Sec. 5. RCW 50.29.041 and 2003 2nd sp.s. c 4 s 16 are each amended to read as follows:

Beginning with contributions assessed for rate year 2005, the contribution rate of each employer subject to contributions under RCW 50.24.010 shall include a solvency surcharge determined as follows:

(1) This section shall apply to employers' contributions for a rate year immediately following a cut-off date only if, on the cut-off date, the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide fewer than ~~((six))~~ seven months of unemployment benefits.

(2) The solvency surcharge shall be the lowest rate necessary, as determined by the commissioner, but not more than two-tenths of one percent, to provide revenue during the applicable rate year that will fund unemployment benefits for the number of months that is the difference between ~~((eight))~~ nine months and the number of months for which the balance in the unemployment compensation fund on the cut-off date will provide benefits.

(3) The basis for determining the number of months of unemployment benefits shall be the same basis used in RCW 50.29.025(2)(b)(i)(B).

Sec. 6. RCW 50.29.021 and 2005 c 133 s 4 are each amended to read as follows:

(1) This section applies to benefits charged to the experience rating accounts of employers for claims that have an effective date on or after January 4, 2004.

(2)(a) An experience rating account shall be established and maintained for each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, based on existing records of the employment security department.

(b) Benefits paid to an eligible individual shall be charged to the experience rating accounts of each of such individual's employers during the individual's base year in the same ratio that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that base year, except as otherwise provided in this section.

(c) When the eligible individual's separating employer is a covered contribution paying base year employer, benefits paid to the eligible individual shall be charged to the experience rating account of only the individual's separating employer if the individual qualifies for benefits under:

(i) RCW 50.20.050(2)(b)(i), as applicable, and became unemployed after having worked and earned wages in the bona fide work; or

(ii) RCW 50.20.050(2)(b)(v) through (x).

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

employers described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, as follows:

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

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

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

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

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

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

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

(f) With respect to claims with an effective date on or after the first Sunday following April 22, 2005, ~~((and before July 1, 2007,))~~ benefits paid that exceed the benefits that would have been paid if the weekly benefit amount for the claim had been determined as one percent of the total wages paid in the individual's base year shall not be charged to the experience rating account of any contribution paying employer.

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

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

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

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

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

(b) The employer requesting relief of charges under this subsection must request relief in writing within thirty days following mailing to the last known address of the notification of the valid initial determination of such claim, stating the date and reason for the separation or the circumstances of continued

employment. The commissioner, upon investigation of the request, shall determine whether relief should be granted.

Sec. 7. RCW 50.16.030 and 2005 c 133 s 6 are each amended to read as follows:

(1)(a) Except as provided in (b) (~~and (c)~~) of this subsection, moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and repayment of loans from the federal government to guarantee solvency of the unemployment compensation fund in accordance with regulations prescribed by the commissioner, except that money credited to this state's account pursuant to section 903 of the social security act, as amended, shall be used exclusively as provided in RCW 50.16.030(5). The commissioner shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to its account therein, as he or she deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and shall issue his or her warrants for the payment of benefits solely from such benefits account.

(b) Moneys for the payment of regular benefits as defined in RCW 50.22.010 shall be requisitioned during fiscal year~~(s)~~ 2006 (~~and 2007~~) in the following order:

(i) First, from the moneys credited to this state's account in the unemployment trust fund pursuant to section 903 of the social security act, as amended in section 209 of the temporary extended unemployment compensation act of 2002 (42 U.S.C. Sec. 1103(d)), the amount equal to the amount of benefits charged that exceed the contributions paid in the four consecutive calendar quarters ending on June 30, 2006, (~~for the fiscal year 2006 calculation, and ending on June 30, 2007, for the fiscal year 2007 calculation;~~) because the social cost factor contributions that employers are subject to under RCW 50.29.025(2)(b)(ii)(B) are less than the social cost factor contributions that these employers would have been subject to if RCW 50.29.025(2)(b)(ii)(A) had applied to these employers; and

(ii) Second, after the requisitioning required under (b)(i) of this subsection (~~in the respective fiscal year~~), from all other moneys credited to this state's account in the unemployment trust fund.

~~((c) After the requisitioning required under (b) of this subsection, if applicable, moneys for the payment of regular benefits as defined in RCW 50.22.010 shall be requisitioned during calendar year 2007 in the following order:~~

~~(i) First, from the moneys credited to this state's account in the unemployment trust fund pursuant to section 903 of the social security act, as amended in section 209 of the temporary extended unemployment compensation act of 2002 (42 U.S.C. Sec. 1103(d)), the amount equal to the amount of benefits paid under RCW 50.20.120(2)(c)(ii) beginning on the first Sunday following April 22, 2005, and ending on June 30, 2007, that exceed the amount of benefits that would have been paid if the weekly benefit amount had been determined as one percent of the total wages paid in the individual's base year; and~~

~~(ii) Second, after the requisitioning required under (c)(i) of this subsection in the respective calendar year, from all other moneys credited to this state's account in the unemployment trust fund.)~~

(2) Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody, and RCW 43.01.050, as amended, shall not apply. All warrants issued by the treasurer for the payment of benefits and refunds shall bear the signature of the treasurer and the countersignature of the commissioner, or his or her duly authorized agent for that purpose.

(3) Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or in the discretion of the commissioner, shall be redeposited with the secretary of the treasury of the United States of America to the credit of this state's account in the unemployment trust fund.

(4) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section 903 of the social security act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this title pursuant to a specific appropriation by the legislature, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

(a) Specifies the purposes for which such money is appropriated and the amounts appropriated therefor;

(b) Limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law; and

(c) Limits the amount which may be obligated during a twelve-month period beginning on July 1st and ending on the next June 30th to an amount which does not exceed the amount by which (i) the aggregate of the amounts credited to the account of this state pursuant to section 903 of the social security act, as amended, during the same twelve-month period and the thirty-four preceding twelve-month periods, exceeds (ii) the aggregate of the amounts obligated pursuant to RCW 50.16.030 (4), (5) and (6) and charged against the amounts credited to the account of this state during any of such thirty-five twelve-month periods. For the purposes of RCW 50.16.030 (4), (5) and (6), amounts obligated during any such twelve-month period shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for administration during any such twelve-month period may be charged against any amount credited during such a twelve-month period earlier than the thirty-fourth twelve-month period preceding such period: PROVIDED, That any amount credited to this state's account under section 903 of the social security act, as amended, which has been appropriated for expenses of administration, whether or not withdrawn from the trust fund shall be excluded from the unemployment compensation fund balance for the purpose of experience rating credit determination.

(5) Money credited to the account of this state pursuant to section 903 of the social security act, as amended, may not be withdrawn or used except for the payment of benefits and for the payment of expenses of administration and of public employment offices pursuant to RCW 50.16.030 (4), (5) and (6).

However, moneys credited because of excess amounts in federal accounts in federal fiscal years 1999, 2000, and 2001 shall be used solely for the administration of the unemployment compensation program and are not subject to appropriation by the legislature for any other purpose.

(6) Money requisitioned as provided in RCW 50.16.030 (4), (5) and (6) for the payment of expenses of administration shall be deposited in the unemployment compensation fund, but until expended, shall remain a part of the unemployment compensation fund. The commissioner shall maintain a separate record of the deposit, obligation, expenditure and return of funds so deposited. Any money so deposited which either will not be obligated within the period specified by the appropriation law or remains unobligated at the end of the period, and any money which has been obligated within the period but will not be expended, shall be returned promptly to the account of this state in the unemployment trust fund.

PART III - REENACTED PROVISIONS

Sec. 8. RCW 50.04.293 and 2003 2nd sp.s. c 4 s 5 are each reenacted to read as follows:

With respect to claims that have an effective date before January 4, 2004, "misconduct" means an employee's act or failure to act in willful disregard of his or her employer's interest where the effect of the employee's act or failure to act is to harm the employer's business.

Sec. 9. RCW 50.04.294 and 2003 2nd sp.s. c 4 s 6 are each reenacted to read as follows:

With respect to claims that have an effective date on or after January 4, 2004:

(1) "Misconduct" includes, but is not limited to, the following conduct by a claimant:

(a) Willful or wanton disregard of the rights, title, and interests of the employer or a fellow employee;

(b) Deliberate violations or disregard of standards of behavior which the employer has the right to expect of an employee;

(c) Carelessness or negligence that causes or would likely cause serious bodily harm to the employer or a fellow employee; or

(d) Carelessness or negligence of such degree or recurrence to show an intentional or substantial disregard of the employer's interest.

(2) The following acts are considered misconduct because the acts signify a willful or wanton disregard of the rights, title, and interests of the employer or a fellow employee. These acts include, but are not limited to:

(a) Insubordination showing a deliberate, willful, or purposeful refusal to follow the reasonable directions or instructions of the employer;

(b) Repeated inexcusable tardiness following warnings by the employer;

(c) Dishonesty related to employment, including but not limited to deliberate falsification of company records, theft, deliberate deception, or lying;

(d) Repeated and inexcusable absences, including absences for which the employee was able to give advance notice and failed to do so;

(e) Deliberate acts that are illegal, provoke violence or violation of laws, or violate the collective bargaining agreement. However, an employee who engages in lawful union activity may not be disqualified due to misconduct;

(f) Violation of a company rule if the rule is reasonable and if the claimant knew or should have known of the existence of the rule; or

(g) Violations of law by the claimant while acting within the scope of employment that substantially affect the claimant's job performance or that substantially harm the employer's ability to do business.

(3) "Misconduct" does not include:

(a) Inefficiency, unsatisfactory conduct, or failure to perform well as the result of inability or incapacity;

(b) Inadvertence or ordinary negligence in isolated instances; or

(c) Good faith errors in judgment or discretion.

(4) "Gross misconduct" means a criminal act in connection with an individual's work for which the individual has been convicted in a criminal court, or has admitted committing, or conduct connected with the individual's work that demonstrates a flagrant and wanton disregard of and for the rights, title, or interest of the employer or a fellow employee.

Sec. 10. RCW 50.20.010 and 2003 2nd sp.s. c 4 s 3 are each reenacted to read as follows:

(1) An unemployed individual shall be eligible to receive waiting period credits or benefits with respect to any week in his or her eligibility period only if the commissioner finds that:

(a) He or she has registered for work at, and thereafter has continued to report at, an employment office in accordance with such regulation as the commissioner may prescribe, except that the commissioner may by regulation waive or alter either or both of the requirements of this subdivision as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which the commissioner finds that the compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this title;

(b) He or she has filed an application for an initial determination and made a claim for waiting period credit or for benefits in accordance with the provisions of this title;

(c) He or she is able to work, and is available for work in any trade, occupation, profession, or business for which he or she is reasonably fitted.

(i) With respect to claims that have an effective date before January 4, 2004, to be available for work an individual must be ready, able, and willing, immediately to accept any suitable work which may be offered to him or her and must be actively seeking work pursuant to customary trade practices and through other methods when so directed by the commissioner or the commissioner's agents.

(ii) With respect to claims that have an effective date on or after January 4, 2004, to be available for work an individual must be ready, able, and willing, immediately to accept any suitable work which may be offered to him or her and must be actively seeking work pursuant to customary trade practices and through other methods when so directed by the commissioner or the commissioner's agents. If a labor agreement or dispatch rules apply, customary trade practices must be in accordance with the applicable agreement or rules;

- (d) He or she has been unemployed for a waiting period of one week;
- (e) He or she participates in reemployment services if the individual has been referred to reemployment services pursuant to the profiling system established by the commissioner under RCW 50.20.011, unless the commissioner determines that:
 - (i) The individual has completed such services; or
 - (ii) There is justifiable cause for the claimant's failure to participate in such services; and
- (f) As to weeks beginning after March 31, 1981, which fall within an extended benefit period as defined in RCW 50.22.010, the individual meets the terms and conditions of RCW 50.22.020 with respect to benefits claimed in excess of twenty-six times the individual's weekly benefit amount.

(2) An individual's eligibility period for regular benefits shall be coincident to his or her established benefit year. An individual's eligibility period for additional or extended benefits shall be the periods prescribed elsewhere in this title for such benefits.

Sec. 11. RCW 50.20.060 and 2003 2nd sp.s. c 4 s 7 are each reenacted to read as follows:

With respect to claims that have an effective date before January 4, 2004, an individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has been discharged or suspended for misconduct connected with his or her work and thereafter for seven calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times his or her weekly benefit amount. Alcoholism shall not constitute a defense to disqualification from benefits due to misconduct.

Sec. 12. RCW 50.20.065 and 2003 2nd sp.s. c 4 s 8 are each reenacted to read as follows:

With respect to claims that have an effective date before January 4, 2004:

- (1) An individual who has been discharged from his or her work because of a felony or gross misdemeanor of which he or she has been convicted, or has admitted committing to a competent authority, and that is connected with his or her work shall have all hourly wage credits based on that employment canceled.
- (2) The employer shall notify the department of such an admission or conviction, not later than six months following the admission or conviction.
- (3) The claimant shall disclose any conviction of the claimant of a work-connected felony or gross misdemeanor occurring in the previous two years to the department at the time of application for benefits.
- (4) All benefits that are paid in error based on wage/hour credits that should have been removed from the claimant's base year are recoverable, notwithstanding RCW 50.20.190 or 50.24.020 or any other provisions of this title.

Sec. 13. RCW 50.20.066 and 2003 2nd sp.s. c 4 s 9 are each reenacted to read as follows:

With respect to claims that have an effective date on or after January 4, 2004:

- (1) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has been discharged or suspended

for misconduct connected with his or her work and thereafter for ten calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to ten times his or her weekly benefit amount. Alcoholism shall not constitute a defense to disqualification from benefits due to misconduct.

(2) An individual who has been discharged from his or her work because of gross misconduct shall have all hourly wage credits based on that employment or six hundred eighty hours of wage credits, whichever is greater, canceled.

(3) The employer shall notify the department of a felony or gross misdemeanor of which an individual has been convicted, or has admitted committing to a competent authority, not later than six months following the admission or conviction.

(4) The claimant shall disclose any conviction of the claimant of a work-connected felony or gross misdemeanor occurring in the previous two years to the department at the time of application for benefits.

(5) All benefits that are paid in error based on this section are recoverable, notwithstanding RCW 50.20.190 or 50.24.020 or any other provisions of this title.

Sec. 14. RCW 50.20.100 and 2004 c 110 s 2 are each reenacted to read as follows:

(1) Suitable work for an individual is employment in an occupation in keeping with the individual's prior work experience, education, or training and if the individual has no prior work experience, special education, or training for employment available in the general area, then employment which the individual would have the physical and mental ability to perform. In determining whether work is suitable for an individual, the commissioner shall also consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, the individual's length of unemployment and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and such other factors as the commissioner may deem pertinent, including state and national emergencies.

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

(3) For part-time workers as defined in RCW 50.20.119, suitable work includes suitable work under subsection (1) of this section that is for seventeen or fewer hours per week.

(4) For individuals who have qualified for unemployment compensation benefits under RCW 50.20.050 (1)(b)(iv) or (2)(b)(iv), as applicable, an evaluation of the suitability of the work must consider the individual's need to address the physical, psychological, legal, and other effects of domestic violence or stalking.

Sec. 15. RCW 50.20.119 and 2003 2nd sp.s. c 4 s 12 are each reenacted to read as follows:

(1) With respect to claims that have an effective date on or after January 2, 2005, an otherwise eligible individual may not be denied benefits for any week

because the individual is a part-time worker and is available for, seeks, applies for, or accepts only work of seventeen or fewer hours per week by reason of the application of RCW 50.20.010(1)(c), 50.20.080, or 50.22.020(1) relating to availability for work and active search for work, or failure to apply for or refusal to accept suitable work.

(2) For purposes of this section, "part-time worker" means an individual who: (a) Earned wages in "employment" in at least forty weeks in the individual's base year; and (b) did not earn wages in "employment" in more than seventeen hours per week in any weeks in the individual's base year.

Sec. 16. RCW 50.20.240 and 2004 c 110 s 1 are each reenacted to read as follows:

(1)(a) To ensure that following the initial application for benefits, an individual is actively engaged in searching for work, the employment security department shall implement a job search monitoring program. Effective January 4, 2004, the department shall contract with employment security agencies in other states to ensure that individuals residing in those states and receiving benefits under this title are actively engaged in searching for work in accordance with the requirements of this section. The department may use interactive voice technology and other electronic means to ensure that individuals are subject to comparable job search monitoring, regardless of whether they reside in Washington or elsewhere.

(b) Except for those individuals with employer attachment or union referral, individuals who qualify for unemployment compensation under RCW 50.20.050 (1)(b)(iv) or (2)(b)(iv), as applicable, and individuals in commissioner-approved training, an individual who has received five or more weeks of benefits under this title, regardless of whether the individual resides in Washington or elsewhere, must provide evidence of seeking work, as directed by the commissioner or the commissioner's agents, for each week beyond five in which a claim is filed. With regard to claims with an effective date before January 4, 2004, the evidence must demonstrate contacts with at least three employers per week or documented in-person job search activity at the local reemployment center. With regard to claims with an effective date on or after January 4, 2004, the evidence must demonstrate contacts with at least three employers per week or documented in-person job search activities at the local reemployment center at least three times per week.

(c) In developing the requirements for the job search monitoring program, the commissioner or the commissioner's agents shall utilize an existing advisory committee having equal representation of employers and workers.

(2) Effective January 4, 2004, an individual who fails to comply fully with the requirements for actively seeking work under RCW 50.20.010 shall lose all benefits for all weeks during which the individual was not in compliance, and the individual shall be liable for repayment of all such benefits under RCW 50.20.190.

Sec. 17. RCW 50.04.335 and 2003 2nd sp.s. c 4 s 2 are each reenacted to read as follows:

After December 31, 2003, for the purpose of the payment of contributions, the term "wages" does not include an employee's income attributable to the

transfer of shares of stock to the employee pursuant to his or her exercise of a stock option granted for any reason connected with his or her employment.

Sec. 18. RCW 50.16.010 and 2005 c 518 s 933 are each reenacted to read as follows:

(1) There shall be maintained as special funds, separate and apart from all public moneys or funds of this state an unemployment compensation fund, an administrative contingency fund, and a federal interest payment fund, which shall be administered by the commissioner exclusively for the purposes of this title, and to which RCW 43.01.050 shall not be applicable.

(2)(a) The unemployment compensation fund shall consist of:

(i) All contributions collected under RCW 50.24.010 and payments in lieu of contributions collected pursuant to the provisions of this title;

(ii) Any property or securities acquired through the use of moneys belonging to the fund;

(iii) All earnings of such property or securities;

(iv) Any moneys received from the federal unemployment account in the unemployment trust fund in accordance with Title XII of the social security act, as amended;

(v) All money recovered on official bonds for losses sustained by the fund;

(vi) All money credited to this state's account in the unemployment trust fund pursuant to section 903 of the social security act, as amended;

(vii) All money received from the federal government as reimbursement pursuant to section 204 of the federal-state extended compensation act of 1970 (84 Stat. 708-712; 26 U.S.C. Sec. 3304); and

(viii) All moneys received for the fund from any other source.

(b) All moneys in the unemployment compensation fund shall be commingled and undivided.

(3)(a) Except as provided in (b) of this subsection, the administrative contingency fund shall consist of:

(i) All interest on delinquent contributions collected pursuant to this title;

(ii) All fines and penalties collected pursuant to the provisions of this title;

(iii) All sums recovered on official bonds for losses sustained by the fund; and

(iv) Revenue received under RCW 50.24.014.

(b) All fees, fines, forfeitures, and penalties collected or assessed by a district court because of the violation of this title or rules adopted under this title shall be remitted as provided in chapter 3.62 RCW.

(c) Moneys available in the administrative contingency fund, other than money in the special account created under RCW 50.24.014(1)(a), shall be expended upon the direction of the commissioner, with the approval of the governor, whenever it appears to him or her that such expenditure is necessary solely for:

(i) The proper administration of this title and no federal funds are available for the specific purpose to which such expenditure is to be made, provided, the moneys are not substituted for appropriations from federal funds which, in the absence of such moneys, would be made available.

(ii) The proper administration of this title for which purpose appropriations from federal funds have been requested but not yet received, provided, the

administrative contingency fund will be reimbursed upon receipt of the requested federal appropriation.

(iii) The proper administration of this title for which compliance and audit issues have been identified that establish federal claims requiring the expenditure of state resources in resolution. Claims must be resolved in the following priority: First priority is to provide services to eligible participants within the state; second priority is to provide substitute services or program support; and last priority is the direct payment of funds to the federal government.

(d) During the 2005-2007 fiscal biennium, the cost of the job skills program at community and technical colleges as appropriated by the legislature.

Money in the special account created under RCW 50.24.014(1)(a) may only be expended, after appropriation, for the purposes specified in this section and RCW 50.62.010, 50.62.020, 50.62.030, 50.24.014, 50.44.053, and 50.22.010.

Sec. 19. RCW 50.16.015 and 2003 2nd sp.s. c 4 s 24 are each reenacted to read as follows:

A separate and identifiable fund to provide for the payment of interest on advances received from this state's account in the federal unemployment trust fund shall be established and administered under the direction of the commissioner. This fund shall be known as the federal interest payment fund and shall consist of contributions paid under RCW 50.16.070. All money in this fund shall be expended solely for the payment of interest on advances received from this state's account in the federal unemployment trust fund and for no other purposes whatsoever.

Sec. 20. RCW 50.24.014 and 2003 2nd sp.s. c 4 s 25 are each reenacted to read as follows:

(1)(a) A separate and identifiable account to provide for the financing of special programs to assist the unemployed is established in the administrative contingency fund. All money in this account shall be expended solely for the purposes of this title and for no other purposes whatsoever. Contributions to this account shall accrue and become payable by each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, at a basic rate of two one-hundredths of one percent. The amount of wages subject to tax shall be determined under RCW 50.24.010.

(b) A separate and identifiable account is established in the administrative contingency fund for financing the employment security department's administrative cost under RCW 50.22.150 and the costs under RCW 50.22.150(9). All money in this account shall be expended solely for the purposes of this title and for no other purposes whatsoever. Contributions to this account shall accrue and become payable by each employer, except employers as described in RCW 50.44.010 and 50.44.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, those employers who are required to make payments in lieu of contributions, those employers described under RCW 50.29.025(1)(f)(ii), and those qualified employers assigned rate class 20 or rate

class 40, as applicable, under RCW 50.29.025, at a basic rate of one one-hundredth of one percent. The amount of wages subject to tax shall be determined under RCW 50.24.010. Any amount of contributions payable under this subsection (1)(b) that exceeds the amount that would have been collected at a rate of four one-thousandths of one percent must be deposited in the unemployment compensation trust fund.

(c) For the first calendar quarter of 1994 only, the basic two one-hundredths of one percent contribution payable under (a) of this subsection shall be increased by one-hundredth of one percent to a total rate of three one-hundredths of one percent. The proceeds of this incremental one-hundredth of one percent shall be used solely for the purposes described in section 22, chapter 483, Laws of 1993, and for the purposes of conducting an evaluation of the call center approach to unemployment insurance under section 5, chapter 161, Laws of 1998. During the 1997-1999 fiscal biennium, any surplus from contributions payable under this subsection (c) may be deposited in the unemployment compensation trust fund, used to support tax and wage automated systems projects that simplify and streamline employer reporting, or both.

(2)(a) Contributions under this section shall become due and be paid by each employer under rules as the commissioner may prescribe, and shall not be deducted, in whole or in part, from the remuneration of individuals in the employ of the employer. Any deduction in violation of this section is unlawful.

(b) In the payment of any contributions under this section, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(3) If the commissioner determines that federal funding has been increased to provide financing for the services specified in chapter 50.62 RCW, the commissioner shall direct that collection of contributions under this section be terminated on the following January 1st.

Sec. 21. RCW 50.20.190 and 2005 c 518 s 934 are each reenacted to read as follows:

(1) An individual who is paid any amount as benefits under this title to which he or she is not entitled shall, unless otherwise relieved pursuant to this section, be liable for repayment of the amount overpaid. The department shall issue an overpayment assessment setting forth the reasons for and the amount of the overpayment. The amount assessed, to the extent not collected, may be deducted from any future benefits payable to the individual: PROVIDED, That in the absence of a back pay award, a settlement affecting the allowance of benefits, fraud, misrepresentation, or willful nondisclosure, every determination of liability shall be mailed or personally served not later than two years after the close of or final payment made on the individual's applicable benefit year for which the purported overpayment was made, whichever is later, unless the merits of the claim are subjected to administrative or judicial review in which event the period for serving the determination of liability shall be extended to allow service of the determination of liability during the six-month period following the final decision affecting the claim.

(2) The commissioner may waive an overpayment if the commissioner finds that the overpayment was not the result of fraud, misrepresentation, willful nondisclosure, or fault attributable to the individual and that the recovery thereof would be against equity and good conscience: PROVIDED, HOWEVER, That

the overpayment so waived shall be charged against the individual's applicable entitlement for the eligibility period containing the weeks to which the overpayment was attributed as though such benefits had been properly paid.

(3) Any assessment herein provided shall constitute a determination of liability from which an appeal may be had in the same manner and to the same extent as provided for appeals relating to determinations in respect to claims for benefits: PROVIDED, That an appeal from any determination covering overpayment only shall be deemed to be an appeal from the determination which was the basis for establishing the overpayment unless the merits involved in the issue set forth in such determination have already been heard and passed upon by the appeal tribunal. If no such appeal is taken to the appeal tribunal by the individual within thirty days of the delivery of the notice of determination of liability, or within thirty days of the mailing of the notice of determination, whichever is the earlier, the determination of liability shall be deemed conclusive and final. Whenever any such notice of determination of liability becomes conclusive and final, the commissioner, upon giving at least twenty days notice by certified mail return receipt requested to the individual's last known address of the intended action, may file with the superior court clerk of any county within the state a warrant in the amount of the notice of determination of liability plus a filing fee under RCW 36.18.012(10). The clerk of the county where the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the person(s) mentioned in the warrant, the amount of the notice of determination of liability, and the date when the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to, and any interest in, all real and personal property of the person(s) against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. A warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law for a civil judgment. A copy of the warrant shall be mailed to the person(s) mentioned in the warrant by certified mail to the person's last known address within five days of its filing with the clerk.

(4) On request of any agency which administers an employment security law of another state, the United States, or a foreign government and which has found in accordance with the provisions of such law that a claimant is liable to repay benefits received under such law, the commissioner may collect the amount of such benefits from the claimant to be refunded to the agency. In any case in which under this section a claimant is liable to repay any amount to the agency of another state, the United States, or a foreign government, such amounts may be collected without interest by civil action in the name of the commissioner acting as agent for such agency if the other state, the United States, or the foreign government extends such collection rights to the employment security department of the state of Washington, and provided that the court costs be paid by the governmental agency benefiting from such collection.

(5) Any employer who is a party to a back pay award or settlement due to loss of wages shall, within thirty days of the award or settlement, report to the department the amount of the award or settlement, the name and social security

number of the recipient of the award or settlement, and the period for which it is awarded. When an individual has been awarded or receives back pay, for benefit purposes the amount of the back pay shall constitute wages paid in the period for which it was awarded. For contribution purposes, the back pay award or settlement shall constitute wages paid in the period in which it was actually paid. The following requirements shall also apply:

(a) The employer shall reduce the amount of the back pay award or settlement by an amount determined by the department based upon the amount of unemployment benefits received by the recipient of the award or settlement during the period for which the back pay award or settlement was awarded;

(b) The employer shall pay to the unemployment compensation fund, in a manner specified by the commissioner, an amount equal to the amount of such reduction;

(c) The employer shall also pay to the department any taxes due for unemployment insurance purposes on the entire amount of the back pay award or settlement notwithstanding any reduction made pursuant to (a) of this subsection;

(d) If the employer fails to reduce the amount of the back pay award or settlement as required in (a) of this subsection, the department shall issue an overpayment assessment against the recipient of the award or settlement in the amount that the back pay award or settlement should have been reduced; and

(e) If the employer fails to pay to the department an amount equal to the reduction as required in (b) of this subsection, the department shall issue an assessment of liability against the employer which shall be collected pursuant to the procedures for collection of assessments provided herein and in RCW 50.24.110.

(6) When an individual fails to repay an overpayment assessment that is due and fails to arrange for satisfactory repayment terms, the commissioner shall impose an interest penalty of one percent per month of the outstanding balance. Interest shall accrue immediately on overpayments assessed pursuant to RCW 50.20.070 and shall be imposed when the assessment becomes final. For any other overpayment, interest shall accrue when the individual has missed two or more of the individual's monthly payments either partially or in full. The interest penalty shall be used, first, to fully fund either social security number cross-match audits or other more effective activities that ensure that individuals are entitled to all amounts of benefits that they are paid, second, to fund other detection and recovery of overpayment and collection activities, and third, during the 2005-07 fiscal biennium, the cost of the job skills program at community and technical colleges as appropriated by the legislature.

Sec. 22. RCW 50.04.206 and 2003 2nd sp.s. c 4 s 27 are each reenacted to read as follows:

The term "employment" shall not include service that is performed by a nonresident alien for the period he or she is temporarily present in the United States as a nonimmigrant under subparagraph (F), (H)(ii), (H)(iii), or (J) of section 101(a)(15) of the federal immigration and naturalization act, as amended, and that is performed to carry out the purpose specified in the applicable subparagraph of the federal immigration and naturalization act.

NEW SECTION. Sec. 23. (1) Sections 8 through 13 and 16 of this act apply retroactively to claims that have an effective date on or after January 4, 2004.

(2) Sections 14 and 15 of this act apply retroactively to claims that have an effective date on or after January 2, 2005.

(3) Sections 17 through 22 of this act apply retroactively to June 20, 2003.

PART IV - MISCELLANEOUS

NEW SECTION. Sec. 24. The employment security department shall study the following and report its findings and recommendations, if any, to the unemployment insurance advisory committee and to the house of representatives commerce and labor committee and the senate labor, commerce, research, and development committee, or their successor committees, by December 1, 2006:

(1) Employment patterns involving repeat episodes of unemployment to achieve improved employer retention rates, improved claimant placement rates, and increased employment opportunities;

(2) Employers in rate class 40, including types of industries, sizes of employers, contributions paid, and benefit charges attributable to such employers;

(3) Reasons for the unusually high rate of employer turnover among Washington employers, which leads to a high volume of charges against inactive accounts and increases socialized costs; and

(4) Fraud prevention methods such as corporate officer eligibility for unemployment insurance, and personal liability of corporate officers for failure to accurately report employee information or pay taxes owed.

NEW SECTION. Sec. 25. Part headings used in this act are not any part of the law.

NEW SECTION. Sec. 26. Sections 4 and 5 of this act apply to rate years beginning on or after January 1, 2007.

NEW SECTION. Sec. 27. 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. 28. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state.

Passed by the Senate March 3, 2006.

Passed by the House March 2, 2006.

Approved by the Governor March 8, 2006.

Filed in Office of Secretary of State March 8, 2006.

CHAPTER 14

[Engrossed Senate Bill 5048]

TOBACCO SAMPLING

AN ACT Relating to protecting the health of minors by prohibiting tobacco product sampling; amending RCW 70.155.010, 70.155.050, 70.155.090, 70.155.100, 82.24.120, and 82.24.230; creating a new section; repealing RCW 70.155.060 and 82.24.270; and prescribing penalties.

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

NEW SECTION. Sec. 1. The legislature recognizes that tobacco use among children is a serious and preventable health problem. Every day sixty-five more children in Washington state become smokers, and every year more than eight thousand two hundred state residents die from tobacco-related illnesses. The legislature further finds that tobacco samples contribute to children's access to tobacco products by providing a no-cost initiation that encourages minors to experiment with nicotine at early ages. Sampling activity often occurs in venues frequented by minors, and tobacco samples are distributed along with other promotional items that contain tobacco brand logos, thus increasing the appeal of the tobacco products as well as the chances that children will obtain them. Sampling events in this state have increased twenty-fold over the past nine years, and nationwide, tobacco industry spending on samples has increased significantly. It is therefore the intent of the legislature to protect minors from the influence of tobacco sampling by eliminating the distribution of samples in this state.

Sec. 2. RCW 70.155.010 and 2003 c 113 s 1 are each amended to read as follows:

The definitions set forth in RCW 82.24.010 shall apply to RCW 70.155.020 through 70.155.130. In addition, for the purposes of this chapter, unless otherwise required by the context:

(1) "Board" means the Washington state liquor control board.

(2) "Delivery sale" means any sale of cigarettes to a consumer in the state where either: (a) The purchaser submits an order for a sale by means of a telephonic or other method of voice transmission, mail delivery, any other delivery service, or the internet or other on-line service; or (b) the cigarettes are delivered by use of mail delivery or any other delivery service. A sale of cigarettes shall be a delivery sale regardless of whether the seller is located within or without the state. A sale of cigarettes not for personal consumption to a person who is a wholesaler licensed pursuant to chapter 82.24 RCW or a retailer pursuant to chapter 82.24 RCW is not a delivery sale.

(3) "Delivery service" means any private carrier engaged in the commercial delivery of letters, packages, or other containers that requires the recipient of that letter, package, or container to sign to accept delivery.

(4) "Minor" refers to an individual who is less than eighteen years old.

(5) (~~"Public place" means a public street, sidewalk, or park, or any area open to the public in a publicly owned and operated building.~~

(6)) "Sample" means a tobacco product distributed to members of the general public at no cost or at nominal cost for product promotion purposes.

(~~(7) "Sampler" means a person engaged in the business of sampling other than a retailer.~~

~~((8))~~ (6) "Sampling" means the distribution of samples to members of the ~~((general))~~ public ~~((in a public place))~~.

~~((9))~~ (7) "Shipping container" means a container in which cigarettes are shipped in connection with a delivery sale.

~~((10))~~ (8) "Shipping documents" means bills of lading, airbills, or any other documents used to evidence the undertaking by a delivery service to deliver letters, packages, or other containers.

~~((11))~~ (9) "Tobacco product" means a product that contains tobacco and is intended for human ~~((consumption))~~ use, including any product defined in RCW 82.24.010(2) or 82.26.010(1).

Sec. 3. RCW 70.155.050 and 1993 c 507 s 6 are each amended to read as follows:

(1) No person may engage in the business of sampling ~~((within the state unless licensed to do so by the board. If a firm contracts with a manufacturer to distribute samples of the manufacturer's products, that firm is deemed to be the person engaged in the business of sampling))~~ tobacco products.

(2) ~~((The board shall issue a license to a sampler not otherwise disqualified by RCW 70.155.100 upon application and payment of the fee.~~

(3) ~~A sampler's license expires on the thirtieth day of June of each year and must be renewed annually upon payment of the appropriate fee.~~

(4) ~~The board shall annually determine the fee for a sampler's license and each renewal. However, the fee for a manufacturer whose employees distribute samples within the state is five hundred dollars per annum, and the fee for all other samplers must be not less than fifty dollars per annum.~~

(5) ~~A sampler's license entitles the licensee, and employees or agents of the licensee, to distribute samples at any lawful location in the state during the term of the license. A person engaged in sampling under the license shall carry the license or a copy at all times.))~~ A violation of this section is a misdemeanor.

Sec. 4. RCW 70.155.090 and 2005 c 206 s 2 are each amended to read as follows:

(1) Where there may be a question of a person's right to purchase or obtain tobacco products by reason of age, the retailer~~((sampler;))~~ or agent thereof, shall require the purchaser to present any one of the following officially issued identification that shows the purchaser's age and bears his or her signature and photograph: (a) Liquor control authority card of identification of a state or province of Canada; (b) driver's license, instruction permit, or identification card of a state or province of Canada; (c) "identocard" issued by the Washington state department of licensing under chapter 46.20 RCW; (d) United States military identification; (e) passport; (f) enrollment card, issued by the governing authority of a federally recognized Indian tribe located in Washington, that incorporates security features comparable to those implemented by the department of licensing for Washington drivers' licenses. At least ninety days prior to implementation of an enrollment card under this subsection, the appropriate tribal authority shall give notice to the board. The board shall publish and communicate to licensees regarding the implementation of each new enrollment card; or (g) merchant marine identification card issued by the United States coast guard.

(2) It is a defense to a prosecution under RCW 26.28.080 that the person making a sale reasonably relied on any of the officially issued identification as defined in subsection (1) of this section. The liquor control board shall waive the suspension or revocation of a license if the licensee clearly establishes that he or she acted in good faith to prevent violations and a violation occurred despite the licensee's exercise of due diligence.

Sec. 5. RCW 70.155.100 and 1998 c 133 s 3 are each amended to read as follows:

(1) The liquor control board may suspend or revoke a retailer's license issued under RCW 82.24.510(1)(b) held by a business at any location, or may impose a monetary penalty as set forth in subsection (2) of this section, if the liquor control board finds that the licensee has violated RCW 26.28.080, 70.155.020, 70.155.030, 70.155.040, 70.155.050, (~~70.155.060~~), 70.155.070, or 70.155.090.

(2) The sanctions that the liquor control board may impose against a person licensed under RCW 82.24.530 (~~and 70.155.050 and 70.155.060~~) based upon one or more findings under subsection (1) of this section may not exceed the following:

(a) For violation of RCW 26.28.080 or 70.155.020:

(i) A monetary penalty of one hundred dollars for the first violation within any two-year period;

(ii) A monetary penalty of three hundred dollars for the second violation within any two-year period;

(iii) A monetary penalty of one thousand dollars and suspension of the license for a period of six months for the third violation within any two-year period;

(iv) A monetary penalty of one thousand five hundred dollars and suspension of the license for a period of twelve months for the fourth violation within any two-year period;

(v) Revocation of the license with no possibility of reinstatement for a period of five years for the fifth or more violation within any two-year period;

(b) For violations of RCW 70.155.030, a monetary penalty in the amount of one hundred dollars for each day upon which such violation occurred;

(c) For violations of RCW 70.155.040 occurring on the licensed premises:

(i) A monetary penalty of one hundred dollars for the first violation within any two-year period;

(ii) A monetary penalty of three hundred dollars for the second violation within any two-year period;

(iii) A monetary penalty of one thousand dollars and suspension of the license for a period of six months for the third violation within any two-year period;

(iv) A monetary penalty of one thousand five hundred dollars and suspension of the license for a period of twelve months for the fourth violation within any two-year period;

(v) Revocation of the license with no possibility of reinstatement for a period of five years for the fifth or more violation within any two-year period;

(d) For violations of RCW 70.155.050 (~~and 70.155.060~~), a monetary penalty in the amount of three hundred dollars for each violation;

(e) For violations of RCW 70.155.070, a monetary penalty in the amount of one thousand dollars for each violation.

(3) The liquor control board may impose a monetary penalty upon any person other than a licensed cigarette retailer (~~(or licensed sampler)~~) if the liquor control board finds that the person has violated RCW 26.28.080, 70.155.020, 70.155.030, 70.155.040, 70.155.050, (~~(70.155.060)~~), 70.155.070, or 70.155.090.

(4) The monetary penalty that the liquor control board may impose based upon one or more findings under subsection (3) of this section may not exceed the following:

(a) For violation of RCW 26.28.080 or 70.155.020, fifty dollars for the first violation and one hundred dollars for each subsequent violation;

(b) For violations of RCW 70.155.030, one hundred dollars for each day upon which such violation occurred;

(c) For violations of RCW 70.155.040, one hundred dollars for each violation;

(d) For violations of RCW 70.155.050 (~~(and 70.155.060)~~), three hundred dollars for each violation;

(e) For violations of RCW 70.155.070, one thousand dollars for each violation.

(5) The liquor control board may develop and offer a class for retail clerks and use this class in lieu of a monetary penalty for the clerk's first violation.

(6) The liquor control board may issue a cease and desist order to any person who is found by the liquor control board to have violated or intending to violate the provisions of this chapter, RCW 26.28.080 or 82.24.500, requiring such person to cease specified conduct that is in violation. The issuance of a cease and desist order shall not preclude the imposition of other sanctions authorized by this statute or any other provision of law.

(7) The liquor control board may seek injunctive relief to enforce the provisions of RCW 26.28.080 or 82.24.500 or this chapter. The liquor control board may initiate legal action to collect civil penalties imposed under this chapter if the same have not been paid within thirty days after imposition of such penalties. In any action filed by the liquor control board under this chapter, the court may, in addition to any other relief, award the liquor control board reasonable attorneys' fees and costs.

(8) All proceedings under subsections (1) through (6) of this section shall be conducted in accordance with chapter 34.05 RCW.

(9) The liquor control board may reduce or waive either the penalties or the suspension or revocation of a license, or both, as set forth in this chapter where the elements of proof are inadequate or where there are mitigating circumstances. Mitigating circumstances may include, but are not limited to, an exercise of due diligence by a retailer. Further, the board may exceed penalties set forth in this chapter based on aggravating circumstances.

Sec. 6. RCW 82.24.120 and 1996 c 149 s 7 are each amended to read as follows:

(1) If any person, subject to the provisions of this chapter or any rules adopted by the department of revenue under authority hereof, is found to have failed to affix the stamps required, or to have them affixed as herein provided, or to pay any tax due hereunder, or to have violated any of the provisions of this chapter or rules adopted by the department of revenue in the administration

hereof, there shall be assessed and collected from such person, in addition to any tax that may be found due, a remedial penalty equal to the greater of ten dollars per package of unstamped cigarettes or two hundred fifty dollars, plus interest on the amount of the tax at the rate as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment, and upon notice mailed to the last known address of the person. The amount shall become due and payable in thirty days from the date of the notice. If the amount remains unpaid, the department or its duly authorized agent may make immediate demand upon such person for the payment of all such taxes, penalties, and interest.

(2) The department, for good reason shown, may waive or cancel all or any part of penalties imposed, but the taxpayer must pay all taxes due and interest thereon, at the rate as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment.

(3) The keeping of any unstamped articles coming within the provisions of this chapter shall be prima facie evidence of intent to violate the provisions of this chapter.

(4) This section does not apply to taxes or tax increases due under RCW ~~((82.24.270 and))~~ 82.24.280.

Sec. 7. RCW 82.24.230 and 1995 c 278 s 9 are each amended to read as follows:

All of the provisions contained in chapter 82.32 RCW shall have full force and application with respect to taxes imposed under the provisions of this chapter, except the following sections: RCW 82.32.050, 82.32.060, 82.32.070, 82.32.100, and 82.32.270, except as noted otherwise in RCW ~~((82.24.270 and))~~ 82.24.280.

NEW SECTION. Sec. 8. The following acts or parts of acts are each repealed:

- (1) RCW 70.155.060 (Sampling in public places) and 1993 c 507 s 7; and
- (2) RCW 82.24.270 (Cigarettes given away—Stamp not required—Payment of tax—Interest—Payment of amount less than due—Penalties—Administration) and 1996 c 149 s 9 & 1995 c 278 s 12.

Passed by the Senate February 14, 2006.

Passed by the House March 3, 2006.

Approved by the Governor March 9, 2006.

Filed in Office of Secretary of State March 9, 2006.

CHAPTER 15

[Engrossed Senate Bill 5232]

TURKEY TAGS

AN ACT Relating to turkey tags; and amending RCW 77.32.460.

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

Sec. 1. RCW 77.32.460 and 2000 c 109 s 2 are each amended to read as follows:

- (1) A small game hunting license is required to hunt for all classified wild animals and wild birds, except big game. A small game license also allows the holder to hunt for unclassified wildlife. ~~((The small game license includes one transport tag for turkey.))~~

(a) The fee for this license is thirty dollars for residents, one hundred fifty dollars for nonresidents, and fifteen dollars for youth.

(b) The fee for this license if purchased in conjunction with a big game combination license package is sixteen dollars for residents, eighty dollars for nonresidents, and eight dollars for youth.

(c) The fee for a three-consecutive-day small game license is fifty dollars for nonresidents.

(2) In addition to a small game license, a turkey tag is required to hunt for turkey.

(a) The fee for a primary turkey tag is fourteen dollars for residents and forty dollars for nonresidents. A primary turkey tag will, on request, be issued to the purchaser of a youth small game license at no charge.

(b) The fee for each additional turkey tag is (~~eighteen~~) fourteen dollars for residents, sixty dollars for nonresidents, and nine dollars for youth.

(c) All moneys received from turkey tags must be deposited in the state wildlife account. One-third of the moneys received from turkey tags must be appropriated solely for the purposes of turkey management. An additional one-third of the moneys received from turkey tags must be appropriated solely for upland game bird management. Moneys received from turkey tags may not supplant existing funds provided for these purposes.

Passed by the Senate March 4, 2006.

Passed by the House March 1, 2006.

Approved by the Governor March 9, 2006.

Filed in Office of Secretary of State March 9, 2006.

CHAPTER 16

[Substitute Senate Bill 6161]

FISHING PERMITS

AN ACT Relating to group fishing permits for outdoor education programs working with the department of fish and wildlife; and amending RCW 77.32.550.

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

Sec. 1. RCW 77.32.550 and 2002 c 266 s 1 are each amended to read as follows:

(1) A group fishing permit allows a group of individuals to fish, and harvest shellfish, without individual licenses or the payment of individual license fees.

(2) The director must issue a group fishing permit on a seasonal basis to a state-operated facility or state-licensed nonprofit facility or program for physically or mentally disabled persons, mentally ill persons, hospital patients, handicapped persons, seriously or terminally ill persons, persons who are dependent on the state because of emotional or physical developmental disabilities, or senior citizens who are in the care of the facility. The permit is valid only for use during open season.

(3) The director may set conditions and issue a group fishing permit to groups working in partnership with and participating in department outdoor education programs. At the discretion of the director, a processing fee may be applied.

(4) The commission (~~(must)~~) may adopt rules that provide the conditions under which a group fishing permit (~~(must be)~~) is issued.

Passed by the Senate February 7, 2006.

Passed by the House February 28, 2006.

Approved by the Governor March 9, 2006.

Filed in Office of Secretary of State March 9, 2006.

CHAPTER 17

[Senate Bill 6674]

TACOMA NARROWS BRIDGE CONSTRUCTION

AN ACT Relating to funds collected from construction of the second Tacoma Narrows bridge; and amending RCW 47.56.165 and 47.12.063.

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

Sec. 1. RCW 47.56.165 and 2002 c 114 s 11 are each amended to read as follows:

A special account to be known as the Tacoma Narrows toll bridge account is created in the motor vehicle fund in the state treasury.

(1) Deposits to the account must include:

(a) All proceeds of bonds issued for construction of the Tacoma Narrows public-private initiative project, including any capitalized interest;

(b) All of the toll charges and other revenues received from the operation of the Tacoma Narrows bridge as a toll facility, to be deposited at least monthly; (~~and~~)

(c) Any interest that may be earned from the deposit or investment of those revenues;

(d) Notwithstanding RCW 47.12.063, proceeds from the sale of any surplus real property acquired for the purpose of building the second Tacoma Narrows bridge; and

(e) All liquidated damages collected under any contract involving the construction of the second Tacoma Narrows bridge.

(2) Proceeds of bonds shall be used consistent with RCW 47.46.130, including the reimbursement of expenses and fees incurred under agreements entered into under RCW 47.46.040 as required by those agreements.

(3) Toll charges, other revenues, and interest may be used to:

(a) Pay any required costs of financing, operation, maintenance, and management and necessary repairs of the facility; and

(b) Repay amounts to the motor vehicle fund as required under RCW 47.46.140.

(4) When repaying the motor vehicle fund under RCW 47.46.140, the state treasurer shall transfer funds from the Tacoma Narrows toll bridge account to the motor vehicle fund on or before each debt service date for bonds issued for the Tacoma Narrows public-private initiative project in an amount sufficient to repay the motor vehicle fund for amounts transferred from that fund to the highway bond retirement fund to provide for any bond principal and interest due on that date. The state treasurer may establish subaccounts for the purpose of segregating toll charges, bond sale proceeds, and other revenues.

Sec. 2. RCW 47.12.063 and 2002 c 255 s 1 are each amended to read as follows:

(1) It is the intent of the legislature to continue the department's policy giving priority consideration to abutting property owners in agricultural areas when disposing of property through its surplus property program under this section.

(2) Whenever the department determines that any real property owned by the state of Washington and under the jurisdiction of the department is no longer required for transportation purposes and that it is in the public interest to do so, the department may sell the property or exchange it in full or part consideration for land or improvements or for construction of improvements at fair market value to any of the following governmental entities or persons:

(a) Any other state agency;

(b) The city or county in which the property is situated;

(c) Any other municipal corporation;

(d) Regional transit authorities created under chapter 81.112 RCW;

(e) The former owner of the property from whom the state acquired title;

(f) In the case of residentially improved property, a tenant of the department who has resided thereon for not less than six months and who is not delinquent in paying rent to the state;

(g) Any abutting private owner but only after each other abutting private owner (if any), as shown in the records of the county assessor, is notified in writing of the proposed sale. If more than one abutting private owner requests in writing the right to purchase the property within fifteen days after receiving notice of the proposed sale, the property shall be sold at public auction in the manner provided in RCW 47.12.283;

(h) To any person through the solicitation of written bids through public advertising in the manner prescribed by RCW 47.28.050;

(i) To any other owner of real property required for transportation purposes;

(j) In the case of property suitable for residential use, any nonprofit organization dedicated to providing affordable housing to very low-income, low-income, and moderate-income households as defined in RCW 43.63A.510 and is eligible to receive assistance through the Washington housing trust fund created in chapter 43.185 RCW; or

(k) A federally recognized Indian tribe within whose reservation boundary the property is located.

(3) Sales to purchasers may at the department's option be for cash, by real estate contract, or exchange of land or improvements. Transactions involving the construction of improvements must be conducted pursuant to chapter 47.28 RCW or Title 39 RCW, as applicable, and must comply with all other applicable laws and rules.

(4) Conveyances made pursuant to this section shall be by deed executed by the secretary of transportation and shall be duly acknowledged.

(5) 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.

Passed by the Senate February 10, 2006.

Passed by the House March 1, 2006.

Approved by the Governor March 9, 2006.
Filed in Office of Secretary of State March 9, 2006.

CHAPTER 18

[Third Substitute House Bill 1458]

ON-SITE SEWAGE DISPOSAL SYSTEMS—MARINE AREAS

AN ACT Relating to managing on-site sewage disposal systems in marine areas; adding a new section to chapter 90.48 RCW; adding a new chapter to Title 70 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that:

(1) Hood Canal and other marine waters in Puget Sound are at risk of severe loss of marine life from low-dissolved oxygen. The increased input of human-influenced nutrients, especially nitrogen, is a factor causing this low-dissolved oxygen condition in some of Puget Sound's waters, in addition to such natural factors as poor overall water circulation and stratification that discourages mixing of surface-to-deeper waters;

(2) A significant portion of the state's residents live in homes served by on-site sewage disposal systems, and many new residences will be served by these systems;

(3) Properly functioning on-site sewage disposal systems largely protect water quality. However, improperly functioning on-site sewage disposal systems in marine recovery areas may contaminate surface water, causing public health problems;

(4) Local programs designed to identify and correct failing on-site sewage disposal systems have proven effective in reducing and eliminating public health hazards, improving water quality, and reopening previously closed shellfish areas; and

(5) State water quality monitoring data and analysis can help to focus these enhanced local programs on specific geographic areas that are sources of pollutants degrading Puget Sound waters.

Therefore, it is the purpose of this chapter to authorize enhanced local programs in marine recovery areas to inventory existing on-site sewage disposal systems, to identify the location of all on-site sewage disposal systems in marine recovery areas, to require inspection of on-site sewage disposal systems and repairs to failing systems, to develop electronic data systems capable of sharing information regarding on-site sewage disposal systems, and to monitor these programs to ensure that they are working to protect public health and Puget Sound water quality.

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

(1) "Board" means the state board of health.

(2) "Department" means the department of health.

(3) "Failing" means a condition of an existing on-site sewage disposal system or component that threatens the public health by inadequately treating sewage, or by creating a potential for direct or indirect contact between sewage and the public. Examples of a failing on-site sewage disposal system include:

(a) Sewage on the surface of the ground;

(b) Sewage backing up into a structure caused by slow soil absorption of septic tank effluent;

(c) Sewage leaking from a sewage tank or collection system;

(d) Cesspools or seepage pits where evidence of ground water or surface water quality degradation exists;

(e) Inadequately treated effluent contaminating ground water or surface water; or

(f) Noncompliance with standards stipulated on the permit.

(4) "Local health officer" or "local health jurisdiction" means the local health officers and local health jurisdictions in the following counties bordering Puget Sound: Clallam, Island, Kitsap, Jefferson, Mason, San Juan, Seattle-King, Skagit, Snohomish, Tacoma-Pierce, Thurston, and Whatcom.

(5) "Marine recovery area" means an area of definite boundaries where the local health officer, or the department in consultation with the health officer, determines that additional requirements for existing on-site sewage disposal systems may be necessary to reduce potential failing systems or minimize negative impacts of on-site sewage disposal systems.

(6) "Marine recovery area on-site strategy" or "on-site strategy" means a local health jurisdiction's on-site sewage disposal system strategy required under section 5 of this act. This strategy is a component of the on-site program management plan required under section 3 of this act.

(7) "On-site sewage disposal system" means an integrated system of components, located on or nearby the property it serves, that conveys, stores, treats, or provides subsurface soil treatment and dispersal of sewage. It consists of a collection system, a treatment component or treatment sequence, and a soil dispersal component. An on-site sewage disposal system also refers to a holding tank sewage system or other system that does not have a soil dispersal component. For purposes of this chapter, the term "on-site sewage disposal system" does not include any system regulated by a water quality discharge permit issued under chapter 90.48 RCW.

(8) "Unknown system" means an on-site sewage disposal system that was installed without the knowledge or approval of the local health jurisdiction, including those that were installed before such approval was required.

NEW SECTION. Sec. 3. By July 1, 2007, the local health officers of health jurisdictions in the twelve counties bordering Puget Sound shall develop a written on-site program management plan to provide guidance to the local health jurisdiction.

NEW SECTION. Sec. 4. (1) In developing on-site program management plans required under section 3 of this act, the local health officer shall propose a marine recovery area for those land areas where existing on-site sewage disposal systems are a significant factor contributing to concerns associated with:

(a) Shellfish growing areas that have been threatened or downgraded by the department under chapter 69.30 RCW;

(b) Marine waters that are listed by the department of ecology under section 303(d) of the federal clean water act (33 U.S.C. Sec. 1251 et seq.) for low-dissolved oxygen or fecal coliform; or

(c) Marine waters where nitrogen has been identified as a contaminant of concern by the local health officer.

(2) In determining the boundaries for a marine recovery area, the local health officer shall assess and include those land areas where existing on-site sewage disposal systems may affect water quality in the marine recovery area.

(3) Determinations made by the local health officer under this section, including identification of nitrogen as a contaminant of concern, will be based on published guidance developed by the department. The guidance must be designed to ensure the proper use of available scientific and technical data. The health officer shall document the basis for these determinations when plans are submitted to the department.

(4) After July 1, 2007, the local health officer may designate additional marine recovery areas meeting the criteria of this section, according to new information. Where the department recommends the designation of a marine recovery area or expansion of a designated marine recovery area, the local health officer shall notify the department of its decision concerning the recommendation within ninety days of receipt of the recommendation.

NEW SECTION. Sec. 5. (1) The local health officer of a local health jurisdiction where a marine recovery area has been proposed under section 4 of this act shall develop and approve a marine recovery area on-site strategy that includes designation of marine recovery areas to guide the local health jurisdiction in developing and managing all existing on-site sewage disposal systems within marine recovery areas within its jurisdiction. The on-site strategy must be a component of the program management plan required under section 3 of this act. The department may grant an extension of twelve months where a local health jurisdiction has demonstrated substantial progress toward completing its on-site strategy.

(2) An on-site strategy for a marine recovery area must specify how the local health jurisdiction will by July 1, 2012, and thereafter, find:

(a) Existing failing systems and ensure that system owners make necessary repairs; and

(b) Unknown systems and ensure that they are inspected as required to ensure that they are functioning properly, and repaired, if necessary.

NEW SECTION. Sec. 6. In a marine recovery area, each local health officer shall:

(1) Require that on-site sewage disposal system maintenance specialists, septic tank pumpers, or others performing on-site sewage disposal system inspections submit reports or inspection results to the local health jurisdiction regarding any failing system; and

(2) Develop and maintain an electronic data system of all on-site sewage disposal systems within a marine recovery area to enable the local health jurisdiction to actively manage on-site sewage disposal systems. In assisting development of electronic data systems, the department shall work with local health jurisdictions with marine recovery areas and the on-site sewage disposal system industry to develop common forms and protocols to facilitate sharing of data. A marine recovery area on-site sewage disposal electronic data system must be compatible with all on-site sewage disposal electronic data systems used throughout a local health jurisdiction.

NEW SECTION. Sec. 7. (1) The on-site program management plans of local health jurisdictions required under section 3 of this act must be submitted

to the department by July 1, 2007, and be reviewed to determine if they contain all necessary elements. The department shall provide in writing to the local board of health its review of the completeness of the plan. The board may adopt additional criteria by rule for approving plans.

(2) In reviewing the on-site strategy component of the plan, the department shall ensure that all required elements, including designation of any marine recovery area, have been addressed.

(3) Within thirty days of receiving an on-site strategy, the department shall either approve the on-site strategy or provide in writing the reasons for not approving the strategy and recommend changes. If the department does not approve the on-site strategy, the local health officer must amend and resubmit the plan to the department for approval.

(4) Upon receipt of department approval or after thirty days without notification, whichever comes first, the local health officer shall implement the on-site strategy.

(5) If the department denies approval of an on-site strategy, the local health officer may appeal the denial to the board. The board must make a final determination concerning the denial.

(6) The department shall assist local health jurisdictions in:

(a) Developing written on-site program management plans required by section 3 of this act;

(b) Identifying reasonable methods for finding unknown systems; and

(c) Developing or enhancing electronic data systems that will enable each local health jurisdiction to actively manage all on-site sewage disposal systems within their jurisdictions, with priority given to those on-site sewage disposal systems that are located in or which could affect designated marine recovery areas.

NEW SECTION. Sec. 8. (1) The department shall enter into a contract with each local health jurisdiction subject to the requirements of this chapter to implement plans developed under this chapter, and to develop or enhance electronic data systems required by this chapter. The contract must include state funding assistance to the local health jurisdiction from funds appropriated to the department for this purpose.

(2) The contract must require, at a minimum, that within a marine recovery area, the local health jurisdiction:

(a) Show progressive improvement in finding failing systems;

(b) Show progressive improvement in working with on-site sewage disposal system owners to make needed system repairs;

(c) Is actively taking steps to find previously unknown systems and ensuring that they are inspected as required and repaired if necessary;

(d) Show progressive improvement in the percentage of on-site sewage disposal systems that are included in an electronic data system; and

(e) Of those on-site sewage disposal systems in the electronic data system, show progressive improvement in the percentage that have had required inspections.

(3) The contract must also include provisions for state assistance in updating the plan. Beginning July 1, 2012, the contract may adopt revised compliance dates, including those in section 5 of this act, where the local health jurisdiction has demonstrated substantial progress in updating the on-site strategy.

(4) The department shall convene a work group for the purpose of making recommendations to the appropriate committees of the legislature for the development of certification or licensing of maintenance specialists. The work group shall make its recommendation with consideration given to the 1998 report to the legislature entitled "On-Site Wastewater Certification Work Group" as it pertains to maintenance specialists. The work group may give priority to appropriate levels of certification or licensure of maintenance specialists who work in the Puget Sound basin.

NEW SECTION. Sec. 9. The provisions of this chapter are supplemental to all other authorities governing on-site sewage disposal systems, including chapter 70.118 RCW and rules adopted under that chapter.

NEW SECTION. Sec. 10. A new section is added to chapter 90.48 RCW to read as follows:

The department shall offer financial and technical assistance to local governments and tribal entities in Puget Sound counties to establish or expand on-site sewage disposal system repair and replacement through local loan and grant programs. The programs must give priority to low-income and financially distressed homeowners.

NEW SECTION. Sec. 11. (1) The department of health shall report to the appropriate committees of the senate and house of representatives by December 31, 2008, on progress in designating marine recovery areas and developing and implementing on-site strategies for such marine recovery areas.

(2) The report shall include information on:

(a) The status of on-site strategies in each county covered by sections 2 through 9 of this act;

(b) The status of on-site sewage disposal system location, identification, and inclusion within electronic data systems in each county, including estimates of remaining on-site sewage disposal systems within marine recovery areas that have not been identified or included within electronic data systems;

(c) Areas for which shoreline surveys have been completed by the department;

(d) The progress of and capacity of local health jurisdictions to identify on-site sewage disposal systems within marine recovery areas and to ensure that failing systems are repaired and all systems are operated and maintained in compliance with board of health standards;

(e) Regulatory, statutory, and financial barriers to implementing the on-site strategy; and

(f) Recommendations that will assist local health jurisdictions to successfully implement plans.

(3) Local health jurisdictions shall provide information and data requested by the department of health in developing the report, and the department shall append all reports or information that the local health jurisdictions request to be included in the report.

NEW SECTION. Sec. 12. Sections 1 through 9 of this act constitute a new chapter in Title 70 RCW.

Passed by the House February 11, 2006.

Passed by the Senate February 28, 2006.

Approved by the Governor March 9, 2006.
 Filed in Office of Secretary of State March 9, 2006.

CHAPTER 19

[Engrossed House Bill 2340]

MORTGAGE BROKERS AND LOAN ORIGINATORS

AN ACT Relating to mortgage brokers and loan originators; amending RCW 19.146.005, 19.146.010, 19.146.020, 19.146.0201, 19.146.030, 19.146.040, 19.146.060, 19.146.070, 19.146.200, 19.146.205, 19.146.210, 19.146.215, 19.146.225, 19.146.228, 19.146.235, and 19.146.280; reenacting and amending RCW 19.146.220; adding new sections to chapter 19.146 RCW; creating a new section; prescribing penalties; and providing an effective date.

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

Sec. 1. RCW 19.146.005 and 1994 c 33 s 1 are each amended to read as follows:

The legislature finds and declares that the brokering of residential real estate loans substantially affects the public interest. The practices of mortgage brokers and loan originators have had significant impact on the citizens of the state and the banking and real estate industries. It is the intent of the legislature to establish a state system of licensure in addition to rules of practice and conduct of mortgage brokers and loan originators to promote honesty and fair dealing with citizens and to preserve public confidence in the lending and real estate community.

Sec. 2. RCW 19.146.010 and 1997 c 106 s 1 are each amended to read as follows:

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

(1) "Affiliate" means any person who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another person.

(2) "Application" means the same as in Regulation X, Real Estate Settlement Procedures, 24 C.F.R. Sec. 3500.

(3) "Borrower" means any person who consults with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan.

~~((3))~~ (4) "Computer loan information systems" or "CLI system" means ~~((the real estate mortgage financing information system defined by rule of the director))~~ a real estate mortgage financing information system that facilitates the provision of information to consumers by a mortgage broker, loan originator, lender, real estate agent, or other person regarding interest rates and other loan terms available from different lenders.

~~((4))~~ (5) "Department" means the department of financial institutions.

~~((5))~~ (6) "Designated broker" means a natural person designated ~~((by the applicant for a license or licensee))~~ as the person responsible for activities of the licensed mortgage broker in conducting the business of a mortgage broker under this chapter and who meets the experience~~((, education,))~~ and examination requirements set forth in RCW 19.146.210(1)(e).

~~((6))~~ (7) "Director" means the director of financial institutions.

~~((7))~~ (8) "Employee" means an individual who has an employment relationship ~~((acknowledged by both the employee and the licensee))~~ with a mortgage broker, and the individual is treated as an employee by the ~~((licensee))~~ mortgage broker for purposes of compliance with federal income tax laws.

~~((8))~~ (9) "Independent contractor" or "person who independently contracts" means any person that expressly or impliedly contracts to perform mortgage brokering services for another and that with respect to its manner or means of performing the services is not subject to the other's right of control, and that is not treated as an employee by the other for purposes of compliance with federal income tax laws.

~~((9))~~ "Investigation" means ~~an examination undertaken for the purpose of detection of violations of this chapter or securing information lawfully required under this chapter.~~

(10) "Loan originator" means a natural person ~~((employed, either directly or indirectly, or retained as an independent contractor by a person required to be licensed as a mortgage broker, or a natural person who represents a person required to be licensed as a mortgage broker, in the performance of any act specified in subsection (12) of this section))~~ who (a) takes a residential mortgage loan application for a mortgage broker, or (b) offers or negotiates terms of a mortgage loan, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain. "Loan originator" also includes a person who holds themselves out to the public as able to perform any of these activities. "Loan originator" does not mean persons performing purely administrative or clerical tasks for a mortgage broker. For the purposes of this subsection, "administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing of a loan in the mortgage industry and communication with a borrower to obtain information necessary for the processing of a loan. A person who holds himself or herself out to the public as able to obtain a loan is not performing administrative or clerical tasks.

(11) "Lock-in agreement" means an agreement with a borrower made by a mortgage broker or loan originator, in which the mortgage broker or loan originator agrees that, for a period of time, a specific interest rate or other financing terms will be the rate or terms at which it will make a loan available to that borrower.

(12) "Mortgage broker" means any person who for compensation or gain, or in the expectation of compensation or gain (a) makes a residential mortgage loan or assists a person in obtaining or applying to obtain a residential mortgage loan or (b) holds himself or herself out as being able to make a residential mortgage loan or assist a person in obtaining or applying to obtain a residential mortgage loan.

(13) "Person" means a natural person, corporation, company, limited liability corporation, partnership, or association.

(14) "Principal" means any person who controls, directly or indirectly through one or more intermediaries, or alone or in concert with others, a ten percent or greater interest in a partnership, company, association, or corporation, and the owner of a sole proprietorship.

(15) "Residential mortgage loan" means any loan primarily for personal, family, or household use secured by a mortgage or deed of trust on residential

real estate upon which is constructed or intended to be constructed a single family dwelling or multiple family dwelling of four or less units.

~~((15))~~ (16) "Third-party provider" means any person other than a mortgage broker or lender who provides goods or services to the mortgage broker in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

Sec. 3. RCW 19.146.020 and 1997 c 106 s 2 are each amended to read as follows:

(1) Except as provided under subsections (2) ~~((and (3)))~~ through (4) of this section, the following are exempt from all provisions of this chapter:

(a)(i) Any person doing business under the laws of the state of Washington or the United States, and any federally insured depository institution doing business under the laws of any other state, relating to commercial banks, bank holding companies, savings banks, trust companies, savings and loan associations, credit unions, ~~((consumer loan companies;))~~ insurance companies, or real estate investment trusts as defined in 26 U.S.C. Sec. 856 and the affiliates, subsidiaries, and service corporations thereof; and

(ii) Subject to the director's written approval, the exclusive agents of an affiliate of a bank that is wholly owned by the bank holding company that owns the bank;

(b) Any person doing business under the consumer loan act is exempt from this chapter only for that business conducted under the authority and coverage of the consumer loan act;

(c) An attorney licensed to practice law in this state who is not principally engaged in the business of negotiating residential mortgage loans when such attorney renders services in the course of his or her practice as an attorney;

~~((e))~~ (d) Any person doing any act under order of any court, except for a person subject to an injunction to comply with any provision of this chapter or any order of the director issued under this chapter;

~~((4))~~ (e) Any person making or acquiring a residential mortgage loan solely with his or her own funds for his or her own investment without intending to resell the residential mortgage loans;

~~((e))~~ (f) A real estate broker or salesperson licensed by the state who obtains financing for a real estate transaction involving a bona fide sale of real estate in the performance of his or her duties as a real estate broker and who receives only the customary real estate broker's or salesperson's commission in connection with the transaction;

~~((f))~~ (g) Any mortgage broker approved and subject to auditing by the federal national mortgage association or the federal home loan mortgage corporation;

~~((g))~~ (h) The United States of America, the state of Washington, any other state, and any Washington city, county, or other political subdivision, and any agency, division, or corporate instrumentality of any of the entities in this subsection (1)~~((g))~~ (h); and

~~((h))~~ (i) A real estate broker who provides only information regarding rates, terms, and lenders in connection with a CLI system, who receives a fee for providing such information, who conforms to all rules of the director with respect to the providing of such service, and who discloses on a form approved

by the director that to obtain a loan the borrower must deal directly with a mortgage broker or lender. However, a real estate broker shall not be exempt if he or she does any of the following:

- (i) Holds himself or herself out as able to obtain a loan from a lender;
- (ii) Accepts a loan application, or submits a loan application to a lender;
- (iii) Accepts any deposit for third-party services or any loan fees from a borrower, whether such fees are paid before, upon, or after the closing of the loan;
- (iv) Negotiates rates or terms with a lender on behalf of a borrower; or
- (v) Provides the disclosure required by RCW 19.146.030(1).

(2) Those persons and their loan originators otherwise exempt under subsection (1)~~((d) or (f))~~ (e), (g), or (4) of this section must comply with RCW 19.146.0201 ~~((and shall be subject to the director's authority to issue a cease and desist order for any violation of RCW 19.146.0201 and shall be subject to the director's authority))~~ through 19.146.080. For violations of RCW 19.146.0201 through 19.146.080, the director has authority to issue a cease and desist order as provided in RCW 19.146.220 and 19.146.227, to impose penalties as provided in RCW 19.146.220, and to obtain and review books and records that are relevant to any allegation of such a violation as provided in RCW 19.146.235.

(3) Any person otherwise exempted from the licensing provisions of this chapter may voluntarily submit an application to the director for a mortgage broker's license. The director shall review such application and may grant or deny licenses to such applicants upon the same grounds and with the same fees as may be applicable to persons required to be licensed under this chapter.

(a) Upon receipt of a license under this subsection, ~~((such an applicant))~~ the licensee is required to continue to maintain a valid license, is subject to all provisions of this chapter, and has no further right to claim exemption from the provisions of this chapter except as provided in (b) of this subsection.

(b) Any licensee under this subsection who would otherwise be exempted from the requirements of licensing by ~~((RCW 19.146.020))~~ this section may apply to the director for exemption from licensing. The director shall adopt rules for reviewing such applications and shall grant exemptions from licensing to applications which are consistent with those rules and consistent with the other provisions of this chapter.

(4) The director may exempt an exclusive agent under subsection (1)(a) of this section provided that the affiliate in subsection (1)(a) of this section:

(a) Applies for and maintains a license as provided by subsection (3) of this section;

(b) Has on file with the director a binding written agreement under which the affiliate assumes responsibility for the exclusive agent's violations of this chapter or rules adopted under this chapter; and

(c) Maintains a bond or other security in an amount required by the director that runs to the benefit of the state and any person who suffers loss by reason of the exclusive agent's violation of this chapter or rules adopted under this chapter.

Sec. 4. RCW 19.146.0201 and 1997 c 106 s 3 are each amended to read as follows:

It is a violation of this chapter for a loan originator, mortgage broker required to be licensed under this chapter, or mortgage broker otherwise

exempted from this chapter under RCW 19.146.020(1) (~~((d) or (f) in connection with a residential mortgage loan)~~) (e), (g), or (4) to:

(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(2) Engage in any unfair or deceptive practice toward any person;

(3) Obtain property by fraud or misrepresentation;

(4) Solicit or enter into a contract with a borrower that provides in substance that the mortgage broker may earn a fee or commission through the mortgage broker's "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

(5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting from a person exempt from licensing under RCW 19.146.020(1) (~~((f) or (g))~~) (g) or (h) or a lender with whom the mortgage broker maintains a written correspondent or loan (~~(brokerage)~~) broker agreement under RCW 19.146.040;

(6) Fail to make disclosures to loan applicants and noninstitutional investors as required by RCW 19.146.030 and any other applicable state or federal law;

(7) Make, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engage in bait and switch advertising;

(8) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any reports filed by a mortgage broker or in connection with any investigation conducted by the department;

(9) Make any payment, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(10) Advertise any rate of interest without conspicuously disclosing the annual percentage rate implied by such rate of interest (~~(or otherwise)~~);

(11) Fail to comply with any requirement of the truth-in-lending act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226(;;); the real estate settlement procedures act, 12 U.S.C. Sec. 2601 and Regulation X, 24 C.F.R. Sec. 3500(;;); the equal credit opportunity act, 15 U.S.C. Sec. 1691 and Regulation B, Sec. 202.9, 202.11, and 202.12(;; as now or hereafter amended, in any advertising of residential mortgage loans or any other mortgage brokerage activity); Title V, Subtitle A of the financial modernization act of 1999 (known as the "Gramm-Leach-Bliley act"), 12 U.S.C. Secs. 6801-6809; the federal trade commission's privacy rules, 16 C.F.R. Parts 313-314, mandated by the Gramm-Leach-Bliley act; the home mortgage disclosure act, 12 U.S.C. Sec. 2801 et seq. and Regulation C, home mortgage disclosure; the federal trade commission act, 12 C.F.R. Part 203, 15 U.S.C. Sec. 45(a); the telemarketing and consumer fraud and abuse act, 15 U.S.C. Secs. 6101 to 6108; and the federal trade commission telephone sales rule, 16 C.F.R. Part 310, as these acts existed on the effective date of this section, or such subsequent date as may be provided by the department by rule, in any advertising of residential mortgage loans, or any other applicable mortgage broker or loan originator activities covered by the acts. The department may adopt by rule requirements that mortgage brokers and loan originators comply with other applicable federal statutes and regulations in any

advertising of residential mortgage loans, or any other mortgage broker or loan originator activity;

~~((11))~~ (12) Fail to pay third-party providers no later than thirty days after the recording of the loan closing documents or ninety days after completion of the third-party service, whichever comes first, unless otherwise agreed or unless the third-party service provider has been notified in writing that a bona fide dispute exists regarding the performance or quality of the third-party service;

~~((12))~~ (13) Collect, charge, attempt to collect or charge or use or propose any agreement purporting to collect or charge any fee prohibited by RCW 19.146.030 or 19.146.070;

~~((13))~~ (14)(a) Except when complying with (b) and (c) of this subsection, ~~((to))~~ act as a ~~((mortgage broker))~~ loan originator in any transaction (i) in which the ~~((mortgage broker))~~ loan originator acts or has acted as a real estate broker or salesperson or (ii) in which another person doing business under the same licensed real estate broker acts or has acted as a real estate broker or salesperson;

(b) Prior to providing mortgage ~~((broker))~~ services to the borrower, ~~((the mortgage broker))~~ a loan originator, in addition to other disclosures required by this chapter and other laws, shall provide to the borrower the following written disclosure:

THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO YOU. I AM ALSO A ~~((LICENSED MORTGAGE BROKER))~~ LOAN ORIGINATOR, AND WOULD LIKE TO PROVIDE MORTGAGE ~~((BROKERAGE))~~ SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY.

YOU ARE NOT REQUIRED TO USE ME AS A ~~((MORTGAGE BROKER))~~ LOAN ORIGINATOR IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON SHOP WITH OTHER MORTGAGE BROKERS AND LENDERS, AND TO SELECT ANY MORTGAGE BROKER OR LENDER OF YOUR CHOOSING; and

(c) A real estate broker or salesperson licensed under chapter 18.85 RCW who also acts as a mortgage broker shall carry on such mortgage ~~((brokerage))~~ broker business activities and shall maintain such person's mortgage ~~((brokerage))~~ broker business records separate and apart from the real estate ~~((brokerage))~~ broker activities conducted pursuant to chapter 18.85 RCW. Such activities shall be deemed separate and apart even if they are conducted at an office location with a common entrance and mailing address, so long as each business is clearly identified by a sign visible to the public, each business is physically separated within the office facility, and no deception of the public as to the separate identities of the ~~((brokerage))~~ broker business firms results. This subsection ~~((13))~~ (14)(c) shall not require a real estate broker or salesperson licensed under chapter 18.85 RCW who also acts as a mortgage broker to maintain a physical separation within the office facility for the conduct of its real estate and mortgage ~~((brokerage))~~ broker activities where the director

determines that maintaining such physical separation would constitute an undue financial hardship upon the mortgage broker and is unnecessary for the protection of the public; or

~~((14))~~ (15) Fail to comply with any provision of RCW 19.146.030 through 19.146.080 or any rule adopted under those sections.

Sec. 5. RCW 19.146.030 and 1997 c 106 s 4 are each amended to read as follows:

(1) Within three business days following receipt of a loan application or any moneys from a borrower, a mortgage broker or loan originator on behalf of the mortgage broker shall provide to each borrower a full written disclosure containing an itemization and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a residential mortgage loan, and specifying the fee or fees which inure to the benefit of the mortgage broker and other such disclosures as may be required by rule. A good faith estimate of a fee or cost shall be provided if the exact amount of the fee or cost is not determinable. This subsection shall not be construed to require disclosure of the distribution or breakdown of loan fees, discount, or points between the mortgage broker and any lender or investor.

(2) The written disclosure shall contain the following information:

(a) The annual percentage rate, finance charge, amount financed, total amount of all payments, number of payments, amount of each payment, amount of points or prepaid interest and the conditions and terms under which any loan terms may change between the time of disclosure and closing of the loan; and if a variable rate, the circumstances under which the rate may increase, any limitation on the increase, the effect of an increase, and an example of the payment terms resulting from an increase. Disclosure in compliance with the requirements of the truth-in-lending act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226, as now or hereafter amended, shall be deemed to comply with the disclosure requirements of this subsection;

(b) The itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, escrow fee, property tax, insurance, structural or pest inspection, and any other third-party provider's costs associated with the residential mortgage loan. Disclosure through good faith estimates of settlement services and special information booklets in compliance with the requirements of the real estate settlement procedures act, 12 U.S.C. Sec. 2601, and Regulation X, 24 C.F.R. Sec. 3500, as now or hereafter amended, shall be deemed to comply with the disclosure requirements of this subsection;

(c) If applicable, the cost, terms, duration, and conditions of a lock-in agreement and whether a lock-in agreement has been entered, and whether the lock-in agreement is guaranteed by the mortgage broker or lender, and if a lock-in agreement has not been entered, disclosure in a form acceptable to the director that the disclosed interest rate and terms are subject to change;

(d) A statement that if the borrower is unable to obtain a loan for any reason, the mortgage broker must, within five days of a written request by the borrower, give copies of any appraisal, title report, or credit report paid for by the borrower to the borrower, and transmit the appraisal, title report, or credit report to any other mortgage broker or lender to whom the borrower directs the documents to be sent;

(e) Whether and under what conditions any lock-in fees are refundable to the borrower; and

(f) A statement providing that moneys paid by the borrower to the mortgage broker for third-party provider services are held in a trust account and any moneys remaining after payment to third-party providers will be refunded.

(3) If subsequent to the written disclosure being provided under this section, a mortgage broker or loan originator enters into a lock-in agreement with a borrower or represents to the borrower that the borrower has entered into a lock-in agreement, then no less than three business days thereafter including Saturdays, the mortgage broker or loan originator shall deliver or send by first-class mail to the borrower a written confirmation of the terms of the lock-in agreement, which shall include a copy of the disclosure made under subsection (2)(c) of this section.

(4) A mortgage broker or loan originator on behalf of a mortgage broker shall not charge any fee that inures to the benefit of the mortgage broker if it exceeds the fee disclosed on the written disclosure pursuant to this section, unless (a) the need to charge the fee was not reasonably foreseeable at the time the written disclosure was provided and (b) the mortgage broker or loan originator on behalf of a mortgage broker has provided to the borrower, no less than three business days prior to the signing of the loan closing documents, a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed. However, if the borrower's closing costs on the final settlement statement, excluding prepaid escrowed costs of ownership as defined by rule, does not exceed the total closing costs in the most recent good faith estimate, excluding prepaid escrowed costs of ownership as defined by rule, no other disclosures shall be required by this subsection.

Sec. 6. RCW 19.146.040 and 1994 c 33 s 19 are each amended to read as follows:

(1) Every contract between a mortgage broker, or a loan originator, and a borrower shall be in writing and shall contain the entire agreement of the parties.

(2) Any contract under this section entered by a loan originator shall be binding on the mortgage broker.

(3) A mortgage broker shall have a written correspondent or loan ~~((brokerage))~~ broker agreement with a lender before any solicitation of, or contracting with, the public.

Sec. 7. RCW 19.146.060 and 1997 c 106 s 6 are each amended to read as follows:

(1) A mortgage broker shall use generally accepted accounting principles.

(2) Except as otherwise provided in subsection (3) of this section, a mortgage broker shall maintain accurate and current books and records which shall be readily available at ~~((the mortgage broker's usual business))~~ a location available to the director until at least twenty-five months have elapsed following the effective period to which the books and records relate.

(3) Where a mortgage broker's usual business location is outside of the state of Washington, the mortgage broker shall, as determined by the director by rule, either maintain its books and records at a location in this state, or reimburse the director for his or her expenses, including but not limited to transportation, food,

and lodging expenses, relating to any examination or investigation resulting under this chapter.

(4) "Books and records" includes but is not limited to:

(a) Copies of all advertisements placed by or at the request of the mortgage broker which mention rates or fees. In the case of radio or television advertisements, or advertisements placed on a telephonic information line or other electronic source of information including but not limited to a computer data base or electronic bulletin board, a mortgage broker shall keep copies of the precise script for the advertisement. All advertisement records shall include for each advertisement the date or dates of publication and name of each periodical, broadcast station, or telephone information line which published the advertisement or, in the case of a flyer or other material distributed by the mortgage broker, the dates, methods, and areas of distribution; and

(b) Copies of all documents, notes, computer records if not stored in printed form, correspondence or memoranda relating to a borrower from whom the mortgage broker has accepted a deposit or other funds, or accepted a residential mortgage loan application or with whom the mortgage broker has entered into an agreement to assist in obtaining a residential mortgage loan.

Sec. 8. RCW 19.146.070 and 1993 c 468 s 13 are each amended to read as follows:

(1) Except as otherwise permitted by this section, a mortgage broker shall not receive a fee, commission, or compensation of any kind in connection with the preparation, negotiation, and brokering of a residential mortgage loan unless a borrower actually obtains a loan from a lender on the terms and conditions agreed upon by the borrower and mortgage broker. A loan originator may not accept a fee, commission, or compensation of any kind from borrowers in connection with the preparation, negotiation, and brokering of a residential mortgage loan.

(2) A mortgage broker may:

(a) If the mortgage broker has obtained for the borrower a written commitment from a lender for a loan on the terms and conditions agreed upon by the borrower and the mortgage broker, and the borrower fails to close on the loan through no fault of the mortgage broker, charge a fee not to exceed three hundred dollars for services rendered, preparation of documents, or transfer of documents in the borrower's file which were prepared or paid for by the borrower if the fee is not otherwise prohibited by the Truth-in-Lending Act, 15 U.S.C. Sec. 1601, and Regulation Z, 12 C.F.R. Sec. 226, as now or hereafter amended; or

(b) Solicit or receive fees for third party provider goods or services in advance. Fees for any goods or services not provided must be refunded to the borrower and the mortgage broker may not charge more for the goods and services than the actual costs of the goods or services charged by the third party provider.

(3) A loan originator may not solicit or receive fees for a third-party provider of goods or services except that a loan originator may transfer funds from a borrower to a licensed mortgage broker, exempt mortgage broker, or third-party provider, if the loan originator does not deposit, hold, retain, or use the funds for any purpose other than the payment of bona fide fees to third-party providers.

Sec. 9. RCW 19.146.200 and 1997 c 106 s 8 are each amended to read as follows:

(1) A person, unless specifically exempted from this chapter under RCW 19.146.020, may not engage in the business of a mortgage broker ~~((, except as an employee of a person licensed or exempt from licensing;))~~ or loan originator without first obtaining and maintaining a license under this chapter. ~~((However, a person who independently contracts with a licensed mortgage broker need not be licensed if the licensed mortgage broker and the independent contractor have on file with the director a binding written agreement under which the licensed mortgage broker assumes responsibility for the independent contractor's violations of any provision of this chapter or rules adopted under this chapter; and if the licensed mortgage broker's bond or other security required under this chapter runs to the benefit of the state and any person who suffers loss by reason of the independent contractor's violation of any provision of this chapter or rules adopted under this chapter;))~~

(2) A person may not bring a suit or action for the collection of compensation ~~((as a mortgage broker))~~ in connection with a residential mortgage loan unless the plaintiff alleges and proves that he or she was a duly licensed mortgage broker, or exempt from the license requirement of this chapter, at the time of offering to perform or performing any such an act or service regulated by this chapter. ~~((This subsection does not apply to suits or actions for the collection or compensation for services performed prior to October 31, 1993;))~~

(3) ~~((The))~~ A mortgage broker license must be prominently displayed in the mortgage broker's place of business.

(4) Every licensed mortgage broker must at all times have a designated broker responsible for all activities of the mortgage broker in conducting the business of a mortgage broker. A designated broker, principal, or owner who has supervisory authority over a mortgage broker is responsible for a licensee's, employee's, or independent contractor's violations of this chapter and its rules if:

(a) The designated broker, principal, or owner directs or instructs the conduct or, with knowledge of the specific conduct, approves or allows the conduct; or

(b) The designated broker, principal, or owner who has supervisory authority over the licensed mortgage broker knows or by the exercise of reasonable care and inquiry should have known of the conduct, at a time when its consequences can be avoided or mitigated and fails to take reasonable remedial action.

Sec. 10. RCW 19.146.205 and 2001 c 177 s 4 are each amended to read as follows:

(1) Application for a mortgage broker license under this chapter shall be in writing and in the form prescribed by the director. The application shall contain at least the following information:

(a) The name, address, date of birth, and social security number of the applicant, and any other names, dates of birth, or social security numbers previously used by the applicant, unless waived by the director;

(b) If the applicant is a partnership or association, the name, address, date of birth, and social security number of each general partner or principal of the association, and any other names, dates of birth, or social security numbers previously used by the members, unless waived by the director;

(c) If the applicant is a corporation, the name, address, date of birth, and social security number of each officer, director, registered agent, and each principal stockholder, and any other names, dates of birth, or social security numbers previously used by the officers, directors, registered agents, and principal stockholders unless waived by the director;

(d) The street address, county, and municipality where the principal business office is to be located;

(e) The name, address, date of birth, and social security number of the applicant's designated broker, and any other names, dates of birth, or social security numbers previously used by the designated broker and a complete set of the designated broker's fingerprints taken by an authorized law enforcement officer; and

(f) Such other information regarding the applicant's or designated broker's background, financial responsibility, experience, character, and general fitness as the director may require by rule.

(2) ~~((The director may exchange fingerprint data with the federal bureau of investigation.))~~ As a part of or in connection with an application for any license under this section, the applicant shall furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check; personal history; experience; business record; purposes; and other pertinent facts, as the director may reasonably require. As part of or in connection with an application for a license under this chapter, the director is authorized to receive criminal history record information that includes nonconviction data as defined in RCW 10.97.030. The department may only disseminate nonconviction data obtained under this section to criminal justice agencies. This section does not apply to financial institutions regulated under chapters 31.12 and 31.13 RCW and Titles 30, 32, and 33 RCW.

(3) At the time of filing an application for a license under this chapter, each applicant shall pay to the director the appropriate application fee in an amount determined by rule of the director in accordance with RCW 43.24.086 to cover, but not exceed, the cost of processing and reviewing the application. The director shall deposit the moneys in the financial services regulation fund, unless the consumer services account is created as a dedicated, nonappropriated account, in which case the director shall deposit the moneys in the consumer services account.

(4)(a) Each applicant for a mortgage broker's license shall file and maintain a surety bond, in an amount of not greater than sixty thousand dollars nor less than twenty thousand dollars which the director deems adequate to protect the public interest, executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety. The bonding requirement as established by the director may take the form of a uniform bond amount for all licensees or the director may establish by rule a schedule establishing a range of bond amounts which shall vary according to the annual average number of loan originators ~~((or independent contractors))~~ of a licensee. The bond shall run to the state of Washington as obligee, and shall run first to the benefit of the borrower and then to the benefit of the state and any person or persons who suffer loss by reason of the applicant's or its loan originator's

violation of any provision of this chapter or rules adopted under this chapter. The bond shall be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all rules adopted under this chapter, and shall reimburse all persons who suffer loss by reason of a violation of this chapter or rules adopted under this chapter. Borrowers shall be given priority over the state and other persons. The state and other third parties shall be allowed to receive distribution pursuant to a valid claim against the remainder of the bond. In the case of claims made by any person or entity who is not a borrower, no final judgment may be entered prior to one hundred eighty days following the date the claim is filed. The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the director of its intent to cancel the bond. The cancellation shall be effective thirty days after the notice is received by the director. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond. In no event shall the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond shall not be liable for any penalties imposed on the licensee, including, but not limited to, any increased damages or attorneys' fees, or both, awarded under RCW 19.86.090. The applicant may obtain the bond directly from the surety or through a group bonding arrangement involving a professional organization comprised of mortgage brokers if the arrangement provides at least as much coverage as is required under this subsection.

(b) Subsection (4)(b) and (c) of this section applies only to applications received on or before January 1, 2007. Before January 1, 2007, in lieu of a surety bond, the applicant may, upon approval by the director, file with the director a certificate of deposit, an irrevocable letter of credit, or such other instrument as approved by the director by rule, drawn in favor of the director for an amount equal to the required bond.

(c) Before January 1, 2007, in lieu of the surety bond or compliance with (b) of this subsection, an applicant may obtain insurance or coverage from an association comprised of mortgage brokers that is organized as a mutual corporation for the sole purpose of insuring or self-insuring claims that may arise from a violation of this chapter. An applicant may only substitute coverage under this subsection for the requirements of (a) or (b) of this subsection if the director, with the consent of the insurance commissioner, has authorized such association to organize a mutual corporation under such terms and conditions as may be imposed by the director to ensure that the corporation is operated in a financially responsible manner to pay any claims within the financial responsibility limits specified in (a) of this subsection.

Sec. 11. RCW 19.146.210 and 1997 c 106 s 10 are each amended to read as follows:

(1) The director shall issue and deliver a mortgage broker license to an applicant if, after investigation, the director makes the following findings:

- (a) The applicant has paid the required license fees;
- (b) The applicant has complied with RCW 19.146.205;

(c) Neither the applicant, any of its principals, or the designated broker have had a license issued under this chapter or any similar state statute suspended or revoked within five years of the filing of the present application;

(d) Neither the applicant, any of its principals, or the designated broker have been convicted of a gross misdemeanor involving dishonesty or financial misconduct or a felony within seven years of the filing of the present application;

(e) The designated broker, (i) has at least two years of experience in the residential mortgage loan industry (~~(or has completed the educational requirements established by rule of the director)~~) and (ii) has passed a written examination whose content shall be established by rule of the director; (~~and~~)

(f) The applicant (~~has~~), its principals, and the designated broker have demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a belief that the business will be operated honestly, fairly, and efficiently within the purposes of this chapter; and

(g) Neither the applicant, any of its principals, or the designated broker have been found to be in violation of this chapter or rules.

(2) If the director does not find the conditions of subsection (1) of this section have been met, the director shall not issue the license. The director shall notify the applicant of the denial and return to the applicant the bond or approved alternative and any remaining portion of the license fee that exceeds the department's actual cost to investigate the license.

(3) The director shall issue a mortgage broker license under this chapter to any licensee issued a license under chapter 468, Laws of 1993, that has a valid license and is otherwise in compliance with the provisions of this chapter.

(4) A license issued pursuant to this (~~chapter is valid~~) section expires on the date one year from the date of issuance (~~with no fixed date of expiration~~) which, for license renewal purposes, is also the renewal date. The director shall adopt rules establishing the process for renewal of licenses.

(5) A licensee may surrender a license by delivering to the director written notice of surrender, but the surrender does not affect the licensee's civil or criminal liability or any administrative actions arising from acts or omissions occurring before such surrender.

(6) To prevent undue delay in the issuance of a license and to facilitate the business of a mortgage broker, an interim license with a fixed date of expiration may be issued when the director determines that the mortgage broker has substantially fulfilled the requirements for licensing as defined by rule.

Sec. 12. RCW 19.146.215 and 1997 c 106 s 11 are each amended to read as follows:

The designated broker of every licensee shall complete an annual continuing education requirement(~~(, which the director shall define by rule)~~). The director shall establish standards in rule for approval of professional organizations offering continuing education to designated brokers. The director may approve continuing education taken by designated brokers in other states if the director is satisfied that such continuing education meets the requirements of the continuing education required by this chapter.

Sec. 13. RCW 19.146.220 and 1997 c 106 s 12 and 1997 c 58 s 879 are each reenacted and amended to read as follows:

(1) The director ~~((shall))~~ may enforce all laws and rules relating to the licensing of mortgage brokers and loan originators, grant or deny licenses to mortgage brokers and loan originators, and hold hearings.

(2) The director may impose ~~((the following sanctions:~~

~~(a) Deny applications for licenses for: (i))~~ finer or order restitution against licensees or other persons subject to this chapter, or deny, suspend, decline to renew, or revoke licenses for:

~~(a) Violations of orders, including cease and desist orders ((issued under this chapter; or (ii) any violation of RCW 19.146.050 or 19.146.0201 (1) through (9)));~~

~~(b) ((Suspend or revoke licenses for:~~

~~(i))~~ False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license;

~~((ii))~~ (c) Failure to pay a fee required by the director or maintain the required bond;

~~((iii))~~ (d) Failure to comply with any directive ((or)), order, or subpoena of the director; or

~~((iv))~~ (e) Any violation of ((RCW 19.146.050, 19.146.060(3), 19.146.0201 (1) through (9) or (12), 19.146.205(4), or 19.146.265;

~~(e))~~ this chapter.

(3) The director may impose fines on ((the licensee;)) an employee ((or)), loan originator, independent contractor, or agent of the licensee, or other person subject to this chapter for:

~~((i))~~ (a) Any violations of RCW 19.146.0201 (1) through (9) or ((12)) (13), 19.146.030 through 19.146.080, 19.146.200, 19.146.205(4), or 19.146.265; or

~~((ii))~~ (b) Failure to comply with any directive or order of the director((;)).

~~((4))~~ (4) The director may issue orders directing a licensee, its employee ((or)), loan originator, independent contractor, agent, or other person subject to this chapter to((:

~~(i))~~ cease and desist from conducting business ((in a manner that is injurious to the public or violates any provision of this chapter; or

~~(ii) Pay restitution to an injured borrower; or~~

~~(e))~~.

(5) The director may issue orders removing from office or prohibiting from participation in the conduct of the affairs of a licensed mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed mortgage broker or any person subject to licensing under this chapter for:

~~((i))~~ (a) Any violation of 19.146.0201 (1) through (9) or ((12)) (13), 19.146.030 through 19.146.080, 19.146.200, 19.146.205(4), or 19.146.265; ((or

~~((ii))~~ (b) False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license;

~~((iii))~~ (c) Conviction of a gross misdemeanor involving dishonesty or financial misconduct or a felony after obtaining a license; or

~~((iv))~~ (d) Failure to comply with any directive or order of the director.

~~((3))~~ (6) Each day's continuance of a violation or failure to comply with any directive or order of the director is a separate and distinct violation or failure.

~~((4))~~ (7) The director shall establish by rule standards for licensure of applicants licensed in other jurisdictions.

~~((5))~~ (8) The director shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order ~~((or a residential or visitation order))~~. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

Sec. 14. RCW 19.146.225 and 1994 c 33 s 15 are each amended to read as follows:

In accordance with the administrative procedure act, chapter 34.05 RCW, the director may issue rules under this chapter only after seeking the advice of the mortgage ~~((brokerage))~~ broker commission and ~~((to govern))~~ only for the purpose of governing the activities of licensed mortgage brokers, loan originators, and other persons subject to this chapter.

Sec. 15. RCW 19.146.228 and 2001 c 177 s 5 are each amended to read as follows:

The director shall establish fees by rule in accordance with the policy established in RCW 43.24.086 and fees shall be sufficient to cover, but not exceed, the costs of administering this chapter. These fees may include:

- (1) An annual assessment paid by each licensee on or before a date specified by rule;
- (2) An investigation fee to cover the costs of any investigation of the books and records of a licensee or other person subject to this chapter; and
- (3) An application fee to cover the costs of processing applications made to the director under this chapter.

Mortgage brokers and loan originators shall not be charged investigation fees for the processing of complaints when the investigation determines that no violation of this chapter occurred or when the mortgage broker or loan originator provides a remedy satisfactory to the complainant and the director and no order of the director is issued. All moneys, fees, and penalties collected under the authority of this chapter shall be deposited into the financial services regulation fund, unless the consumer services account is created as a dedicated, nonappropriated account, in which case all moneys, fees, and penalties collected under this chapter shall be deposited in the consumer services account.

Sec. 16. RCW 19.146.235 and 1997 c 106 s 14 are each amended to read as follows:

~~((For the purposes of investigating complaints arising under this chapter, the director may at any time, either personally or by a designee, examine the business, including but not limited to the books, accounts, records, and files used therein, of every licensee and of every person engaged in the business of mortgage brokering, whether such a person shall act or claim to act under or without the authority of this chapter. For that purpose the director and~~

~~designated representatives shall have access during regular business hours to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all such persons. The director or designated person may direct or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation, and may direct or order such person to produce books, accounts, records, files, and any other documents the director or designated person deems relevant to the inquiry. If a person who receives such a directive or order does not attend and testify, or does not produce the requested books, records, files, or other documents within the time period established in the directive or order, then the director or designated person may issue a subpoena requiring attendance or compelling production of books, records, files, or other documents. No person subject to examination or investigation under this chapter shall withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.~~

~~Once during the first two years of licensing, the director may visit, either personally or by designee, the licensee's place or places of business to conduct a compliance examination. The director may examine, either personally or by designee, a sample of the licensee's loan files, interview the licensee or other designated employee or independent contractor, and undertake such other activities as necessary to ensure that the licensee is in compliance with the provisions of this chapter. For those licensees issued licenses prior to March 21, 1994, the cost of such an examination shall be considered to have been prepaid in their license fee. After this one visit within the two-year period subsequent to issuance of a license, the director or a designee may visit the licensee's place or places of business only to ensure that corrective action has been taken or to investigate a complaint:))~~

The director or a designee has authority to conduct investigations and examinations as provided in this section.

(1) For the purposes of investigating violations or complaints arising under this chapter, the director or his or her designee may make an investigation of the operations of any mortgage broker or loan originator as often as necessary in order to carry out the purposes of this chapter.

(2) Every mortgage broker shall make available to the director or a designee its books and records relating to its operations.

(a) For the purpose of examinations, the director or his or her designee may have access to such books and records during normal business hours and interview the officers, principals, loan originators, employees, independent contractors, and agents of the licensee concerning their business.

(b) For the purposes of investigating violations or complaints arising under this chapter, the director may at any time, either personally or by a designee, investigate the business, including but not limited to the books, accounts, records, and files used therein, of every licensee and of every person engaged in the business of mortgage brokering, whether such a person acts or claims to act under, or without the authority of, this chapter.

(c) The director or designated person may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation, and may direct, subpoena, or order such person to

produce books, accounts, records, files, and any other documents the director or designated person deems relevant to the inquiry.

(3) Once during the first five years of licensing, including branch licensing, the director may visit, either personally or by designee, the licensee's place or places of business to conduct an examination. The scope of the examination is limited to documents and information necessary to determine compliance with this chapter and attendant rules. In general, the examination scope may include:

(a) A review for trust accounting compliance;

(b) Loan file review to determine the mortgage broker's compliance with this chapter and applicable federal regulations covering the business of mortgage brokering and lending;

(c) Interviews for the purpose of understanding business and solicitation practices, transactional events, disclosure compliance, complaint resolution, or determining specific compliance with this chapter and the attendant rules; and

(d) A review of general business books and records, including employee records, for the purpose of determining specific compliance with this chapter and the attendant rules.

(4) The purpose of an examination is to make certain that licensees are conducting business in compliance with the law. Therefore, protocols for examination findings and corrective action directed from an examination must be established by rule of the director. To accomplish this purpose, these protocols must include the following:

(a) A reporting mechanism from the director to the licensee;

(b) A process for clear notification of violations and an opportunity for response by the licensee; and

(c) The criteria by which the frequency of examinations will be determined.

(5) If the examination findings clearly identify the need to expand the scope of the examination, the director or a designee, upon five days' written notification to the licensee with an explanation of the need, may:

(a) Expand the examination review to locations other than the examined location regardless of the number of years a location has held a license; or

(b) Expand the time period of the examination beyond the five-year period of licensing, provided the expansion of time does not exceed a date certain identified in the written notification in this subsection.

(6) The director or a designee may consider reports made by independent certified professionals for the mortgage broker covering the same general subject matter as the examination. The director or a designee may incorporate all or part of the report in the report of the examination.

(7) The director may retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations. The cost of these services for investigations only must be billed in accordance with RCW 19.146.228.

(8) The director may establish by rule travel costs for examination of out-of-state entities.

(9)(a) No person subject to examination or investigation under this chapter may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

(b) A person who commits an act under (a) of this subsection is guilty of a class B felony punishable under RCW 9A.20.021(1)(b) or punishable by a fine of not more than twenty thousand dollars, or both.

Sec. 17. RCW 19.146.280 and 2001 c 177 s 6 are each amended to read as follows:

(1) There is established the mortgage ~~((brokerage))~~ broker commission consisting of ~~((five))~~ seven commission members who shall act in an advisory capacity to the director on mortgage ~~((brokerage))~~ broker issues.

(2) The director shall appoint the members of the commission, weighing the recommendations from professional organizations representing mortgage brokers and loan originators. At least three of the commission members shall be mortgage brokers licensed under this chapter ~~((and))~~, at least one shall be exempt from licensure under RCW 19.146.020(1)~~((#))~~ (g), and at least two of the commission members shall be licensed loan originators under this chapter. No commission member shall be appointed who has had less than five years' experience in the business of residential mortgage lending. In addition, the director or a designee shall serve as an ex officio, nonvoting member of the commission. Voting members of the commission shall serve for two-year terms ~~((with three of the initial commission members serving one-year terms))~~. The department shall provide staff support to the commission.

(3) The commission may establish a code of conduct for its members. Any commissioner may bring a motion before the commission to remove a commissioner for failing to conduct themselves in a manner consistent with the code of conduct. The motion shall be in the form of a recommendation to the director to dismiss a specific commissioner and shall enumerate causes for doing so. The commissioner in question shall recuse himself or herself from voting on any such motion. Any such motion must be approved unanimously by the remaining ~~((four))~~ six commissioners. Approved motions shall be immediately transmitted to the director for review and action.

(4) Members of the commission shall be reimbursed for their travel expenses incurred in carrying out the provisions of this chapter in accordance with RCW 43.03.050 and 43.03.060. All costs and expenses associated with the commission shall be paid from the financial services regulation fund, unless the consumer services account is created as a dedicated, nonappropriated account, in which case all costs and expenses shall be paid from the consumer services account.

(5) The commission shall advise the director on the characteristics and needs of the mortgage ~~((brokerage))~~ broker profession.

(6) The department, in consultation with other applicable agencies of state government, shall conduct a continuing review of the number and type of consumer complaints arising from residential mortgage lending in the state. The department shall report its findings to the senate committee on financial institutions and house of representatives committee on financial institutions and insurance along with recommendations for any changes in the licensing requirements of this chapter, biennially by December 1st of each even-numbered year.

NEW SECTION. Sec. 18. A new section is added to chapter 19.146 RCW to read as follows:

(1) A licensee shall provide the director with an annual report of mortgage broker activity. The director may by rule create a schedule and format for the annual report. The annual report may only include the following for mortgage broker activities in Washington state:

- (a) The total number of closed loans originated by the mortgage broker; and
- (b) The total dollar volume of closed loans originated by the mortgage broker.

(2) Any information provided by a mortgage broker in an annual report that constitutes a trade secret as defined in RCW 19.108.010 is exempt from the disclosure requirements in chapters 42.17 and 42.56 RCW, unless aggregated with information supplied by other mortgage brokers in such a manner that the mortgage broker's individual information is not identifiable. Any information provided by the mortgage broker that allows identification of the mortgage broker may only be used for purposes reasonably related to the regulation of mortgage brokers to ensure compliance with this chapter.

NEW SECTION. Sec. 19. A new section is added to chapter 19.146 RCW to read as follows:

(1) Application for a loan originator license under this chapter shall be in writing and in the form prescribed by the director. The application shall contain at least the following information:

(a) The name, address, date of birth, and social security number of the loan originator applicant, and any other names, dates of birth, or social security numbers previously used by the loan originator applicant, unless waived by the director; and

(b) Such other information regarding the loan originator applicant's background, experience, character, and general fitness as the director may require by rule.

(2) As part of or in connection with an application for any license under this section, the loan originator applicant shall furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check; personal history; experience; business record; purposes; and other pertinent facts, as the director may reasonably require. As part of or in connection with an application for a license under this chapter, the director is authorized to receive criminal history record information that includes nonconviction data as defined in RCW 10.97.030. The department may only disseminate nonconviction data obtained under this section to criminal justice agencies. This section does not apply to financial institutions regulated under chapters 31.12 and 31.13 RCW and Titles 30, 32, and 33 RCW.

(3) At the time of filing an application for a license under this chapter, each loan originator applicant shall pay to the director the appropriate application fee in an amount determined by rule of the director in accordance with RCW 19.146.228 to cover the cost of processing and reviewing the application. The director shall deposit the moneys in the financial services regulation fund.

(4) The director must establish by rule procedures for accepting and processing incomplete applications.

NEW SECTION. **Sec. 20.** A new section is added to chapter 19.146 RCW to read as follows:

(1) The director shall issue and deliver a loan originator license if, after investigation, the director makes the following findings:

(a) The loan originator applicant has paid the required license fees;

(b) The loan originator applicant has met the requirements of section 19 of this act;

(c) The loan originator applicant has not had a license issued under this chapter or any similar state statute suspended or revoked within five years of the filing of the present application;

(d) The loan originator applicant has not been convicted of a gross misdemeanor involving dishonesty or financial misconduct or a felony within seven years of the filing of the present application;

(e) The loan originator applicant has passed a written examination whose content shall be established by rule of the director;

(f) The loan originator applicant has not been found to be in violation of this chapter or rules;

(g) The loan originator applicant has demonstrated character and general fitness such as to command the confidence of the community and to warrant a belief that the business will be operated honestly and fairly within the purposes of this chapter; and

(h) The loan originator licensee has completed, during the calendar year preceding a licensee's annual license renewal date, continuing education as established by rule of the director. The director shall establish standards in rule for approval of professional organizations offering continuing education to loan originators. The director may approve continuing education taken by loan originators in other states if the director is satisfied that such continuing education meets the requirements of the continuing education required by this chapter.

(2) If the director does not find the conditions of subsection (1) of this section have been met, the director shall not issue the loan originator license. The director shall notify the loan originator applicant of the denial and return to the loan originator applicant any remaining portion of the license fee that exceeds the department's actual cost to investigate the license.

(3) The director shall issue a new loan originator license under this chapter to any licensee that has a valid license and is otherwise in compliance with this chapter.

(4) A loan originator license issued under this section expires on the date one year from the date of issuance which, for license renewal purposes, is also the renewal date. The director shall establish rules regarding the loan originator license renewal process created under this chapter.

(5) A loan originator licensee may surrender a license by delivering to the director written notice of surrender, but the surrender does not affect the loan originator licensee's civil or criminal liability or any administrative actions arising from acts or omissions occurring before such surrender.

(6) To prevent undue delay in the issuance of a loan originator license and to facilitate the business of a loan originator, an interim loan originator license with a fixed date of expiration may be issued when the director determines that the

loan originator has substantially fulfilled the requirements for loan originator licensing as defined by rule.

NEW SECTION. Sec. 21. A new section is added to chapter 19.146 RCW to read as follows:

A loan originator license, or the authority granted under such a license, is not assignable and cannot be transferred, sold, or franchised by contract or any other means.

NEW SECTION. Sec. 22. A new section is added to chapter 19.146 RCW to read as follows:

A loan originator may only take an application on behalf of one mortgage broker at a time, and that mortgage broker must be clearly identified on the application.

NEW SECTION. Sec. 23. The director of the department of financial institutions or the director's designee may take such steps as are necessary to ensure that this act is implemented on the effective date of this section.

NEW SECTION. Sec. 24. This act takes effect January 1, 2007.

Passed by the House February 11, 2006.

Passed by the Senate February 28, 2006.

Approved by the Governor March 9, 2006.

Filed in Office of Secretary of State March 9, 2006.

CHAPTER 20

[Substitute House Bill 2344]

SUPERIOR COURT JUDGES

AN ACT Relating to superior court judges; amending RCW 2.08.064; and creating a new section.

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

Sec. 1. RCW 2.08.064 and 2003 c 96 s 2 are each amended to read as follows:

There shall be in the counties of Benton and Franklin jointly, six judges of the superior court; in the county of Clallam, (~~two~~) three judges of the superior court; in the county of Jefferson, one judge of the superior court; in the county of Snohomish, fifteen judges of the superior court; in the counties of Asotin, Columbia and Garfield jointly, one judge of the superior court; in the county of Cowlitz, (~~four~~) five judges of the superior court; in the counties of Klickitat and Skamania jointly, one judge of the superior court.

NEW SECTION. Sec. 2. The additional judicial positions created by section 1 of this act in Clallam and Cowlitz counties are effective only if each county through its duly constituted legislative authority documents its approval of the additional position and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of the existing and additional judicial positions as provided by statute and the state Constitution.

Passed by the House February 9, 2006.

Passed by the Senate February 28, 2006.

Approved by the Governor March 9, 2006.
Filed in Office of Secretary of State March 9, 2006.

CHAPTER 21

[House Bill 2338]

MORTGAGE LENDING FRAUD PROSECUTION ACCOUNT

AN ACT Relating to the extension of the mortgage lending fraud prosecution account; amending RCW 36.22.181, 43.320.140, and 43.320.1401; and providing expiration dates.

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

Sec. 1. RCW 36.22.181 and 2003 c 289 s 1 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, a surcharge of one dollar shall be charged by the county auditor at the time of recording of each deed of trust, which will be in addition to any other charge authorized by law. The auditor may retain up to five percent of the funds collected to administer collection. The remaining funds shall be transmitted monthly to the state treasurer who will deposit the funds into the mortgage lending fraud prosecution account created in RCW 43.320.140. The department of financial institutions is responsible for the distribution of the funds in the account and shall, in consultation with the attorney general and local prosecutors, develop rules for the use of these funds to pursue criminal prosecution of fraudulent activities within the mortgage lending process.

(2) The surcharge imposed in this section does not apply to assignments or substitutions of previously recorded deeds of trust.

(3) This section expires June 30, (~~2006~~) 2011.

Sec. 2. RCW 43.320.140 and 2003 c 289 s 2 are each amended to read as follows:

(1) The mortgage lending fraud prosecution account is created in the custody of the state treasurer. All receipts from the surcharge imposed in RCW 36.22.181, except those retained by the county auditor for administration, must be deposited into the account. Except as otherwise provided in this section, expenditures from the account may be used only for criminal prosecution of fraudulent activities related to mortgage lending fraud crimes. Only the director of the department of financial institutions or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) This section expires June 30, (~~2006~~) 2011.

Sec. 3. RCW 43.320.1401 and 2003 c 289 s 3 are each amended to read as follows:

(1) Before December 31st of every year, the department of financial institutions shall provide the senate and house of representatives committees that address matters related to financial institutions with a written report outlining the activity of the mortgage lending fraud prosecution account.

(2) This section expires June 30, (~~2006~~) 2011.

Passed by the House January 25, 2006.

Passed by the Senate February 28, 2006.

Approved by the Governor March 9, 2006.
Filed in Office of Secretary of State March 9, 2006.

CHAPTER 22

[House Bill 2367]

TRIBAL POLICE OFFICERS

AN ACT Relating to the certification of tribal police officers; amending RCW 43.101.085 and 43.101.380; adding a new section to chapter 43.101 RCW; and providing an effective date.

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

Sec. 1. RCW 43.101.085 and 2001 c 167 s 7 are each amended to read as follows:

In addition to its other powers granted under this chapter, the commission has authority and power to:

- (1) Adopt, amend, or repeal rules as necessary to carry out this chapter;
- (2) Issue subpoenas and administer oaths in connection with investigations, hearings, or other proceedings held under this chapter;
- (3) Take or cause to be taken depositions and other discovery procedures as needed in investigations, hearings, and other proceedings held under this chapter;
- (4) Appoint members of a hearings board as provided under RCW 43.101.380;
- (5) Enter into contracts for professional services determined by the commission to be necessary for adequate enforcement of this chapter;
- (6) Grant, deny, or revoke certification of peace officers under the provisions of this chapter;
- (7) Designate individuals authorized to sign subpoenas and statements of charges under the provisions of this chapter; ~~(and)~~
- (8) Employ such investigative, administrative, and clerical staff as necessary for the enforcement of this chapter; and
- (9) To grant, deny, or revoke certification of tribal police officers whose tribal governments have agreed to participate in the tribal police officer certification process.

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

(1) Tribal governments may voluntarily request certification for their police officers. Tribal governments requesting certification for their police officers must enter into a written agreement with the commission. The agreement must require the tribal law enforcement agency and its officers to comply with all of the requirements for granting, denying, and revoking certification as those requirements are applied to peace officers certified under this chapter and the rules of the commission.

(2) Officers making application for certification as tribal police officers shall meet the requirements of this chapter and the rules of the commission as those requirements are applied to certification of peace officers. Application for certification as a tribal police officer shall be accepted and processed in the same manner as those for certification of peace officers.

(3) For purposes of certification, "tribal police officer" means any person employed and commissioned by a tribal government to enforce the criminal laws of that government.

Sec. 3. RCW 43.101.380 and 2001 c 167 s 10 are each amended to read as follows:

(1) The procedures governing adjudicative proceedings before agencies under chapter 34.05 RCW, the administrative procedure act, govern hearings before the commission and govern all other actions before the commission unless otherwise provided in this chapter. The standard of proof in actions before the commission is clear, cogent, and convincing evidence.

(2) ~~((On all appeals brought))~~ In all hearings requested under RCW 43.101.155, a five-member hearings panel shall both hear the case and make the commission's final administrative decision. Members of the commission or the board on law enforcement training standards and education may but need not be appointed to the hearings panels. The commission shall appoint as follows two or more panels to hear appeals from decertification actions:

(a) When ~~((an appeal))~~ a hearing is ((filed)) requested in relation to decertification of a Washington peace officer who is not a peace officer of the Washington state patrol, the commission shall appoint to the panel: (i) One police chief; (ii) one sheriff; (iii) two peace officers who are at or below the level of first line supervisor, who are from city or county law enforcement agencies, and who have at least ten years' experience as peace officers; and (iv) one person who is not currently a peace officer and who represents a community college or four-year college or university.

(b) When ~~((an appeal))~~ a hearing is ((filed)) requested in relation to decertification of a peace officer of the Washington state patrol, the commission shall appoint to the panel: (i) Either one police chief or one sheriff; (ii) one administrator of the state patrol; (iii) one peace officer who is at or below the level of first line supervisor, who is from a city or county law enforcement agency, and who has at least ten years' experience as a peace officer; (iv) one state patrol officer who is at or below the level of first line supervisor, and who has at least ten years' experience as a peace officer; and (v) one person who is not currently a peace officer and who represents a community college or four-year college or university.

(c) When a hearing is requested in relation to decertification of a tribal police officer, the commission shall appoint to the panel (i) either one chief or one sheriff; (ii) one tribal police chief; (iii) one peace officer who is at or below the level of first line supervisor, who is from a city or county law enforcement agency, and who has at least ten years' experience as a peace officer; (iv) one tribal police officer who is at or below the level of first line supervisor, and who has at least ten years' experience as a peace officer; and (v) one person who is not currently a peace officer and who represents a community college or four-year college or university.

(d) Persons appointed to hearings panels by the commission shall, in relation to any decertification matter on which they sit, have the powers, duties, and immunities, and are entitled to the emoluments, including travel expenses in accordance with RCW 43.03.050 and 43.03.060, of regular commission members.

(3) Where the charge upon which revocation or denial is based is that a peace officer was "discharged for disqualifying misconduct," and the discharge is "final," within the meaning of RCW 43.101.105(~~((4))~~) (1)(d), and the officer received a civil service hearing or arbitration hearing culminating in an affirming decision following separation from service by the employer, the hearings panel may revoke or deny certification if the hearings panel determines that the discharge occurred and was based on disqualifying misconduct; the hearings panel need not redetermine the underlying facts but may make this determination based solely on review of the records and decision relating to the employment separation proceeding. However, the hearings panel may, in its discretion, consider additional evidence to determine whether such a discharge occurred and was based on such disqualifying misconduct. The hearings panel shall, upon written request by the subject peace officer, allow the peace officer to present additional evidence of extenuating circumstances.

Where the charge upon which revocation or denial of certification is based is that a peace officer "has been convicted at any time of a felony offense" within the meaning of RCW 43.101.105(~~((3))~~) (1)(c), the hearings panel shall revoke or deny certification if it determines that the peace officer was convicted of a felony. The hearings panel need not redetermine the underlying facts but may make this determination based solely on review of the records and decision relating to the criminal proceeding. However, the hearings panel shall, upon the panel's determination of relevancy, consider additional evidence to determine whether the peace officer was convicted of a felony.

Where the charge upon which revocation or denial is based is under RCW 43.101.105 (1)(~~(2), (5), or (6))~~) (a), (b), (e), or (f), the hearings panel shall determine the underlying facts relating to the charge upon which revocation or denial of certification is based.

(4) The commission's final administrative decision is subject to judicial review under RCW 34.05.510 through 34.05.598.

NEW SECTION. Sec. 4. This act takes effect January 1, 2007.

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

Passed by the House January 28, 2006.

Passed by the Senate February 28, 2006.

Approved by the Governor March 9, 2006.

Filed in Office of Secretary of State March 9, 2006.

CHAPTER 23

[Substitute House Bill 2372]

HUNTER TRAINING PROGRAMS—VOLUNTEER INCENTIVES

AN ACT Relating to providing a mechanism to encourage volunteers to teach hunter education programs in Washington; and amending RCW 77.32.155.

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

Sec. 1. RCW 77.32.155 and 1998 c 191 s 17 are each amended to read as follows:

(1) When purchasing any hunting license, persons under the age of eighteen shall present certification of completion of a course of instruction of at least ten hours in the safe handling of firearms, safety, conservation, and sportsmanship. ~~((Beginning January 1, 1995,))~~ All persons purchasing any hunting license for the first time, if born after January 1, 1972, shall present such certification.

(2) The director may establish a program for training persons in the safe handling of firearms, conservation, and sportsmanship and shall prescribe the type of instruction and the qualifications of the instructors. The director may cooperate with the National Rifle Association, organized sportsmen's groups, or other public or private organizations when establishing the training program.

~~((The director shall prescribe the type of instruction and the qualifications of the instructors.))~~

(3) Upon the successful completion of ~~((the))~~ a course established under this section, ~~((a))~~ the trainee shall receive a hunter education certificate signed by an authorized instructor. The certificate is evidence of compliance with this section.

(4) The director may accept certificates from other states that persons have successfully completed firearm safety, hunter education, or similar courses as evidence of compliance with this section.

(5) To encourage the participation of an adequate number of instructors for the training program, the commission shall develop nonmonetary incentives available to individuals who commit to serving as an instructor. The incentives may include additional hunting opportunities for instructors.

Passed by the House February 9, 2006.

Passed by the Senate February 28, 2006.

Approved by the Governor March 9, 2006.

Filed in Office of Secretary of State March 9, 2006.

CHAPTER 24

[Substitute House Bill 2376]

COST-SHARING IN MEDICAL PROGRAMS

AN ACT Relating to repealing cost-sharing in medical programs; and amending RCW 74.09.055.

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

Sec. 1. RCW 74.09.055 and 2003 1st sp.s. c 14 s 1 are each amended to read as follows:

The department is authorized to establish copayment, deductible, or coinsurance, or other cost-sharing requirements for recipients of any medical programs defined in RCW 74.09.010, except that premiums shall not be imposed on children in households at or below two hundred percent of the federal poverty level.

Passed by the House February 8, 2006.

Passed by the Senate February 28, 2006.

Approved by the Governor March 9, 2006.

Filed in Office of Secretary of State March 9, 2006.

CHAPTER 25

[House Bill 2406]

INSURANCE

AN ACT Relating to insurance; amending RCW 48.05.250, 48.05.440, 48.43.045, 48.44.095, 48.46.080, 48.125.090, 52.30.020, 48.43.005, and 48.22.030; reenacting and amending RCW 48.24.030; adding new sections to chapter 48.05 RCW; adding a new section to chapter 42.56 RCW; adding a new section to chapter 48.17 RCW; adding a new chapter to Title 43 RCW; creating a new section; recodifying RCW 48.48.030, 48.48.040, 48.48.045, 48.48.050, 48.48.060, 48.48.065, 48.48.070, 48.48.080, 48.48.090, 48.48.110, 48.48.140, 48.48.150, and 48.48.160; repealing RCW 48.05.490 and 48.43.365; and providing an effective date.

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

NEW SECTION. Sec. 1. A new section is added to chapter 48.05 RCW to read as follows:

(1) Every property and casualty insurance company doing business in this state, unless otherwise exempted by the domiciliary commissioner, shall annually submit the opinion of an appointed actuary entitled "Statement of Actuarial Opinion." This opinion shall be filed in accordance with the property and casualty annual statement instructions as adopted by the national association of insurance commissioners.

(2) Every property and casualty insurance company domiciled in this state that is required to submit a statement of actuarial opinion shall annually submit an actuarial opinion summary, written by the company's appointed actuary. This actuarial opinion summary shall be filed in accordance with the property and casualty annual statement instructions as adopted by the national association of insurance commissioners and shall be considered as a document supporting the actuarial opinion required in subsection (1) of this section.

(3) An insurance company authorized but not domiciled in this state shall provide the actuarial opinion summary upon request.

(4) An actuarial report and underlying work papers as required by the property and casualty annual statement instructions as adopted by the national association of insurance commissioners shall be prepared to support each actuarial opinion.

(5) If the insurance company fails to provide either a supporting actuarial report or work papers, or both, at the request of the commissioner or the commissioner determines that the supporting actuarial report or work papers provided by the insurance company is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting actuarial report or work papers.

(6) The appointed actuary is not liable for damages to any person, other than the insurance company, the commissioner, or both, for any act, error, omission, decision, or conduct with respect to the actuary's opinion, except in cases of fraud or willful misconduct on the part of the appointed actuary.

NEW SECTION. Sec. 2. A new section is added to chapter 48.05 RCW to read as follows:

(1) The statement of actuarial opinion shall be provided with the annual statement in accordance with the property and casualty annual statement instructions as adopted by the national association of insurance commissioners and shall be treated as a public document.

(2) Documents, materials or other information in the possession or control of the commissioner that are considered an actuarial report, work papers, or actuarial opinion summary provided in support of the opinion, and any other material provided by the insurance company to the commissioner in connection with the actuarial report, work papers, or actuarial opinion summary, is confidential by law and privileged, is not subject to chapter 42.17 or 42.56 RCW, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any private civil action.

(3) Subsection (2) of this section does not limit the commissioner's authority to release the documents to the actuarial board for counseling and discipline so long as the material is required for the purpose of professional disciplinary proceedings and the board establishes procedures satisfactory to the commissioner for preserving the confidentiality of the documents. Subsection (2) of this section does not limit the commissioner's authority to use the documents, materials, or other information in furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(4) Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner is permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (2) of this section.

(5) In order to assist in the performance of the commissioner's duties, the commissioner:

(a) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (2) of this section with other state, federal, and international regulatory agencies, with the national association of insurance commissioners and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information and has the legal authority to maintain confidentiality;

(b) May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the national association of insurance commissioners and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(c) May enter into agreements governing the sharing and use of information consistent with this subsection.

(6) A waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information may not occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (5) of this section.

NEW SECTION. Sec. 3. A new section is added to chapter 42.56 RCW to read as follows:

Documents, materials, and information obtained by the insurance commissioner under section 2(2) of this act are confidential and privileged and not subject to public disclosure under this chapter.

NEW SECTION. Sec. 4. Sections 1 through 3 of this act may be known and cited as the property and casualty actuarial opinion law.

Sec. 5. RCW 48.05.250 and 1983 c 85 s 1 are each amended to read as follows:

(1) Each ~~((authorized))~~ domestic insurer shall annually, on or before the first day of March, file with the commissioner a true statement of its financial condition, transactions, and affairs as of the thirty-first day of December preceding. The statement forms shall be in general form and context as approved by the National Association of Insurance Commissioners for the kinds of insurance to be reported upon, and as supplemented for additional information required by this code and by the commissioner. The statement shall be verified by the oaths of at least two of the insurer's officers.

(2) The annual statement of an alien insurer shall relate only to its transactions and affairs in the United States unless the commissioner requires otherwise. The statement shall be verified by the insurer's United States manager or by its officers duly authorized.

(3) The commissioner shall suspend or revoke the certificate of authority of any insurer failing to file its annual statement when due or during any extension of time therefor which the commissioner, for good cause, may grant.

Sec. 6. RCW 48.05.440 and 1995 c 83 s 3 are each amended to read as follows:

(1) "Company action level event" means any of the following events:

(a) The filing of an RBC report by an insurer indicating that:

(i) The insurer's total adjusted capital is greater than or equal to its regulatory action level RBC, but less than its company action level RBC; ~~((or))~~

(ii) If a life and disability insurer, the insurer has total adjusted capital that is greater than or equal to its company action level RBC, but less than the product of its authorized control level RBC and 2.5 and has a negative trend; or

(iii) If a property and casualty insurer, the insurer has total adjusted capital that is greater than or equal to its company action level RBC but less than the product of its authorized control level RBC and 3.0 and met the trend test determined in accordance with the trend test calculation included in the RBC instructions;

(b) The notification by the commissioner to the insurer of an adjusted RBC report that indicates an event in (a) of this subsection, provided the insurer does not challenge the adjusted RBC report under RCW 48.05.460; or

(c) If, under RCW 48.05.460, an insurer challenges an adjusted RBC report that indicates an event in (a) of this subsection, the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(2) In the event of a company action level event, the insurer shall prepare and submit to the commissioner an RBC plan that:

(a) Identifies the conditions that contribute to the company action level event;

(b) Contains proposals of corrective actions that the insurer intends to take and would be expected to result in the elimination of the company action level event;

(c) Provides projections of the insurer's financial results in the current year and at least the four succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital, and surplus. The projections for both new and renewal business might include separate projections for each major line of business and separately identify each significant income, expense, and benefit component;

(d) Identifies the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and

(e) Identifies the quality of, and problems associated with, the insurer's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance, if any, in each case.

(3) The RBC plan shall be submitted:

(a) Within forty-five days of the company action level event; or

(b) If the insurer challenges an adjusted RBC report under RCW 48.05.460, within forty-five days after notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(4) Within sixty days after the submission by an insurer of an RBC plan to the commissioner, the commissioner shall notify the insurer whether the RBC plan may be implemented or is, in the judgment of the commissioner, unsatisfactory. If the commissioner determines the RBC plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination, and may set forth proposed revisions that will render the RBC plan satisfactory. Upon notification from the commissioner, the insurer shall prepare a revised RBC plan, that may incorporate by reference any revisions proposed by the commissioner, and shall submit the revised RBC plan to the commissioner:

(a) Within forty-five days after the notification from the commissioner; or

(b) If the insurer challenges the notification from the commissioner under RCW 48.05.460, within forty-five days after a notification to the insurer that the commissioner has, after a hearing, rejected the insurer's challenge.

(5) In the event of a notification by the commissioner to an insurer that the insurer's RBC plan or revised RBC plan is unsatisfactory, the commissioner may, subject to the insurer's rights to a hearing under RCW 48.05.460, specify in the notification that the notification constitutes a regulatory action level event.

(6) Every domestic insurer that files an RBC plan or revised RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in any state in which the insurer is authorized to do business if:

(a) The state has an RBC provision substantially similar to RCW 48.05.465(1); and

(b) The insurance commissioner of that state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of the RBC plan or revised RBC plan in that state no later than the later of:

(i) Fifteen days after the receipt of notice to file a copy of its RBC plan or revised plan with the state; or

(ii) The date on which the RBC plan or revised RBC plan is filed under subsections (3) and (4) of this section.

Sec. 7. RCW 48.43.045 and 1997 c 231 s 205 are each amended to read as follows:

Every health plan delivered, issued for delivery, or renewed by a health carrier on and after January 1, 1996, shall:

(1) Permit every category of health care provider to provide health services or care for conditions included in the basic health plan services to the extent that:

(a) The provision of such health services or care is within the health care providers' permitted scope of practice; and

(b) The providers agree to abide by standards related to:

(i) Provision, utilization review, and cost containment of health services;

(ii) Management and administrative procedures; and

(iii) Provision of cost-effective and clinically efficacious health services.

(2) Annually report the names and addresses of all officers, directors, or trustees of the health carrier during the preceding year, and the amount of wages, expense reimbursements, or other payments to such individuals, unless substantially similar information is filed with the commissioner or the national association of insurance commissioners. This requirement does not apply to a foreign or alien insurer regulated under chapter 48.20 or 48.21 RCW that files a supplemental compensation exhibit in its annual statement as required by law.

Sec. 8. RCW 48.44.095 and 1997 c 212 s 4 are each amended to read as follows:

(1) Every domestic health care service contractor shall annually, on or before the first day of March, file with the commissioner a statement verified by at least two of the principal officers of the health care service contractor showing its financial condition as of the last day of the preceding calendar year. The statement shall be in such form as is furnished or prescribed by the commissioner. The commissioner may for good reason allow a reasonable extension of the time within which such annual statement shall be filed.

(2) In addition to the requirements of subsection (1) of this section, every health care service contractor that is registered in this state shall annually, on or before March 1st of each year, file with the national association of insurance commissioners a copy of its annual statement, along with those additional schedules as prescribed by the commissioner for the preceding year. The information filed with the national association of insurance commissioners shall be in the same format and scope as that required by the commissioner and shall include the signed jurate page and the actuarial certification. Any amendments and addendums to the annual statement filing subsequently filed with the commissioner shall also be filed with the national association of insurance commissioners.

(3) Coincident with the filing of its annual statement and other schedules, each health care service contractor shall pay a reasonable fee directly to the national association of insurance commissioners in an amount approved by the commissioner to cover the costs associated with the analysis of the annual statement.

(4) Foreign health care service contractors that are domiciled in a state that has a law substantially similar to subsection (2) of this section are considered to be in compliance with this section.

(5) In the absence of actual malice, members of the national association of insurance commissioners, their duly authorized committees, subcommittees, and task forces, their delegates, national association of insurance commissioners employees, and all other persons charged with the responsibility of collecting, reviewing, analyzing, and disseminating the information developed from the filing of the annual statement shall be acting as agents of the commissioner under the authority of this section and shall not be subject to civil liability for libel, slander, or any other cause of action by virtue of their collection, review, analysis, or dissemination of the data and information collected for the filings required under this section.

(6) The commissioner may suspend or revoke the certificate of registration of any health care service contractor failing to file its annual statement or pay the fees when due or during any extension of time therefor which the commissioner, for good cause, may grant.

Sec. 9. RCW 48.46.080 and 1997 c 212 s 5 are each amended to read as follows:

(1) Every domestic health maintenance organization shall annually, on or before the first day of March, file with the commissioner a statement verified by at least two of the principal officers of the health maintenance organization showing its financial condition as of the last day of the preceding calendar year.

(2) Such annual report shall be in such form as the commissioner shall prescribe and shall include:

(a) A financial statement of such organization, including its balance sheet and receipts and disbursements for the preceding year, which reflects at a minimum;

(i) All prepayments and other payments received for health care services rendered pursuant to health maintenance agreements;

(ii) Expenditures to all categories of health care facilities, providers, insurance companies, or hospital or medical service plan corporations with which such organization has contracted to fulfill obligations to enrolled participants arising out of its health maintenance agreements, together with all other direct expenses including depreciation, enrollment, and commission; and

(iii) Expenditures for capital improvements, or additions thereto, including but not limited to construction, renovation, or purchase of facilities and capital equipment;

(b) The number of participants enrolled and terminated during the report period. Every employer offering health care benefits to their employees through a group contract with a health maintenance organization shall furnish said health maintenance organization with a list of their employees enrolled under such plan;

(c) The number of doctors by type of practice who, under contract with or as an employee of the health maintenance organization, furnished health care services to consumers during the past year;

(d) A report of the names and addresses of all officers, directors, or trustees of the health maintenance organization during the preceding year, and the amount of wages, expense reimbursements, or other payments to such

individuals for services to such organization. For partnership and professional service corporations, a report shall be made for partners or shareholders as to any compensation or expense reimbursement received by them for services, other than for services and expenses relating directly for patient care;

(e) Such other information relating to the performance of the health maintenance organization or the health care facilities or providers with which it has contracted as reasonably necessary to the proper and effective administration of this chapter, in accordance with rules and regulations; and

(f) Disclosure of any financial interests held by officers and directors in any providers associated with the health maintenance organization or any provider of the health maintenance organization.

(3) The commissioner may for good reason allow a reasonable extension of the time within which such annual statement shall be filed.

(4) In addition to the requirements of subsections (1) and (2) of this section, every health maintenance organization that is registered in this state shall annually, on or before March 1st of each year, file with the national association of insurance commissioners a copy of its annual statement, along with those additional schedules as prescribed by the commissioner for the preceding year. The information filed with the national association of insurance commissioners shall be in the same format and scope as that required by the commissioner and shall include the signed jurate page and the actuarial certification. Any amendments and addendums to the annual statement filing subsequently filed with the commissioner shall also be filed with the national association of insurance commissioners.

(5) Coincident with the filing of its annual statement and other schedules, each health maintenance organization shall pay a reasonable fee directly to the national association of insurance commissioners in an amount approved by the commissioner to cover the costs associated with the analysis of the annual statement.

(6) Foreign health maintenance organizations that are domiciled in a state that has a law substantially similar to subsection (4) of this section are considered to be in compliance with this section.

(7) In the absence of actual malice, members of the national association of insurance commissioners, their duly authorized committees, subcommittees, and task forces, their delegates, national association of insurance commissioners employees, and all other persons charged with the responsibility of collecting, reviewing, analyzing, and disseminating the information developed from the filing of the annual statement shall be acting as agents of the commissioner under the authority of this section and shall not be subject to civil liability for libel, slander, or any other cause of action by virtue of their collection, review, analysis, or dissemination of the data and information collected for the filings required under this section.

(8) The commissioner may suspend or revoke the certificate of registration of any health maintenance organization failing to file its annual statement or pay the fees when due or during any extension of time therefor which the commissioner, for good cause, may grant.

(9) No person shall knowingly file with any public official or knowingly make, publish, or disseminate any financial statement of a health maintenance

organization which does not accurately state the health maintenance organization's financial condition.

Sec. 10. RCW 48.125.090 and 2004 c 260 s 11 are each amended to read as follows:

(1) A self-funded multiple employer welfare arrangement must comply with the reporting requirements of this section.

(2) Every arrangement holding a certificate of authority from the commissioner must file its financial statements as required by this title and by the commissioner in accordance with the accounting practices and procedures manuals as adopted by the national association of insurance commissioners, unless otherwise provided by law.

(3) Every arrangement must comply with the provisions of chapters 48.12 and 48.13 RCW.

(4) Every domestic arrangement holding a certificate of authority shall ~~(;)~~ annually, on or before the first day of March, file with the commissioner a true statement of its financial condition, transactions, and affairs as of the thirty-first day of December of the preceding year. The statement forms must be those forms approved by the national association of insurance commissioners for health insurance. The statement must be verified by the oaths of at least two officers of the arrangement. Additional information may be required by this title or by the request of the commissioner.

(5) Every arrangement must report their annual and other statements in the same manner required of other insurers by rule of the commissioner.

(6) The arrangement must file with the commissioner a copy of the arrangement's internal revenue service form 5500 together with all attachments to the form, at the time required for filing the form.

NEW SECTION. Sec. 11. The following acts or parts of acts are each repealed:

(1) RCW 48.05.490 (RBC reports for 1995—Requirements) and 1995 c 83 s 13; and

(2) RCW 48.43.365 (RBC report for 1998 calendar year) and 1998 c 241 s 14.

Sec. 12. RCW 52.30.020 and 1979 c 151 s 164 are each amended to read as follows:

Wherever a fire protection district has been organized which includes within its area or is adjacent to, buildings and equipment, except those leased to a nontax exempt person or organization, owned by the legislative or administrative authority of a state agency or institution or a municipal corporation, the agency or institution or municipal corporation involved shall contract with such district for fire protection services necessary for the protection and safety of personnel and property pursuant to the provisions of chapter 39.34 RCW ~~(, as now or hereafter amended)~~: PROVIDED, That nothing in this section shall be construed to require that any state agency, institution, or municipal corporation contract for services which are performed by the staff and equipment of such state agency, institution, or municipal corporation: PROVIDED FURTHER, That nothing in this section shall apply to state agencies or institutions or municipal corporations which are receiving fire protection services by contract from another municipality, city, town, or other

entities: AND PROVIDED FURTHER, That school districts shall receive fire protection services from the fire protection districts in which they are located without the necessity of executing a contract for such fire protection services: PROVIDED FURTHER, That prior to September 1, 1974, the superintendent of public instruction, the ~~((insurance commissioner))~~ chief of the Washington state patrol through the director of fire protection, the director of financial management, and the executive director of the Washington fire commissioners association, or their designees, shall develop criteria to be used by the ~~((insurance commissioner))~~ chief of the Washington state patrol through the director of fire protection in establishing uniform rates governing payments to fire districts by school districts for fire protection services. On or before September 1, 1974, the ~~((insurance commissioner))~~ chief of the Washington state patrol through the director of fire protection shall establish such rates to be payable by school districts on or before January 1st of each year commencing January 1, 1975, payable July 1, 1975: AND PROVIDED FURTHER, That beginning with the 1975-77 biennium and in each biennium thereafter the superintendent of public instruction shall present in ~~((his))~~ the budget submittal to the governor an amount sufficient to reimburse affected school districts for the moneys necessary to pay the costs of the uniform rates established by the ~~((insurance commissioner))~~ chief of the Washington state patrol through the director of fire protection.

NEW SECTION. Sec. 13. RCW 48.48.030, 48.48.040, 48.48.045, 48.48.050, 48.48.060, 48.48.065, 48.48.070, 48.48.080, 48.48.090, 48.48.110, 48.48.140, 48.48.150, and 48.48.160 are each recodified as a new chapter in Title 43 RCW.

Sec. 14. RCW 48.24.030 and 2005 c 223 s 13 and 2005 c 222 s 2 are each reenacted and amended to read as follows:

(1) Insurance under any group life insurance policy issued under RCW 48.24.020, 48.24.050, 48.24.060, 48.24.070, or 48.24.090 may be extended to insure the spouse and dependent children, or any class or classes thereof, of each insured employee or member who so elects, in amounts in accordance with a plan that precludes individual selection by the employees or members or by the employer or labor union or trustee, and which insurance on the life of any one family member including a spouse shall not be in excess of the amount on the life of the insured employee or member.

Premiums for the insurance on the family members shall be paid by the policyholder, either from the employer's funds, funds contributed to him or her, employee's funds, trustee's funds, or labor union funds.

(2) A spouse insured under this section has the same conversion right as to the insurance on his or her life as is vested in the employee or member under this chapter.

NEW SECTION. Sec. 15. A new section is added to chapter 48.17 RCW to read as follows:

(1) All Washington state licensed insurance agents who sell federal flood insurance policies must comply with the minimum training requirements of section 207 of the flood insurance reform act of 2004, and basic flood education as outlined at 70 C.F.R. Sec. 52117, or such later requirements as are published by the federal emergency management agency.

(2) Licensed insurers shall demonstrate to the commissioner, upon request, that their licensed and appointed agents who sell federal flood insurance policies have complied with the minimum federal flood insurance training requirements.

Sec. 16. RCW 48.43.005 and 2004 c 244 s 2 are each amended to read as follows:

Unless otherwise specifically provided, the definitions in this section apply throughout this chapter.

(1) "Adjusted community rate" means the rating method used to establish the premium for health plans adjusted to reflect actuarially demonstrated differences in utilization or cost attributable to geographic region, age, family size, and use of wellness activities.

(2) "Basic health plan" means the plan described under chapter 70.47 RCW, as revised from time to time.

(3) "Basic health plan model plan" means a health plan as required in RCW 70.47.060(2)((~~d~~)) (e).

(4) "Basic health plan services" means that schedule of covered health services, including the description of how those benefits are to be administered, that are required to be delivered to an enrollee under the basic health plan, as revised from time to time.

(5) "Catastrophic health plan" means:

(a) In the case of a contract, agreement, or policy covering a single enrollee, a health benefit plan requiring a calendar year deductible of, at a minimum, one thousand five hundred dollars and an annual out-of-pocket expense required to be paid under the plan (other than for premiums) for covered benefits of at least three thousand dollars; and

(b) In the case of a contract, agreement, or policy covering more than one enrollee, a health benefit plan requiring a calendar year deductible of, at a minimum, three thousand dollars and an annual out-of-pocket expense required to be paid under the plan (other than for premiums) for covered benefits of at least five thousand five hundred dollars; or

(c) Any health benefit plan that provides benefits for hospital inpatient and outpatient services, professional and prescription drugs provided in conjunction with such hospital inpatient and outpatient services, and excludes or substantially limits outpatient physician services and those services usually provided in an office setting.

(6) "Certification" means a determination by a review organization that an admission, extension of stay, or other health care service or procedure has been reviewed and, based on the information provided, meets the clinical requirements for medical necessity, appropriateness, level of care, or effectiveness under the auspices of the applicable health benefit plan.

(7) "Concurrent review" means utilization review conducted during a patient's hospital stay or course of treatment.

(8) "Covered person" or "enrollee" means a person covered by a health plan including an enrollee, subscriber, policyholder, beneficiary of a group plan, or individual covered by any other health plan.

(9) "Dependent" means, at a minimum, the enrollee's legal spouse and unmarried dependent children who qualify for coverage under the enrollee's health benefit plan.

(10) "Eligible employee" means an employee who works on a full-time basis with a normal work week of thirty or more hours. The term includes a self-employed individual, including a sole proprietor, a partner of a partnership, and may include an independent contractor, if the self-employed individual, sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer, but does not work less than thirty hours per week and derives at least seventy-five percent of his or her income from a trade or business through which he or she has attempted to earn taxable income and for which he or she has filed the appropriate internal revenue service form. Persons covered under a health benefit plan pursuant to the consolidated omnibus budget reconciliation act of 1986 shall not be considered eligible employees for purposes of minimum participation requirements of chapter 265, Laws of 1995.

(11) "Emergency medical condition" means the emergent and acute onset of a symptom or symptoms, including severe pain, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical attention, if failure to provide medical attention would result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part, or would place the person's health in serious jeopardy.

(12) "Emergency services" means otherwise covered health care services medically necessary to evaluate and treat an emergency medical condition, provided in a hospital emergency department.

(13) "Enrollee point-of-service cost-sharing" means amounts paid to health carriers directly providing services, health care providers, or health care facilities by enrollees and may include copayments, coinsurance, or deductibles.

(14) "Grievance" means a written complaint submitted by or on behalf of a covered person regarding: (a) Denial of payment for medical services or nonprovision of medical services included in the covered person's health benefit plan, or (b) service delivery issues other than denial of payment for medical services or nonprovision of medical services, including dissatisfaction with medical care, waiting time for medical services, provider or staff attitude or demeanor, or dissatisfaction with service provided by the health carrier.

(15) "Health care facility" or "facility" means hospices licensed under chapter 70.127 RCW, hospitals licensed under chapter 70.41 RCW, rural health care facilities as defined in RCW 70.175.020, psychiatric hospitals licensed under chapter 71.12 RCW, nursing homes licensed under chapter 18.51 RCW, community mental health centers licensed under chapter 71.05 or 71.24 RCW, kidney disease treatment centers licensed under chapter 70.41 RCW, ambulatory diagnostic, treatment, or surgical facilities licensed under chapter 70.41 RCW, drug and alcohol treatment facilities licensed under chapter 70.96A RCW, and home health agencies licensed under chapter 70.127 RCW, and includes such facilities if owned and operated by a political subdivision or instrumentality of the state and such other facilities as required by federal law and implementing regulations.

(16) "Health care provider" or "provider" means:

(a) A person regulated under Title 18 or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

(17) "Health care service" means that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(18) "Health carrier" or "carrier" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, or a health maintenance organization as defined in RCW 48.46.020.

(19) "Health plan" or "health benefit plan" means any policy, contract, or agreement offered by a health carrier to provide, arrange, reimburse, or pay for health care services except the following:

(a) Long-term care insurance governed by chapter 48.84 RCW;

(b) Medicare supplemental health insurance governed by chapter 48.66 RCW;

(c) Coverage supplemental to the coverage provided under chapter 55, Title 10, United States Code;

(d) Limited health care services offered by limited health care service contractors in accordance with RCW 48.44.035;

~~((d))~~ (e) Disability income;

~~((e))~~ (f) Coverage incidental to a property/casualty liability insurance policy such as automobile personal injury protection coverage and homeowner guest medical;

~~((f))~~ (g) Workers' compensation coverage;

~~((g))~~ (h) Accident only coverage;

~~((h))~~ (i) Specified disease and hospital confinement indemnity when marketed solely as a supplement to a health plan;

~~((i))~~ (j) Employer-sponsored self-funded health plans;

~~((j))~~ (k) Dental only and vision only coverage; and

~~((k))~~ (l) Plans deemed by the insurance commissioner to have a short-term limited purpose or duration, or to be a student-only plan that is guaranteed renewable while the covered person is enrolled as a regular full-time undergraduate or graduate student at an accredited higher education institution, after a written request for such classification by the carrier and subsequent written approval by the insurance commissioner.

(20) "Material modification" means a change in the actuarial value of the health plan as modified of more than five percent but less than fifteen percent.

(21) "Preexisting condition" means any medical condition, illness, or injury that existed any time prior to the effective date of coverage.

(22) "Premium" means all sums charged, received, or deposited by a health carrier as consideration for a health plan or the continuance of a health plan. Any assessment or any "membership," "policy," "contract," "service," or similar fee or charge made by a health carrier in consideration for a health plan is deemed part of the premium. "Premium" shall not include amounts paid as enrollee point-of-service cost-sharing.

(23) "Review organization" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, health care service contractor as defined in RCW 48.44.010, or health maintenance organization as defined in RCW 48.46.020, and entities affiliated with, under contract with, or acting on behalf of a health carrier to perform a utilization review.

(24) "Small employer" or "small group" means any person, firm, corporation, partnership, association, political subdivision, sole proprietor, or self-employed individual that is actively engaged in business that, on at least fifty percent of its working days during the preceding calendar quarter, employed at least two but no more than fifty eligible employees, with a normal work week of thirty or more hours, the majority of whom were employed within this state, and is not formed primarily for purposes of buying health insurance and in which a bona fide employer-employee relationship exists. In determining the number of eligible employees, companies that are affiliated companies, or that are eligible to file a combined tax return for purposes of taxation by this state, shall be considered an employer. Subsequent to the issuance of a health plan to a small employer and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided, a small employer shall continue to be considered a small employer until the plan anniversary following the date the small employer no longer meets the requirements of this definition. A self-employed individual or sole proprietor must derive at least seventy-five percent of his or her income from a trade or business through which the individual or sole proprietor has attempted to earn taxable income and for which he or she has filed the appropriate internal revenue service form 1040, schedule C or F, for the previous taxable year except for a self-employed individual or sole proprietor in an agricultural trade or business, who must derive at least fifty-one percent of his or her income from the trade or business through which the individual or sole proprietor has attempted to earn taxable income and for which he or she has filed the appropriate internal revenue service form 1040, for the previous taxable year. A self-employed individual or sole proprietor who is covered as a group of one on the day prior to June 10, 2004, shall also be considered a "small employer" to the extent that individual or group of one is entitled to have his or her coverage renewed as provided in RCW 48.43.035(6).

(25) "Utilization review" means the prospective, concurrent, or retrospective assessment of the necessity and appropriateness of the allocation of health care resources and services of a provider or facility, given or proposed to be given to an enrollee or group of enrollees.

(26) "Wellness activity" means an explicit program of an activity consistent with department of health guidelines, such as, smoking cessation, injury and accident prevention, reduction of alcohol misuse, appropriate weight reduction, exercise, automobile and motorcycle safety, blood cholesterol reduction, and nutrition education for the purpose of improving enrollee health status and reducing health service costs.

Sec. 17. RCW 48.22.030 and 2004 c 90 s 1 are each amended to read as follows:

(1) "Underinsured motor vehicle" means a motor vehicle with respect to the ownership, maintenance, or use of which either no bodily injury or property damage liability bond or insurance policy applies at the time of an accident, or with respect to which the sum of the limits of liability under all bodily injury or property damage liability bonds and insurance policies applicable to a covered person after an accident is less than the applicable damages which the covered person is legally entitled to recover.

(2) No new policy or renewal of an existing policy insuring against loss resulting from liability imposed by law for bodily injury, death, or property damage, suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall be issued with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of underinsured motor vehicles, hit-and-run motor vehicles, and phantom vehicles because of bodily injury, death, or property damage, resulting therefrom, except while operating or occupying a motorcycle or motor-driven cycle, and except while operating or occupying a motor vehicle owned or available for the regular use by the named insured or any family member, and which is not insured under the liability coverage of the policy. The coverage required to be offered under this chapter is not applicable to general liability policies, commonly known as umbrella policies, or other policies which apply only as excess to the insurance directly applicable to the vehicle insured.

(3) Except as to property damage, coverage required under subsection (2) of this section shall be in the same amount as the insured's third party liability coverage unless the insured rejects all or part of the coverage as provided in subsection (4) of this section. Coverage for property damage need only be issued in conjunction with coverage for bodily injury or death. Property damage coverage required under subsection (2) of this section shall mean physical damage to the insured motor vehicle unless the policy specifically provides coverage for the contents thereof or other forms of property damage.

(4) A named insured or spouse may reject, in writing, underinsured coverage for bodily injury or death, or property damage, and the requirements of subsections (2) and (3) of this section shall not apply. If a named insured or spouse has rejected underinsured coverage, such coverage shall not be included in any supplemental or renewal policy unless a named insured or spouse subsequently requests such coverage in writing. The requirement of a written rejection under this subsection shall apply only to the original issuance of policies issued after July 24, 1983, and not to any renewal or replacement policy. When a named insured or spouse chooses a property damage coverage that is less than the insured's third party liability coverage for property damage, a written rejection is not required.

(5) The limit of liability under the policy coverage may be defined as the maximum limits of liability for all damages resulting from any one accident regardless of the number of covered persons, claims made, or vehicles or premiums shown on the policy, or premiums paid, or vehicles involved in an accident.

(6) The policy may provide that if an injured person has other similar insurance available to him under other policies, the total limits of liability of all coverages shall not exceed the higher of the applicable limits of the respective coverages.

(7)(a) The policy may provide for a deductible of not more than three hundred dollars for payment for property damage when the damage is caused by a hit-and-run driver or a phantom vehicle.

(b) In all other cases of underinsured property damage coverage, the policy may provide for a deductible of not more than one hundred dollars.

(8) For the purposes of this chapter, a "phantom vehicle" shall mean a motor vehicle which causes bodily injury, death, or property damage to an insured and has no physical contact with the insured or the vehicle which the insured is occupying at the time of the accident if:

(a) The facts of the accident can be corroborated by competent evidence other than the testimony of the insured or any person having an underinsured motorist claim resulting from the accident; and

(b) The accident has been reported to the appropriate law enforcement agency within seventy-two hours of the accident.

(9) An insurer who elects to write motorcycle or motor-driven cycle insurance in this state must provide information to prospective insureds about the coverage.

NEW SECTION. **Sec. 18.** Sections 1 through 4 of this act take effect December 31, 2007.

Passed by the House January 18, 2006.

Passed by the Senate February 28, 2006.

Approved by the Governor March 9, 2006.

Filed in Office of Secretary of State March 9, 2006.

CHAPTER 26

[Substitute House Bill 2608]

VOLUNTEER FIRE FIGHTERS—RELIEF AND PENSIONS—PERFORMANCE OF DUTY

AN ACT Relating to the volunteer fire fighters' and reserve officers' relief and pension act; and amending RCW 41.24.010.

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

Sec. 1. RCW 41.24.010 and 2005 c 37 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) "Municipal corporation" or "municipality" includes any county, city, town or combination thereof, fire protection district, local law enforcement agency, or any emergency medical service district or other special district, authorized by law to protect life or property within its boundaries through a fire department, emergency workers, or reserve officers.

(2) "Fire department" means any regularly organized fire department or emergency medical service district consisting wholly of volunteer fire fighters, or any part-paid and part-volunteer fire department duly organized and maintained by any municipality: **PROVIDED**, That any such municipality wherein a part-paid fire department is maintained may by appropriate legislation permit the full-paid members of its department to come under the provisions of chapter 41.16 RCW.

(3) "Fire fighter" includes any fire fighter or emergency worker who is a member of any fire department of any municipality but shall not include fire fighters who are eligible for participation in the Washington law enforcement officers' and fire fighters' retirement system or the Washington public employees' retirement system, with respect to periods of service rendered in such capacity.

(4) "Emergency worker" means any emergency medical service personnel, regulated by chapters 18.71 and 18.73 RCW, who is a member of an emergency medical service district but shall not include emergency medical service personnel who are eligible for participation in the Washington public employees' retirement system, with respect to periods of service rendered in such capacity.

(5) "Performance of duty" or "performance of service" shall be construed to mean and include any work in and about company quarters, any fire station, any law enforcement office or precinct, or any other place under the direction or general orders of the chief or other officer having authority to order such member to perform such work; performing other officially assigned duties that are secondary to his or her duties as a fire fighter, emergency worker, or reserve officer such as maintenance, public education, inspections, investigations, court testimony, and fund-raising for the benefit of the department; being on call or on standby under the orders of the chief or designated officer of the department, except at the individual's home or place of business; responding to, working at, or returning from an alarm of fire, emergency call, or law enforcement duties; drill or training; or any work performed of an emergency nature in accordance with the rules and regulations of the fire department or local law enforcement agency.

(6) "State board" means the state board for volunteer fire fighters and reserve officers.

(7) "Board of trustees" or "local board" means: (a) For matters affecting fire fighters, a fire fighter board of trustees created under RCW 41.24.060; (b) for matters affecting an emergency worker, an emergency medical service district board of trustees created under RCW 41.24.330; or (c) for matters affecting reserve officers, a reserve officer board of trustees created under RCW 41.24.460.

(8) "Appropriate legislation" means an ordinance when an ordinance is the means of legislating by any municipality, and resolution in all other cases.

(9) "Reserve officer" means the same as defined by the Washington state criminal justice training commission under chapter 43.101 RCW, but shall not include enforcement officers who are eligible for participation in the Washington law enforcement officers' and fire fighters' retirement system or the Washington public employees' retirement system, with respect to periods of service rendered in such capacity.

(10) "Participant" means: (a) For purposes of relief, any reserve officer who is or may become eligible for relief under this chapter or any fire fighter or emergency worker; and (b) for purposes of retirement pension, any fire fighter, emergency worker, or reserve officer who is or may become eligible to receive a benefit of any type under the retirement provisions of this chapter, or whose beneficiary may be eligible to receive any such benefit.

(11) "Relief" means all medical, death, and disability benefits available under this chapter that are made necessary from death, sickness, injury, or disability arising in the performance of duty, including benefits provided under RCW 41.24.110, 41.24.150, 41.24.160, 41.24.175, 41.24.220, and 41.24.230, but does not include retirement pensions provided under this chapter.

(12) "Retirement pension" means retirement payments for the performance of service, as provided under RCW 41.24.170, 41.24.172, 41.24.175, 41.24.180, and 41.24.185.

(13) "Principal fund" means the volunteer fire fighters' and reserve officers' relief and pension principal fund created under RCW 41.24.030.

(14) "Administrative fund" means the volunteer fire fighters' and reserve officers' administrative fund created under RCW 41.24.030.

Passed by the House February 11, 2006.

Passed by the Senate February 27, 2006.

Approved by the Governor March 9, 2006.

Filed in Office of Secretary of State March 9, 2006.

CHAPTER 27

[House Bill 1305]

AUTHORIZED EMERGENCY VEHICLE PERMITS

AN ACT Relating to authorized emergency vehicles; and amending RCW 46.37.194.

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

Sec. 1. RCW 46.37.194 and 1987 c 330 s 711 are each amended to read as follows:

The state patrol may make rules and regulations relating to authorized emergency vehicles and shall test and approve sirens and emergency vehicle lamps to be used on such vehicles. The equipment and standards review unit shall require a record check of all applicants and drivers for an authorized emergency vehicle permit through the Washington state patrol criminal identification section pursuant to RCW 10.97.050 and through the federal bureau of investigation before issuing an authorized emergency vehicle permit. The record check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card. When necessary, applicants and drivers may be employed on a conditional basis pending completion of the investigation. Pursuant to RCW 43.43.742, the applicant, driver, or employer shall pay costs associated with the record check.

Passed by the House February 11, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 14, 2006.

Filed in Office of Secretary of State March 14, 2006.

CHAPTER 28

[Substitute House Bill 1504]

ABANDONED VEHICLE AUCTIONS

AN ACT Relating to abandoned vehicle auctions; and amending RCW 46.55.130.

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

Sec. 1. RCW 46.55.130 and 2002 c 279 s 12 are each amended to read as follows:

(1) If, after the expiration of fifteen days from the date of mailing of notice of custody and sale required in RCW 46.55.110(3) to the registered and legal owners, the vehicle remains unclaimed and has not been listed as a stolen vehicle, or a suspended license impound has been directed, but no security paid under RCW 46.55.120, then the registered tow truck operator having custody of

the vehicle shall conduct a sale of the vehicle at public auction after having first published a notice of the date, place, and time of the auction, and a method to contact the tow truck operator conducting the auction such as a telephone number, electronic mail address, or web site, in a newspaper of general circulation in the county in which the vehicle is located not less than three days and no more than ten days before the date of the auction. For the purposes of this section, a newspaper of general circulation may be a commercial, widely circulated, free, classified advertisement circular not affiliated with the registered tow truck operator and the notice may be listed in a classification delineating "Auctions" or similar language designed to attract potential bidders to the auction. The notice shall contain a ~~((description of the vehicle including the make, model, year, and license number and a))~~ notification that a ~~((three-hour))~~ public viewing period will be available before the auction and the length of the viewing period. The auction shall be held during daylight hours of a normal business day. The viewing period must be one hour if twenty-five or fewer vehicles are to be auctioned, two hours if more than twenty-five and fewer than fifty vehicles are to be auctioned, and three hours if fifty or more vehicles are to be auctioned.

(2) The following procedures are required in any public auction of such abandoned vehicles:

(a) The auction shall be held in such a manner that all persons present are given an equal time and opportunity to bid;

(b) All bidders must be present at the time of auction unless they have submitted to the registered tow truck operator, who may or may not choose to use the preauction bid method, a written bid on a specific vehicle. Written bids may be submitted up to five days before the auction and shall clearly state which vehicle is being bid upon, the amount of the bid, and who is submitting the bid;

(c) The open bid process, including all written bids, shall be used so that everyone knows the dollar value that must be exceeded;

(d) The highest two bids received shall be recorded in written form and shall include the name, address, and telephone number of each such bidder;

(e) In case the high bidder defaults, the next bidder has the right to purchase the vehicle for the amount of his or her bid;

(f) The successful bidder shall apply for title within fifteen days;

(g) The registered tow truck operator shall post a copy of the auction procedure at the bidding site. If the bidding site is different from the licensed office location, the operator shall post a clearly visible sign at the office location that describes in detail where the auction will be held. At the bidding site a copy of the newspaper advertisement that lists the vehicles for sale shall be posted;

(h) All surplus moneys derived from the auction after satisfaction of the registered tow truck operator's lien shall be remitted within thirty days to the department for deposit in the state motor vehicle fund. A report identifying the vehicles resulting in any surplus shall accompany the remitted funds. If the director subsequently receives a valid claim from the registered vehicle owner of record as determined by the department within one year from the date of the auction, the surplus moneys shall be remitted to such owner;

(i) If an operator receives no bid, or if the operator is the successful bidder at auction, the operator shall, within forty-five days, sell the vehicle to a licensed

vehicle wrecker, hulk hauler, or scrap processor by use of the abandoned vehicle report-affidavit of sale, or the operator shall apply for title to the vehicle.

(3) A tow truck operator may refuse to accept a bid at an abandoned vehicle auction under this section for any reason in the operator's posted operating procedures and for any of the following reasons: (a) The bidder is currently indebted to the operator; (b) the operator has knowledge that the bidder has previously abandoned vehicles purchased at auction; or (c) the bidder has purchased, at auction, more than four vehicles in the last calendar year without obtaining title to any or all of the vehicles. In no case may an operator hold a vehicle for longer than ninety days without holding an auction on the vehicle, except for vehicles that are under a police or judicial hold.

(4)(a) In no case may the accumulation of storage charges exceed fifteen days from the date of receipt of the information by the operator from the department as provided by RCW 46.55.110(3).

(b) The failure of the registered tow truck operator to comply with the time limits provided in this chapter limits the accumulation of storage charges to five days except where delay is unavoidable. Providing incorrect or incomplete identifying information to the department in the abandoned vehicle report shall be considered a failure to comply with these time limits if correct information is available. However, storage charges begin to accrue again on the date the correct and complete information is provided to the department by the registered tow truck operator.

Passed by the House February 10, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 14, 2006.

Filed in Office of Secretary of State March 14, 2006.

CHAPTER 29

[House Bill 1641]

VESSEL REGISTRATION VIOLATIONS

AN ACT Relating to decriminalizing vessel registration violations; amending RCW 88.02.020, 88.02.090, and 88.02.110; and prescribing penalties.

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

Sec. 1. RCW 88.02.020 and 1985 c 267 s 1 are each amended to read as follows:

Except as provided in this chapter, no person may own or operate any vessel on the waters of this state unless the vessel has been registered and displays a registration number and a valid decal in accordance with this chapter, except that a vessel which has or is required to have a valid marine document as a vessel of the United States is only required to display a valid decal. A violation of this section is a class 2 civil infraction.

Sec. 2. RCW 88.02.090 and 1983 c 7 s 21 are each amended to read as follows:

Any person charged with the enforcement of this chapter may request for inspection the certificate of registration from any vessel owner or operator to ascertain the legal and registered ownership of such vessel. Failure to provide such certificate for inspection upon the request of any person charged with

enforcement of this chapter (~~(constitutes)~~) is a (violation of this chapter and subjects the person requested to produce such document to the penalties provided by RCW 88.02.110) class 2 civil infraction.

Sec. 3. RCW 88.02.110 and 1993 c 244 s 4 are each amended to read as follows:

(1) Except as otherwise provided in this chapter, a violation of this chapter and the rules adopted by the department pursuant to these statutes is a misdemeanor punishable only by a fine not to exceed one hundred dollars per vessel for the first violation. Subsequent violations in the same year are subject to the following fines:

(a) For the second violation, a fine of two hundred dollars per vessel;

(b) For the third and successive violations, a fine of four hundred dollars per vessel.

(2) A violation designated in this chapter as a civil infraction shall be punished accordingly pursuant to chapter 7.80 RCW.

(3) After subtraction of court costs and administrative collection fees, moneys collected under this section shall be credited to the current expense fund of the arresting jurisdiction.

~~((3))~~ (4) All law enforcement officers shall have the authority to enforce this chapter, and the rules adopted by the department pursuant to these statutes within their respective jurisdictions: PROVIDED, That a city, town, or county may contract with a fire protection district for such enforcement and fire protection districts are authorized to engage in such activities.

Passed by the House February 9, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 14, 2006.

Filed in Office of Secretary of State March 14, 2006.

CHAPTER 30

[House Bill 2454]

SEXUAL ASSAULT ADVOCATES—PRIVILEGED COMMUNICATIONS

AN ACT Relating to the privilege for sexual assault advocates; and amending RCW 5.60.060.

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

Sec. 1. RCW 5.60.060 and 2005 c 504 s 705 are each amended to read as follows:

(1) A husband shall not be examined for or against his wife, without the consent of the wife, nor a wife for or against her husband without the consent of the husband; nor can either during marriage or afterward, be without the consent of the other, examined as to any communication made by one to the other during marriage. But this exception shall not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other, nor to a criminal action or proceeding against a spouse if the marriage occurred subsequent to the filing of formal charges against the defendant, nor to a criminal action or proceeding for a crime committed by said husband or wife against any child of whom said husband or wife is the parent or guardian, nor to a proceeding under chapter 70.96A, 70.96B, 71.05, or 71.09 RCW: PROVIDED, That the spouse of a person sought

to be detained under chapter 70.96A, 70.96B, 71.05, or 71.09 RCW may not be compelled to testify and shall be so informed by the court prior to being called as a witness.

(2)(a) An attorney or counselor shall not, without the consent of his or her client, be examined as to any communication made by the client to him or her, or his or her advice given thereon in the course of professional employment.

(b) A parent or guardian of a minor child arrested on a criminal charge may not be examined as to a communication between the child and his or her attorney if the communication was made in the presence of the parent or guardian. This privilege does not extend to communications made prior to the arrest.

(3) A member of the clergy or a priest shall not, without the consent of a person making the confession, be examined as to any confession made to him or her in his or her professional character, in the course of discipline enjoined by the church to which he or she belongs.

(4) Subject to the limitations under RCW 70.96A.140 or 71.05.360 (8) and (9), a physician or surgeon or osteopathic physician or surgeon or podiatric physician or surgeon shall not, without the consent of his or her patient, be examined in a civil action as to any information acquired in attending such patient, which was necessary to enable him or her to prescribe or act for the patient, except as follows:

(a) In any judicial proceedings regarding a child's injury, neglect, or sexual abuse or the cause thereof; and

(b) Ninety days after filing an action for personal injuries or wrongful death, the claimant shall be deemed to waive the physician-patient privilege. Waiver of the physician-patient privilege for any one physician or condition constitutes a waiver of the privilege as to all physicians or conditions, subject to such limitations as a court may impose pursuant to court rules.

(5) A public officer shall not be examined as a witness as to communications made to him or her in official confidence, when the public interest would suffer by the disclosure.

(6)(a) A peer support group counselor shall not, without consent of the law enforcement officer making the communication, be compelled to testify about any communication made to the counselor by the officer while receiving counseling. The counselor must be designated as such by the sheriff, police chief, or chief of the Washington state patrol, prior to the incident that results in counseling. The privilege only applies when the communication was made to the counselor while acting in his or her capacity as a peer support group counselor. The privilege does not apply if the counselor was an initial responding officer, a witness, or a party to the incident which prompted the delivery of peer support group counseling services to the law enforcement officer.

(b) For purposes of this section, "peer support group counselor" means a:

(i) Law enforcement officer, or civilian employee of a law enforcement agency, who has received training to provide emotional and moral support and counseling to an officer who needs those services as a result of an incident in which the officer was involved while acting in his or her official capacity; or

(ii) Nonemployee counselor who has been designated by the sheriff, police chief, or chief of the Washington state patrol to provide emotional and moral support and counseling to an officer who needs those services as a result of an

incident in which the officer was involved while acting in his or her official capacity.

(7) A sexual assault advocate may not, without the consent of the victim, be examined as to any communication made ~~((by))~~ between the victim ~~((to))~~ and the sexual assault advocate.

(a) For purposes of this section, "sexual assault advocate" means the employee or volunteer from a rape crisis center, victim assistance unit, program, or association, that provides information, medical or legal advocacy, counseling, or support to victims of sexual assault, who is designated by the victim to accompany the victim to the hospital or other health care facility and to proceedings concerning the alleged assault, including police and prosecution interviews and court proceedings.

(b) A sexual assault advocate may disclose a confidential communication without the consent of the victim if failure to disclose is likely to result in a clear, imminent risk of serious physical injury or death of the victim or another person. Any sexual assault advocate participating in good faith in the disclosing of records and communications under this section shall have immunity from any liability, civil, criminal, or otherwise, that might result from the action. In any proceeding, civil or criminal, arising out of a disclosure under this section, the good faith of the sexual assault advocate who disclosed the confidential communication shall be presumed.

Passed by the House February 10, 2006.

Passed by the Senate February 28, 2006.

Approved by the Governor March 14, 2006.

Filed in Office of Secretary of State March 14, 2006.

CHAPTER 31

[Substitute House Bill 2538]

INDUSTRIAL SAFETY AND HEALTH ACT—INSPECTIONS

AN ACT Relating to authorizing the department to request and superior court to grant warrants pursuant to chapter 49.17 RCW; amending RCW 49.17.070; adding a new section to chapter 49.17 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature intends that inspections performed under the Washington industrial safety and health act ensure safe and healthful working conditions for every person working in the state of Washington. Inspections must follow the mandates of Article II, section 35 of the state Constitution, and equal or exceed the requirements prescribed by the occupational safety and health act of 1970 (Public Law 91-596, 84 Stat. 1590). The legislature also intends that the inspections comply with the fourth and fourteenth amendments to the United States Constitution and Article I, section 7 of the state Constitution.

Sec. 2. RCW 49.17.070 and 1973 c 80 s 7 are each amended to read as follows:

(1) Subject to subsections (2) through (5) of this section, the director, or his or her authorized representative, in carrying out his or her duties under this chapter, upon the presentation of appropriate credentials to the owner, manager,

operator, or ~~((agent in charge))~~ on-site person in charge of the worksite, is authorized:

~~((1))~~ (a) To enter without delay and at all reasonable times the factory, plant, establishment, construction site, or other area, workplace, or environment where work is performed by an employee of an employer; and

~~((2))~~ (b) To inspect, survey, and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such workplace and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent, or employee~~((s))~~.

~~((3))~~ (2) In making inspections and making investigations under this chapter the director may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the superior courts. In the case of contumacy, failure, or refusal of any person to obey such an order, any superior court within the jurisdiction of which such person is found, or resides, or transacts business, upon the application of the director, shall have jurisdiction to issue to such person an order requiring such person to appear to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) Except as provided in subsection (4) of this section or section 3 of this act, the director or his or her authorized representative shall obtain consent from the owner, manager, operator, or his or her on-site person in charge of the worksite when entering any worksite located on private property to carry out his or her duties under this chapter. Solely for the purpose of requesting the consent required by this section, the director or his or her authorized representative shall, in a safe manner, enter a worksite at an entry point designated by the employer or, in the event no entry point has been designated, at a reasonably recognizable entry point.

(4) This section does not prohibit the director or his or her authorized representative from taking action consistent with a recognized exception to the warrant requirements of the federal and state Constitutions.

(5) This section does not require advance notice of an inspection.

NEW SECTION. Sec. 3. A new section is added to chapter 49.17 RCW to read as follows:

The director may apply to a court of competent jurisdiction for a search warrant authorizing access to any factory, plant, establishment, construction site, or other area, workplace, or environment where work is performed by an employee of an employer. The court may upon such application issue a search warrant for the purpose requested.

Passed by the House February 10, 2006.

Passed by the Senate February 28, 2006.

Approved by the Governor March 14, 2006.

Filed in Office of Secretary of State March 14, 2006.

CHAPTER 32

[House Bill 2676]

INTERLOCAL COOPERATIVE AGREEMENTS—ELECTRONIC AVAILABILITY

AN ACT Relating to making interlocal cooperative agreements available in electronic format; and amending RCW 39.34.040.

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

Sec. 1. RCW 39.34.040 and 1995 c 22 s 1 are each amended to read as follows:

Prior to its entry into force, an agreement made pursuant to this chapter shall be filed with the county auditor or, alternatively, listed by subject on a public agency's web site or other electronically retrievable public source. In the event that an agreement entered into pursuant to this chapter is between or among one or more public agencies of this state and one or more public agencies of another state or of the United States the agreement shall have the status of an interstate compact, but in any case or controversy involving performance or interpretation thereof or liability thereunder, the public agencies party thereto shall be real parties in interest and the state may maintain an action to recoup or otherwise make itself whole for any damages or liability which it may incur by reason of being joined as a party therein. Such action shall be maintainable against any public agency or agencies whose default, failure of performance, or other conduct caused or contributed to the incurring of damage or liability by the state.

Passed by the House February 8, 2006.

Passed by the Senate February 28, 2006.

Approved by the Governor March 14, 2006.

Filed in Office of Secretary of State March 14, 2006.

CHAPTER 33

[Substitute House Bill 2684]

RETIREMENT SYSTEMS—VESTING REQUIREMENTS

AN ACT Relating to vesting after five years of service in the defined benefit portion of the public employees' retirement system, the school employees' retirement system, and the teachers' retirement system plan 3; and amending RCW 41.32.875, 41.35.680, and 41.40.820.

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

Sec. 1. RCW 41.32.875 and 2000 c 247 s 903 are each amended to read as follows:

(1) NORMAL RETIREMENT. Any member who is at least age sixty-five and who has:

(a) Completed ten service credit years; or

(b) Completed five service credit years, including twelve service credit months after attaining age ~~((fifty-four))~~ forty-four; or

(c) Completed five service credit years by July 1, 1996, under plan 2 and who transferred to plan 3 under RCW 41.32.817; shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.840.

(2) EARLY RETIREMENT. Any member who has attained at least age fifty-five and has completed at least ten years of service shall be eligible to retire and to receive a retirement allowance computed according to the provisions of

RCW 41.32.840, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(3) ALTERNATE EARLY RETIREMENT. Any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.840, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by three percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

Sec. 2. RCW 41.35.680 and 2000 c 247 s 906 are each amended to read as follows:

(1) NORMAL RETIREMENT. Any member who is at least age sixty-five and who has:

- (a) Completed ten service credit years; or
- (b) Completed five service credit years, including twelve service credit months after attaining age (~~fifty-four~~) forty-four; or
- (c) Completed five service credit years by September 1, 2000, under the public employees' retirement system plan 2 and who transferred to plan 3 under RCW 41.35.510;

shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.620.

(2) EARLY RETIREMENT. Any member who has attained at least age fifty-five and has completed at least ten years of service shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.620, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(3) ALTERNATE EARLY RETIREMENT. Any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.620, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by three percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

Sec. 3. RCW 41.40.820 and 2000 c 247 s 309 are each amended to read as follows:

(1) NORMAL RETIREMENT. Any member who is at least age sixty-five and who has:

- (a) Completed ten service credit years; or
- (b) Completed five service credit years, including twelve service credit months after attaining age (~~fifty-four~~) forty-four; or
- (c) Completed five service credit years by the transfer payment date specified in RCW 41.40.795, under the public employees' retirement system plan 2 and who transferred to plan 3 under RCW 41.40.795;

shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.790.

(2) EARLY RETIREMENT. Any member who has attained at least age fifty-five and has completed at least ten years of service shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.790, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

(3) ALTERNATE EARLY RETIREMENT. Any member who has completed at least thirty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.790, except that a member retiring pursuant to this subsection shall have the retirement allowance reduced by three percent per year to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

Passed by the House February 11, 2006.

Passed by the Senate February 28, 2006.

Approved by the Governor March 14, 2006.

Filed in Office of Secretary of State March 14, 2006.

CHAPTER 34

[Substitute House Bill 2726]

WASHINGTON MANUFACTURING SERVICES

AN ACT Relating to assisting small manufacturers; and adding a new chapter to Title 24 RCW.

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

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

(a) To perform in the emerging global marketplace, Washington manufacturers must master new technologies, production processes, and methods of work organization;

(b) Only through modernization can Washington manufacturers both compete successfully in the market of the future and pay good wages;

(c) Most small and midsize manufacturers cannot easily access the technical assistance and skills training needed to make them globally competitive;

(d) To be effective, any program to improve the capability of Washington small and midsize manufacturers must reflect the specific needs and capabilities of those firms.

(2) It is the intent of the legislature that the state increase its support for delivery of modernization services to small and midsize manufacturers and leverage federal and private resources devoted to such efforts. It is the further intent of the legislature that the state facilitate the delivery of modernization services and:

(a) Encourage small and midsize firms to aggregate their demand for training and other modernization services, thus driving down the cost to the individual firm and securing more effective services; and

(b) Encourage large firms to support training consortia among their suppliers and validate the importance of high performance work organization and workplace learning as desirable supplier practices.

NEW SECTION. **Sec. 2.** (1) Washington manufacturing services is organized as a private, nonprofit corporation in accordance with chapter 24.03 RCW and this section. The mission of the center is to operate a modernization extension system, coordinate a network of public and private modernization resources, and stimulate the competitiveness of small and midsize manufacturers in Washington.

(2) Washington manufacturing services shall be governed by a board of directors. A majority of the board of directors shall be representatives of small and medium-sized manufacturing firms and industry associations, networks, or consortia. The board shall also include at least one member representing labor unions or labor councils and, as ex officio members, the director of the department of community, trade, and economic development, the executive director of the state board for community and technical colleges, and the director of the work force training and education coordinating board, or their respective designees.

(3) Washington manufacturing services may:

(a) Charge fees for services, make and execute contracts with any individual, corporation, association, public agency, or any other entity, and employ all other legal instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions under this chapter; and

(b) Receive funds from federal, state, or local governments, private businesses, foundations, or any other source for purposes consistent with this chapter.

(4) Washington manufacturing services shall:

(a) Develop policies, plans, and programs to assist in the modernization of businesses in targeted sectors of Washington's economy and coordinate the delivery of modernization services;

(b) Provide information about the advantages of modernization and the modernization services available in the state to federal, state, and local economic development officials, state colleges and universities, and private providers;

(c) Collaborate with the Washington quality initiative in the development of manufacturing quality standards and quality certification programs;

(d) Serve as an information clearinghouse and provide access for users to the federal manufacturing extension partnership national research and information system; and

(e) Provide, either directly or through contracts, assistance to industry associations, networks, or consortia, that would be of value to their member firms in:

(i) Adopting advanced business management practices such as strategic planning and total quality management;

(ii) Developing mechanisms for interfirm collaboration and cooperation;

(iii) Appraising, purchasing, installing, and effectively using equipment, technologies, and processes that improve the quality of goods and services and the productivity of the firm;

(iv) Improving human resource systems and work force training in a manner that moves firms toward flexible, high-performance work organizations;

(v) Developing new products;

(vi) Conducting market research, analysis, and development of new sales channels and export markets;

(vii) Improving processes to enhance environmental, health, and safety compliance; and
 (viii) Improving credit, capital management, and business finance skills.

NEW SECTION. Sec. 3. Sections 1 and 2 of this act constitute a new chapter in Title 24 RCW.

Passed by the House February 10, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 14, 2006.

Filed in Office of Secretary of State March 14, 2006.

CHAPTER 35

[Substitute House Bill 2759]

REAL PROPERTY TRANSFERS—PUBLIC BODIES—NONPROFIT CORPORATIONS

AN ACT Relating to the transfer of certain real property and facilities acquired, constructed, or improved using Referendum 29 or 37 bonds; adding a new section to chapter 43.99C RCW; adding a new section to chapter 43.83D RCW; adding a new section to chapter 36.34 RCW; adding a new section to chapter 43.19 RCW; adding a new section to chapter 28A.335 RCW; adding a new section to chapter 39.33 RCW; adding a new section to chapter 35.82 RCW; adding a new section to chapter 70.44 RCW; adding a new section to chapter 35.21 RCW; adding a new section to chapter 35A.79 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that protecting the public health, safety, and welfare by providing services to needy or vulnerable persons is a fundamental purpose of government. The legislature further finds that private nonprofit corporations fill an important public purpose in providing these types of health, safety, and welfare services to our state's residents. Acting through partnerships with governmental entities, these private sector providers are able to increase the amount and quality of these services available to state residents. The legislature finds that ensuring continued provision of these services in the private sector confers a valuable benefit on the public that constitutes consideration for transfer of certain public property and facilities to eligible private nonprofit corporations, subject to restrictions that provide continued protection of the public interest.

NEW SECTION. Sec. 2. A new section is added to chapter 43.99C RCW to read as follows:

(1) Public bodies, as defined in RCW 43.99C.020, may transfer without further consideration real property and facilities acquired, constructed, or otherwise improved under this chapter to nonprofit corporations organized to provide services for individuals with physical or mental disabilities, in exchange for the promise to continually operate services benefiting the public on the site, subject to all the conditions in this section. For purposes of this section, "transfer" may include lease renewals. The nonprofit corporation shall use the real property and facilities for the purpose of providing the following limited programs as designated by the department of social and health services: Nonprofit community centers, close-to-home living units, employment and independent living training centers, vocational rehabilitation centers, developmental disabilities training centers, and community homes for individuals with mental illness.

(2) The deed transferring the property in subsection (1) of this section must provide for immediate reversion back to the public body if the nonprofit corporation ceases to use the property for the purposes described in subsection (1) of this section.

(3) The nonprofit corporation is authorized to sell the property transferred to it pursuant to subsection (1) of this section only if all of the following conditions are satisfied: (a) Any such sale must have the prior written approval by the department of social and health services; (b) all proceeds from such a sale must be applied to the purchase price of a different property or properties of equal or greater value than the original property; (c) any new property or properties must be used for the purposes stated in subsection (1) of this section; (d) the new property or properties must be available for use within one year of sale; and (e) the nonprofit corporation must enter into an agreement with the public entity to reimburse the public entity for the value of the original property at the time of the sale if the nonprofit corporation ceases to use the new property for the purposes described in subsection (1) of this section.

(4) If the nonprofit corporation ceases to use the property for the purposes described in subsection (1) of this section, the property and facilities revert immediately to the public body. The public body shall then determine if the property, or the reimbursed amount in the case of a reimbursement under subsection (3)(e) of this section, may be used by another program as designated by the department of social and health services. These programs have priority in obtaining the property to ensure that the purposes specified in this chapter are carried out.

NEW SECTION. Sec. 3. A new section is added to chapter 43.83D RCW to read as follows:

(1) Public bodies, as defined in RCW 43.83D.050, may transfer without further consideration real property and facilities acquired, constructed, or otherwise improved under this chapter to nonprofit corporations organized to provide individuals with social and health services, in exchange for the promise to continually operate services benefiting the public on the site, subject to all the conditions in this section. For purposes of this section, "transfer" may include lease renewals. The nonprofit corporation shall use the real property and facilities for the purpose of providing the following programs as designated by the department of social and health services: Facilities for social services, adult and juvenile correction or detention, child welfare, day care, drug abuse and alcoholism treatment, mental health, public health, developmental disabilities, and vocational rehabilitation.

(2) The deed transferring the property in subsection (1) of this section must provide for immediate reversion back to the public body if the nonprofit corporation ceases to use the property for the purposes described in subsection (1) of this section.

(3) The nonprofit corporation is authorized to sell the property transferred to it pursuant to subsection (1) of this section only if all of the following conditions are satisfied: (a) Any such sale must be subject to prior written approval by the department of social and health services; (b) all proceeds from such a sale must be applied to the purchase price of a different property or properties of equal or greater value than the original property; (c) any new property or properties must be used for the purposes stated in subsection (1) of this section; (d) the new

property or properties must be available for use within one year of sale; and (e) the nonprofit corporation must enter into an agreement with the public entity to reimburse the public entity for the value of the original property at the time of the sale if the nonprofit corporation ceases to use the new property for the purposes described in subsection (1) of this section.

(4) If the nonprofit corporation ceases to use the property for the purposes described in subsection (1) of this section, the property and facilities revert immediately to the public body. The public body shall then determine if the property, or the reimbursed amount in the case of a reimbursement under subsection (3)(e) of this section, may be used by another program as designated by the department of social and health services. These programs have priority in obtaining the property to ensure that the purposes specified in this chapter are carried out.

NEW SECTION. Sec. 4. A new section is added to chapter 36.34 RCW to read as follows:

This chapter does not apply to transfers of property under sections 1 and 2 of this act.

NEW SECTION. Sec. 5. A new section is added to chapter 43.19 RCW to read as follows:

This chapter does not apply to transfers of property under sections 1 and 2 of this act.

NEW SECTION. Sec. 6. A new section is added to chapter 28A.335 RCW to read as follows:

This chapter does not apply to transfers of property under sections 1 and 2 of this act.

NEW SECTION. Sec. 7. A new section is added to chapter 39.33 RCW to read as follows:

This chapter does not apply to transfers of property under sections 1 and 2 of this act.

NEW SECTION. Sec. 8. A new section is added to chapter 35.82 RCW to read as follows:

This chapter does not apply to transfers of property under sections 1 and 2 of this act.

NEW SECTION. Sec. 9. A new section is added to chapter 70.44 RCW to read as follows:

This chapter does not apply to transfers of property under sections 1 and 2 of this act.

NEW SECTION. Sec. 10. A new section is added to chapter 35.21 RCW to read as follows:

Cities are authorized to transfer real property pursuant to sections 2 and 3 of this act.

NEW SECTION. Sec. 11. A new section is added to chapter 35A.79 RCW to read as follows:

Code cities are authorized to transfer real property pursuant to sections 2 and 3 of this act.

Passed by the House February 13, 2006.
Passed by the Senate February 28, 2006.
Approved by the Governor March 14, 2006.
Filed in Office of Secretary of State March 14, 2006.

CHAPTER 36

[Substitute House Bill 2776]

HOME HEATING FUEL SERVICE CONTRACTS

AN ACT Relating to home heating fuel service contracts; amending RCW 48.110.015 and 48.110.020; adding a new chapter to Title 48 RCW; and prescribing penalties.

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

NEW SECTION. Sec. 1. The legislature finds that certain service contracts involving providers of home heating fuel and homeowners are in the public interest. The legislature further finds that the existing statutory provisions regulating service contracts are more burdensome than is necessary to safeguard homeowners from the risk that a contract obligor will close or be unable to fulfill their contract obligations. The legislature declares that it is necessary to establish separate standards that will safeguard certain homeowners from possible losses arising from the cessation of business of a home heating fuel company or the mismanagement of funds paid for home heating fuel service contracts. The purpose of this chapter is to create a legal framework within which home heating fuel service contracts may be sold in this state and set forth requirements for conducting a service contract business.

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

(1) "Administrator" means the person who is responsible for the administration of the service contracts or the service contracts plan.

(2) "Commissioner" means the insurance commissioner of this state.

(3) "Consumer" means an individual who buys any tangible personal property that is primarily for personal, family, or household use.

(4) "Home heating fuel service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of a customer-owned home heating fuel supply system including the fuel tank and all visible pipes, caps, lines, and associated parts or the indemnification for repair, replacement, or maintenance for operational or structural failure due to a defect in materials or workmanship, or normal wear and tear.

(5) "Person" means an individual, partnership, corporation, incorporated or unincorporated association, joint stock company, reciprocal insurer, syndicate, or any similar entity or combination of entities acting in concert.

(6) "Premium" means the consideration paid to an insurer for a reimbursement insurance policy.

(7) "Provider fee" means the consideration paid by a consumer for a home heating fuel service contract.

(8) "Reimbursement insurance policy" means a policy of insurance that is issued to a service contract provider to provide reimbursement to the service contract provider or to pay on behalf of the service contract provider all

contractual obligations incurred by the service contract provider under the terms of the insured service contracts issued or sold by the service contract provider.

(9) "Home heating fuel service contract holder" or "contract holder" means a person who is the purchaser or holder of a home heating fuel service contract.

(10) "Home heating fuel service contract provider" or "contract provider" means a person who is providing home heating fuel delivery services to the customer and is contractually obligated to the home heating fuel service contract holder under the terms of the service contract.

(11) "Home heating fuel service contract seller" means the person who sells the home heating fuel service contract to the consumer.

(12) "Warranty" means a warranty made solely by the manufacturer, importer, or seller of property or services without consideration; that is not negotiated or separated from the sale of the product and is incidental to the sale of the product; and that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or other remedial measures, such as repair or replacement of the property or repetition of services.

NEW SECTION. Sec. 3. (1) A person shall not act as, or offer to act as, or hold himself or herself out to be a home heating fuel service contract provider in this state, nor may a home heating fuel service contract be sold to a consumer in this state, unless the contract provider has a valid registration as a home heating fuel service contract provider issued by the commissioner.

(2) Applicants to be a home heating fuel service contract provider shall make an application to the commissioner upon a form to be furnished by the commissioner. The application must include or be accompanied by the following information and documents:

(a) All basic organizational documents of the home heating fuel service contract provider, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement, bylaws, and other applicable documents, and all amendments to those documents;

(b) The identities of the contract provider's executive officer or officers directly responsible for the contract provider's home heating fuel service contract business;

(c) Annual financial statements or other financial reports acceptable to the commissioner for the two most recent years which prove that the applicant is solvent and any information the commissioner may require in order to review the current financial condition of the applicant;

(d) An application fee of one hundred dollars, which must be deposited into the general fund; and

(e) Any other pertinent information required by the commissioner.

(3) The commissioner may refuse to issue a registration if the commissioner determines that the home heating fuel service contract provider, or any individual responsible for the conduct of the affairs of the contract provider under subsection (2)(b) of this section, is not competent, trustworthy, or financially responsible.

(4) A registration issued under this section is valid, unless surrendered, suspended, or revoked by the commissioner, or not renewed for so long as the service contract provider continues in business in this state and remains in compliance with this chapter. A registration is subject to renewal annually on

July 1st upon application of the home heating fuel service contract provider and payment of a fee of twenty-five dollars, which must be deposited into the insurance commissioner's regulatory account under RCW 48.02.190. If not so renewed, the registration expires on July 31st of that year.

(5) A home heating fuel service contract provider shall keep current the information required to be disclosed in its registration under this section by reporting all material changes or additions within thirty days after the end of the month in which the change or addition occurs.

NEW SECTION. Sec. 4. (1) Every registered home heating fuel service contract provider that is assuring its faithful performance of its obligations to its contract holders by complying with section 5(2)(b) of this act shall file an annual report for the preceding calendar year with the commissioner on or before March 1st of each year, or within any extension of time the commissioner for good cause may grant. The report must be in the form and contain those matters as the commissioner prescribes and must be verified by at least two officers of the home heating fuel service contract provider.

(2) As part of an investigation by the commissioner, the commissioner may require a home heating fuel service contract provider to file monthly financial reports whenever, in the commissioner's discretion, there is a need to more closely monitor the financial activities of the service contract provider. Monthly financial statements must be filed in the commissioner's office no later than the twenty-fifth day of the month following the month for which the financial report is being filed. These monthly financial reports must be the internal financial statements of the service contract provider. The monthly financial reports that are filed with the commissioner constitute information that might be damaging to the service contract provider if made available to its competitors, and therefore shall be kept confidential by the commissioner. This information may not be made public or be subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner.

NEW SECTION. Sec. 5. (1) Home heating fuel service contracts may not be issued, sold, or offered for sale in this state or sold to consumers in this state unless the contract provider has:

(a) Provided a receipt for, or other written evidence of, the purchase of the home heating fuel service contract to the contract holder; and

(b) Provided a copy of the home heating fuel service contract to the service contract holder within a reasonable period of time from the date of purchase.

(2) In order to assure the faithful performance of a home heating fuel service contract provider's obligations to its contract holders, every home heating fuel service contract provider is responsible for complying with the requirements of one of the following:

(a) Insure all home heating fuel service contracts under a reimbursement insurance policy issued by an insurer holding a certificate of authority from the commissioner; or

(b)(i) Maintain a funded reserve account for its obligations under its home heating service contracts issued and outstanding in this state. The reserves may not be less than forty percent of the gross consideration received, less claims paid, on the sale of the home heating fuel service contract for all in-force

contracts. The reserve account is subject to examination and review by the insurance commissioner; and

(ii) Place in trust with the commissioner a financial security deposit, having a value of not less than five percent of the gross consideration received, less claims paid, on the sale of the service contract for all service contracts issued and in force, but not less than ten thousand dollars, consisting of one of the following:

(A) A surety bond issued by an insurer holding a certificate of authority from the commissioner;

(B) Securities of the type eligible for deposit by authorized insurers in this state;

(C) Cash;

(D) An evergreen letter of credit issued by a qualified financial institution;

(E) A pledged certificate of deposit issued by a qualified financial institution; or

(F) Another form of security prescribed by rule by the commissioner.

(3) Home heating fuel service contracts must require the contract provider to permit the contract holder to return the home heating fuel service contract within thirty days of the date the home heating fuel service contract was delivered to the contract holder, or within a longer time period permitted under the home heating fuel service contract. Upon return of the home heating fuel service contract to the contract provider within the applicable period, if no claim has been made under the home heating fuel service contract prior to the return to the contract provider, the home heating fuel service contract is void and the contract provider shall refund to the contract holder, or credit the account of the contract holder with the full purchase price of the home heating fuel service contract. The right to void the home heating fuel service contract provided in this subsection is not transferable and applies only to the original contract purchaser. A ten percent penalty per month must be added to a refund of the purchase price that is not paid or credited within thirty days after return of the home heating fuel service contract to the contract provider.

(4) Except for home heating fuel service contract providers, persons marketing, selling, or offering to sell home heating service contracts for providers are exempt from the registration requirements of this chapter.

(5) The marketing, sale, offering for sale, issuance, making, proposing to make, and administration of home heating fuel service contracts by contract providers and related contract sellers, administrators, and other persons complying with this chapter are exempt from the other provisions of this title, except chapter 48.04 RCW and as otherwise provided in this chapter.

NEW SECTION. Sec. 6. (1) Reimbursement insurance policies insuring home heating fuel service contracts issued, sold, or offered for sale in this state or sold to consumers in this state must state that the insurer that issued the reimbursement insurance policy shall reimburse or pay on behalf of the contract provider all sums the contract provider is legally obligated to pay, including but not limited to the refund of the full purchase price of the contract to the contract holder or shall provide the service which the contract provider is legally obligated to perform according to the contract provider's contractual obligations under the home heating fuel service contracts issued or sold by the contract provider.

(2) The reimbursement insurance policy must fully insure the obligations of the contract provider, rather than partially insure, or insure only in the event of contract provider default.

(3) The reimbursement insurance policy must state that the contract holder is entitled to apply directly to the reimbursement insurance company.

NEW SECTION. Sec. 7. (1) Home heating fuel service contracts marketed, sold, offered for sale, issued, made, proposed to be made, or administered in this state or sold to residents of this state must be written, printed, or typed in clear, understandable language that is easy to read, and disclose the requirements set forth in this section, as applicable.

(2) Home heating fuel service contracts insured under a reimbursement insurance policy must not be issued, sold, or offered for sale in this state or sold to residents of this state unless the home heating fuel service contract conspicuously contains a statement in substantially the following form: "Obligations of the home heating fuel service contract provider under this contract are insured under a contract reimbursement insurance policy." The home heating fuel service contract must also conspicuously state the name and address of the issuer of the reimbursement insurance policy and state that the contract holder is entitled to apply directly to the reimbursement insurance company.

(3) Service contracts not insured under a reimbursement insurance policy must contain a statement in substantially the following form: "Obligations of the home heating fuel service contract provider under this contract are backed by the full faith and credit of the home heating fuel service contract provider."

(4) Home heating fuel service contracts must state the name and address of the contract provider and must identify any administrator if different from the contract provider, the contract seller, and the contract holder to the extent that the name of the contract holder has been furnished by the contract holder. The identities of the parties are not required to be preprinted on the home heating fuel service contract and may be added to the home heating fuel service contract at the time of sale.

(5) Home heating fuel service contracts must state the purchase price of the contract and the terms under which the home heating fuel service contract is sold. The purchase price is not required to be preprinted on the home heating fuel service contract and may be negotiated at the time of sale.

(6) Home heating fuel service contracts must state the procedure to obtain service or to file a claim, including but not limited to the procedures for obtaining prior approval for repair work, the toll-free telephone number if prior approval is necessary for service, and the procedure for obtaining emergency repairs performed outside of normal business hours or provide for twenty-four hour telephone assistance.

(7) Home heating fuel service contracts must state the existence of any deductible amount, if applicable.

(8) Home heating fuel service contracts must specify the merchandise and services to be provided and any limitations, exceptions, or exclusions.

(9) Home heating fuel service contracts must state any restrictions governing the transferability of the service contract, if applicable.

(10) Home heating fuel service contracts must state the terms, restrictions, or conditions governing cancellation of the home heating fuel service contract

prior to the termination or expiration date of the home heating fuel service contract by either the contract provider or by the contract holder, which rights can be no more restrictive than provided in section 5 of this act. The contract provider of the home heating fuel service contract shall mail a written notice to the contract holder at the last known address of the contract holder contained in the records of the contract provider at least twenty-one days prior to cancellation by the contract provider. The notice must state the effective date of the cancellation and the true and actual reason for the cancellation.

(11) Home heating fuel service contracts must set forth the obligations and duties of the contract holder, including but not limited to the duty to protect against any further damage and any requirement to follow owner's manual instructions.

(12) Home heating fuel service contracts must state whether or not the home heating fuel service contract provides for or excludes consequential damages or preexisting conditions.

(13) Home heating fuel service contracts must not contain a provision that requires that any civil action brought in connection with the home heating fuel service contract must be brought in the courts of a jurisdiction other than this state. Home heating service contracts that authorize binding arbitration to resolve claims or disputes may allow for arbitration proceedings to be held at a location in closest proximity to the contract holder's permanent residence.

NEW SECTION. Sec. 8. (1) A home heating fuel service contract provider shall not use in its name the words insurance, casualty, guaranty, surety, mutual, or any other words descriptive of the insurance, casualty, guaranty, or surety business; or a name deceptively similar to the name or description of any insurance or surety corporation, or to the name of any other home heating fuel service contract provider. This subsection does not apply to a company that was using any of the prohibited language in its name prior to the effective date of this section. However, a company using the prohibited language in its name shall conspicuously disclose in its home heating fuel service contracts the following statement: "This agreement is not an insurance contract."

(2) Every home heating fuel service contract provider shall conduct its business in its own legal name, unless the commissioner has approved the use of another name.

(3) A home heating fuel service contract provider or its representative shall not in its contracts or literature make, permit, or cause to be made any false or misleading statement, or deliberately omit any material statement that would be considered misleading if omitted.

(4) A person, such as a bank, savings and loan association, lending institution, manufacturer, or seller shall not require the purchase of a home heating fuel service contract as a condition of a loan or a condition for the sale of any property.

NEW SECTION. Sec. 9. (1) The home heating fuel service contract provider shall keep accurate accounts, books, and records concerning transactions regulated under this chapter.

(2) The contract provider's accounts, books, and records must include the following:

(a) Copies of each type of home heating fuel service contract sold;

(b) The name and address of each contract holder, to the extent that the name and address have been furnished by the contract holder; and

(c) Written claim files that contain at least the dates, amounts, and descriptions of claims related to the service contracts.

(3) The records required under this chapter may be, but are not required to be, maintained on a computer disk or other recordkeeping technology. If the records are maintained in other than hard copy, the records must be capable of duplication to legible hard copy.

(4) A home heating fuel service contract provider discontinuing business in this state shall maintain its records until it furnishes the commissioner satisfactory proof that it has discharged all obligations to service contract holders in this state.

NEW SECTION. Sec. 10. As applicable, an insurer that issued a reimbursement insurance policy shall not terminate the policy until a notice of termination in accordance with RCW 48.18.290 has been given to the home heating fuel service contract provider and has been delivered to the commissioner. The termination of a reimbursement insurance policy does not reduce the issuer's responsibility for home heating fuel service contracts issued by contract providers prior to the effective date of the termination.

NEW SECTION. Sec. 11. (1) Home heating fuel service contract providers are the agent of the insurer that issued the reimbursement insurance policy for purposes of obligating the insurer to contract holders in accordance with the home heating fuel service contract and this chapter. Payment of the provider fee by the consumer to the home heating fuel service contract seller, contract provider, or administrator constitutes payment by the consumer to the home heating fuel service contract provider and to the insurer that issued the reimbursement insurance policy. In cases when a contract provider is acting as an administrator and enlists other contract providers, the contract provider acting as the administrator shall notify the insurer of the existence and identities of the other contract providers.

(2) This chapter does not prevent or limit the right of an insurer that issued a reimbursement insurance policy to seek indemnification or subrogation against a home heating fuel service contract provider if the issuer pays or is obligated to pay the contract holder sums that the contract provider was obligated to pay under the provisions of the home heating fuel service contract.

NEW SECTION. Sec. 12. (1) The commissioner may conduct investigations of home heating fuel service contract providers, administrators, home heating fuel service contract sellers, insurers, and other persons to enforce this chapter and protect home heating fuel service contract holders in this state. Upon request of the commissioner, the contract provider shall make all accounts, books, and records concerning home heating fuel service contracts sold by the contract provider available to the commissioner that are necessary to enable the commissioner to determine compliance or noncompliance with this chapter.

(2) The commissioner may take actions under RCW 48.02.080 or 48.04.050 that are necessary or appropriate to enforce this chapter and the commissioner's rules and orders, and to protect home heating fuel service contract holders in this state.

NEW SECTION. Sec. 13. (1) The commissioner may, subject to chapter 48.04 RCW, deny, suspend, or revoke the registration of a home heating fuel service contract provider if the commissioner finds that the contract provider:

- (a) Has violated this chapter or the commissioner's rules and orders;
- (b) Has refused to be investigated or to produce its accounts, records, and files for investigation, or if any of its officers have refused to give information with respect to its affairs or refused to perform any other legal obligation as to an investigation, when required by the commissioner;
- (c) Has, without just cause, refused to pay proper claims or perform services arising under its contracts or has, without just cause, caused home heating fuel service contract holders to accept less than the amount due them or caused home heating fuel service contract holders to employ attorneys or bring suit against the contract provider to secure full payment or settlement of claims;
- (d) Is affiliated with or under the same general management or interlocking directorate or ownership as another home heating fuel service contract provider that unlawfully transacts business in this state without having a registration;
- (e) At any time fails to meet any qualification for which issuance of the registration could have been refused had that failure then existed and been known to the commissioner;
- (f) Is under suspension or revocation in another state with respect to its home heating fuel service contract business;
- (g) Has made a material misstatement in its application for registration;
- (h) Has obtained or attempted to obtain a registration through misrepresentation or fraud;
- (i) Has, in the transaction of business under its registration, used fraudulent, coercive, or dishonest practices;
- (j) Has failed to pay any judgment rendered against it in this state regarding a home heating fuel service contract within sixty days after the judgment has become final; or
- (k) Has been convicted of, or has entered a plea of guilty or nolo contendere to, a property or finance-related felony.

(2) The commissioner may, without advance notice or hearing thereon, immediately suspend the registration of a home heating fuel service contract provider if the commissioner finds that any of the following circumstances exist:

- (a) The provider is insolvent;
- (b) A proceeding for receivership, conservatorship, rehabilitation, or other delinquency proceeding regarding the home heating fuel service contract provider has been commenced in any state; or
- (c) The financial condition or business practices of the home heating fuel service contract provider otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this state.

(3) If the commissioner finds that grounds exist for the suspension or revocation of a registration issued under this chapter, the commissioner may, in lieu of suspension or revocation, impose a fine upon the home heating fuel service contract provider in an amount not more than one thousand dollars per violation.

NEW SECTION. Sec. 14. The commissioner may adopt rules to implement and administer this chapter.

NEW SECTION. Sec. 15. This chapter applies to all home heating fuel service contracts sold or offered for sale after October 1, 2006.

Sec. 16. RCW 48.110.015 and 2000 c 208 s 1 are each amended to read as follows:

- (1) The following are exempt from this title:
 - (a) Warranties;
 - (b) Maintenance agreements; and
 - (c) Service contracts:
 - (i) Paid for with separate and additional consideration;
 - (ii) Issued at the point of sale, or within sixty days of the original purchase date of the property; and
 - (iii) On tangible property when the tangible property for which the service contract is sold has a purchase price of fifty dollars or less, exclusive of sales tax.
- (2) This chapter does not apply to:
 - (a) Vehicle service contracts which are governed under chapter 48.96 RCW;
 - (b) Vehicle mechanical breakdown insurance; (~~and~~)
 - (c) Service contracts on tangible personal property purchased by persons who are not consumers; and
 - (d) Home heating fuel service contracts offered by home heating energy providers.

Sec. 17. RCW 48.110.020 and 2000 c 208 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter.

- (1) "Administrator" means the person who is responsible for the administration of the service contracts or the service contracts plan.
- (2) "Commissioner" means the insurance commissioner of this state.
- (3) "Consumer" means an individual who buys any tangible personal property that is primarily for personal, family, or household use.
- (4) "Maintenance agreement" means a contract of limited duration that provides for scheduled maintenance only.
- (5) "Person" means an individual, partnership, corporation, incorporated or unincorporated association, joint stock company, reciprocal insurer, syndicate, or any similar entity or combination of entities acting in concert.
- (6) "Premium" means the consideration paid to an insurer for a reimbursement insurance policy.
- (7) "Provider fee" means the consideration paid by a consumer for a service contract.
- (8) "Reimbursement insurance policy" means a policy of insurance that is issued to a service contract provider to provide reimbursement to the service contract provider or to pay on behalf of the service contract provider all contractual obligations incurred by the service contract provider under the terms of the insured service contracts issued or sold by the service contract provider.
- (9) "Service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or the indemnification for repair, replacement, or maintenance for operational or structural failure due to a defect in materials or workmanship, or normal wear and tear. Service contracts may provide for the repair, replacement, or maintenance of property for damage resulting from

power surges and accidental damage from handling, with or without additional provision for indemnity payments for incidental damages to other property directly caused by the failure of the property which is the subject of the service contract, provided the indemnity payment per incident does not exceed the purchase price of the property that is the subject of the service contract.

(10) "Service contract holder" or "contract holder" means a person who is the purchaser or holder of a service contract.

(11) "Service contract provider" means a person who is contractually obligated to the service contract holder under the terms of the service contract.

(12) "Service contract seller" means the person who sells the service contract to the consumer.

(13) "Warranty" means a warranty made solely by the manufacturer, importer, or seller of property or services without consideration; that is not negotiated or separated from the sale of the product and is incidental to the sale of the product; and that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or other remedial measures, such as repair or replacement of the property or repetition of services.

(14) "Home heating fuel service contract" means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of a home heating fuel supply system including the fuel tank and all visible pipes, caps, lines, and associated parts or the indemnification for repair, replacement, or maintenance for operational or structural failure due to a defect in materials or workmanship, or normal wear and tear.

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. Sections 1 through 15 and 18 of this act constitute a new chapter in Title 48 RCW.

Passed by the House February 14, 2006.

Passed by the Senate February 28, 2006.

Approved by the Governor March 14, 2006.

Filed in Office of Secretary of State March 14, 2006.

CHAPTER 37

[House Bill 2874]

TRANSPORTATION PROJECTS—DESIGN-BUILD CONSTRUCTION

AN ACT Relating to design-build construction for transportation projects; and amending RCW 47.20.785.

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

Sec. 1. RCW 47.20.785 and 2001 c 226 s 3 are each amended to read as follows:

(1) The department of transportation may use the design-build procedure for public works projects over ten million dollars where:

~~((+))~~ (a) The construction activities are highly specialized and a design-build approach is critical in developing the construction methodology; or

~~((2))~~ (b) The projects selected provide opportunity for greater innovation and efficiencies between the designer and the builder; or

~~((3))~~ (c) Significant savings in project delivery time would be realized.

~~((This section expires April 30, 2008.))~~

(2) To test the applicability of the design-build procedure on smaller projects and specialty projects, the department may conduct up to five pilot projects on projects that cost between two and ten million dollars. The department shall evaluate these pilot projects with respect to cost, time to complete, efficiencies gained, if any, and other pertinent information to facilitate analysis regarding the further use of the design-build process on projects of this size.

Passed by the House February 10, 2006.

Passed by the Senate March 1, 2006.

Approved by the Governor March 14, 2006.

Filed in Office of Secretary of State March 14, 2006.

CHAPTER 38

[Substitute House Bill 2876]

LAW ENFORCEMENT—SOUND, VIDEO RECORDINGS

AN ACT Relating to sound and video recordings by law enforcement officers; and amending RCW 9.73.090.

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

Sec. 1. RCW 9.73.090 and 2000 c 195 s 2 are each amended to read as follows:

(1) The provisions of RCW 9.73.030 through 9.73.080 shall not apply to police, fire, emergency medical service, emergency communication center, and poison center personnel in the following instances:

(a) Recording incoming telephone calls to police and fire stations, licensed emergency medical service providers, emergency communication centers, and poison centers;

(b) Video and/or sound recordings may be made of arrested persons by police officers responsible for making arrests or holding persons in custody before their first appearance in court. Such video and/or sound recordings shall conform strictly to the following:

(i) The arrested person shall be informed that such recording is being made and the statement so informing him shall be included in the recording;

(ii) The recording shall commence with an indication of the time of the beginning thereof and terminate with an indication of the time thereof;

(iii) At the commencement of the recording the arrested person shall be fully informed of his constitutional rights, and such statements informing him shall be included in the recording;

(iv) The recordings shall only be used for valid police or court activities;

(c) Sound recordings that correspond to video images recorded by video cameras mounted in law enforcement vehicles. All law enforcement officers wearing a sound recording device that makes recordings corresponding to videos recorded by video cameras mounted in law enforcement vehicles must be in uniform. A sound recording device ~~(which)~~ that makes a recording pursuant to

this subsection (1)(c) (~~may only~~) must be operated simultaneously with the video camera when the operating system has been activated for an event. No sound recording device may be intentionally turned off by the law enforcement officer during the (~~operation of the video camera~~) recording of an event. Once the event has been captured, the officer may turn off the audio recording and place the system back into "pre-event" mode.

No sound or video recording made under this subsection (1)(c) may be duplicated and made available to the public by a law enforcement agency subject to this section until final disposition of any criminal or civil litigation which arises from the (~~incident or incidents~~) event or events which were recorded. Such sound recordings shall not be divulged or used by any law enforcement agency for any commercial purpose.

A law enforcement officer shall inform any person being recorded by sound under this subsection (1)(c) that a sound recording is being made and the statement so informing the person shall be included in the sound recording, except that the law enforcement officer is not required to inform the person being recorded if the person is being recorded under exigent circumstances. A law enforcement officer is not required to inform a person being recorded by video under this subsection (1)(c) that the person is being recorded by video.

(2) It shall not be unlawful for a law enforcement officer acting in the performance of the officer's official duties to intercept, record, or disclose an oral communication or conversation where the officer is a party to the communication or conversation or one of the parties to the communication or conversation has given prior consent to the interception, recording, or disclosure: PROVIDED, That prior to the interception, transmission, or recording the officer shall obtain written or telephonic authorization from a judge or magistrate, who shall approve the interception, recording, or disclosure of communications or conversations with a nonconsenting party for a reasonable and specified period of time, if there is probable cause to believe that the nonconsenting party has committed, is engaged in, or is about to commit a felony: PROVIDED HOWEVER, That if such authorization is given by telephone the authorization and officer's statement justifying such authorization must be electronically recorded by the judge or magistrate on a recording device in the custody of the judge or magistrate at the time transmitted and the recording shall be retained in the court records and reduced to writing as soon as possible thereafter.

Any recording or interception of a communication or conversation incident to a lawfully recorded or intercepted communication or conversation pursuant to this subsection shall be lawful and may be divulged.

All recordings of communications or conversations made pursuant to this subsection shall be retained for as long as any crime may be charged based on the events or communications or conversations recorded.

(3) Communications or conversations authorized to be intercepted, recorded, or disclosed by this section shall not be inadmissible under RCW 9.73.050.

(4) Authorizations issued under subsection (2) of this section shall be effective for not more than seven days, after which period the issuing authority may renew or continue the authorization for additional periods not to exceed seven days.

(5) If the judge or magistrate determines that there is probable cause to believe that the communication or conversation concerns the unlawful manufacture, delivery, sale, or possession with intent to manufacture, deliver, or sell, controlled substances as defined in chapter 69.50 RCW, or legend drugs as defined in chapter 69.41 RCW, or imitation controlled substances as defined in chapter 69.52 RCW, the judge or magistrate may authorize the interception, transmission, recording, or disclosure of communications or conversations under subsection (2) of this section even though the true name of the nonconsenting party, or the particular time and place for the interception, transmission, recording, or disclosure, is not known at the time of the request, if the authorization describes the nonconsenting party and subject matter of the communication or conversation with reasonable certainty under the circumstances. Any such communication or conversation may be intercepted, transmitted, recorded, or disclosed as authorized notwithstanding a change in the time or location of the communication or conversation after the authorization has been obtained or the presence of or participation in the communication or conversation by any additional party not named in the authorization.

Authorizations issued under this subsection shall be effective for not more than fourteen days, after which period the issuing authority may renew or continue the authorization for an additional period not to exceed fourteen days.

Passed by the House February 14, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 14, 2006.

Filed in Office of Secretary of State March 14, 2006.

CHAPTER 39

[House Bill 2932]

LEOFF RETIREMENT SYSTEM—CATASTROPHIC DISABILITY ALLOWANCE

AN ACT Relating to receiving a catastrophic disability allowance under the law enforcement officers' and fire fighters' retirement system, plan 2; amending RCW 41.26.470 and 77.12.264; and declaring an emergency.

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

Sec. 1. RCW 41.26.470 and 2005 c 451 s 1 are each amended to read as follows:

(1) A member of the retirement system who becomes totally incapacitated for continued employment by an employer as determined by the director shall be eligible to receive an allowance under the provisions of RCW 41.26.410 through 41.26.550. Such member shall receive a monthly disability allowance computed as provided for in RCW 41.26.420 and shall have such allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age fifty-three, except under subsection (7) of this section.

(2) Any member who receives an allowance under the provisions of this section shall be subject to such comprehensive medical examinations as required by the department. If such medical examinations reveal that such a member has recovered from the incapacitating disability and the member is no longer entitled to benefits under Title 51 RCW, the retirement allowance shall be canceled and the member shall be restored to duty in the same civil service rank, if any, held by the member at the time of retirement or, if unable to perform the duties of the

rank, then, at the member's request, in such other like or lesser rank as may be or become open and available, the duties of which the member is then able to perform. In no event shall a member previously drawing a disability allowance be returned or be restored to duty at a salary or rate of pay less than the current salary attached to the rank or position held by the member at the date of the retirement for disability. If the department determines that the member is able to return to service, the member is entitled to notice and a hearing. Both the notice and the hearing shall comply with the requirements of chapter 34.05 RCW, the Administrative Procedure Act.

(3) Those members subject to this chapter who became disabled in the line of duty on or after July 23, 1989, and who receive benefits under RCW 41.04.500 through 41.04.530 or similar benefits under RCW 41.04.535 shall receive or continue to receive service credit subject to the following:

(a) No member may receive more than one month's service credit in a calendar month.

(b) No service credit under this section may be allowed after a member separates or is separated without leave of absence.

(c) Employer contributions shall be paid by the employer at the rate in effect for the period of the service credited.

(d) Employee contributions shall be collected by the employer and paid to the department at the rate in effect for the period of service credited.

(e) State contributions shall be as provided in RCW 41.45.060 and 41.45.067.

(f) Contributions shall be based on the regular compensation which the member would have received had the disability not occurred.

(g) The service and compensation credit under this section shall be granted for a period not to exceed six consecutive months.

(h) Should the legislature revoke the service credit authorized under this section or repeal this section, no affected employee is entitled to receive the credit as a matter of contractual right.

(4)(a) If the recipient of a monthly retirement allowance under this section dies before the total of the retirement allowance paid to the recipient equals the amount of the accumulated contributions at the date of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the recipient has nominated by written designation duly executed and filed with the director, or, if there is no such designated person or persons still living at the time of the recipient's death, then to the surviving spouse, or, if there is neither such designated person or persons still living at the time of his or her death nor a surviving spouse, then to his or her legal representative.

(b) If a recipient of a monthly retirement allowance under this section died before April 27, 1989, and before the total of the retirement allowance paid to the recipient equaled the amount of his or her accumulated contributions at the date of retirement, then the department shall pay the balance of the accumulated contributions to the member's surviving spouse or, if there is no surviving spouse, then in equal shares to the member's children. If there is no surviving spouse or children, the department shall retain the contributions.

(5) Should the disability retirement allowance of any disability beneficiary be canceled for any cause other than reentrance into service or retirement for service, he or she shall be paid the excess, if any, of the accumulated

contributions at the time of retirement over all payments made on his or her behalf under this chapter.

(6) A member who becomes disabled in the line of duty, and who ceases to be an employee of an employer except by service or disability retirement, may request a refund of one hundred fifty percent of the member's accumulated contributions. Any accumulated contributions attributable to restorations made under RCW 41.50.165(2) shall be refunded at one hundred percent. A person in receipt of this benefit is a retiree.

(7) A member who becomes disabled in the line of duty shall be entitled to receive a minimum retirement allowance equal to ten percent of such member's final average salary. The member shall additionally receive a retirement allowance equal to two percent of such member's average final salary for each year of service beyond five.

(8) A member who is totally disabled in the line of duty is entitled to receive a retirement allowance equal to seventy percent of the member's final average salary. The allowance provided under this subsection shall be offset by:

(a) Temporary disability wage-replacement benefits or permanent total disability benefits provided to the member under Title 51 RCW; and

(b) Federal social security disability benefits, if any;

so that such an allowance does not result in the member receiving combined benefits that exceed one hundred percent of the member's final average salary. However, the offsets shall not in any case reduce the allowance provided under this subsection below the member's accrued retirement allowance.

A member is considered totally disabled if he or she is unable to perform any substantial gainful activity due to a physical or mental condition that may be expected to result in death or that has lasted or is expected to last at least twelve months. Substantial gainful activity is defined as average earnings in excess of eight hundred sixty dollars a month in 2006 adjusted annually as determined by the director based on federal social security disability standards. The department may require a person in receipt of an allowance under this subsection to provide any financial records that are necessary to determine continued eligibility for such an allowance. A person in receipt of an allowance under this subsection whose earnings exceed the threshold for substantial gainful activity shall have their benefit converted to a line-of-duty disability retirement allowance as provided in subsection (7) of this section.

Any person in receipt of an allowance under the provisions of this section is subject to comprehensive medical examinations as may be required by the department under subsection (2) of this section in order to determine continued eligibility for such an allowance.

Sec. 2. RCW 77.12.264 and 2001 c 253 s 18 are each amended to read as follows:

The director shall relieve from active duty fish and wildlife officers who are injured in the performance of their official duties to such an extent as to be incapable of active service. While relieved from active duty, the employees shall receive one-half of their salary less any compensation received through the provisions of RCW 41.26.470, 41.40.200, 41.40.220, and 77.12.262.

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

Passed by the House February 11, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 14, 2006.

Filed in Office of Secretary of State March 14, 2006.

CHAPTER 40

[Engrossed Substitute House Bill 2951]

FIREARMS CERTIFICATES—RETIRED LAW ENFORCEMENT OFFICERS

AN ACT Relating to a firearms training certificate program for retired law enforcement officers; and adding a new section to chapter 36.28A RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 36.28A RCW to read as follows:

(1) The purpose of this section is to establish a process for issuing firearms certificates to residents of Washington who are qualified retired law enforcement officers for the purpose of satisfying the certification requirements contained in the federal law enforcement officers safety act of 2004 (118 Stat. 865; 18 U.S.C. Sec. 926B and 926C).

(2) The Washington association of sheriffs and police chiefs shall develop a firearms certificate form to be used by local law enforcement agencies when issuing firearms certificates to retired law enforcement officers under this section.

(3) A retired law enforcement officer who is a resident of Washington may apply for a firearms certificate with a local law enforcement agency. The local law enforcement agency may issue the firearms certificate to a retired law enforcement officer if the officer:

(a) Has been qualified or otherwise found to meet the standards established by the criminal justice training commission for firearms qualifications for active law enforcement officers in the state; and

(b) Has undergone the same background check as required under RCW 9.41.070 and is not ineligible to possess a firearm under RCW 9.41.040 or 9.41.045.

(4) The qualification required under (3)(a) of this section may be performed by the local law enforcement agency or by an individual or entity certified to provide firearms training.

(5) The firearms certificate is valid for a period of one year. An applicant for the firearms certificate shall pay a fee of thirty-six dollars, plus additional charges imposed by the federal bureau of investigation that are passed on to the applicant. The fee shall be distributed in the same manner as the fee for a concealed pistol license under RCW 9.41.070. The retired law enforcement officer is also responsible for paying the costs of the firearms qualification required under (3)(a) of this section.

Passed by the House February 13, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 14, 2006.
Filed in Office of Secretary of State March 14, 2006.

CHAPTER 41

[House Bill 3056]

CITIES, TOWNS—PAYMENT OF CLAIMS

AN ACT Relating to payment of claims by checks or warrants; adding a new section to chapter 35.23 RCW; and adding a new section to chapter 35.27 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 35.23 RCW to read as follows:

A second class city, by ordinance, may adopt a policy for the payment of claims or other obligations of the city, which are payable out of solvent funds, electing to pay such obligations by warrant or by check. However, when the applicable fund is not solvent at the time payment is ordered, a warrant shall be issued. When checks are to be used, the legislative body shall designate the qualified public depository, upon which such checks are to be drawn, and the officers authorized or required to sign such checks. Wherever a reference is made to warrants in this title, such term shall include checks where authorized by this section.

NEW SECTION. Sec. 2. A new section is added to chapter 35.27 RCW to read as follows:

A town, by ordinance, may adopt a policy for the payment of claims or other obligations of the town, which are payable out of solvent funds, electing to pay such obligations by warrant or by check. However, when the applicable fund is not solvent at the time payment is ordered, a warrant shall be issued. When checks are to be used, the legislative body shall designate the qualified public depository, upon which such checks are to be drawn, and the officers authorized or required to sign such checks. Wherever a reference is made to warrants in this title, such term shall include checks where authorized by this section.

Passed by the House February 8, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 14, 2006.

Filed in Office of Secretary of State March 14, 2006.

CHAPTER 42

[Substitute House Bill 3085]

PUBLIC LANDS—TECHNICAL CORRECTIONS

AN ACT Relating to technical corrections to public lands statutes; amending RCW 79.15.050 and 79.15.080; and repealing 2003 c 381 ss 1, 2, and 3.

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

Sec. 1. RCW 79.15.050 and 2003 c 334 s 353 are each amended to read as follows:

(1) All sales of valuable materials exceeding ~~((twenty))~~ twenty-five thousand dollars in appraised value must be at public auction or by sealed bid to the highest bidder, provided that on public lands granted to the state for

educational purposes sealed bids may be accepted for sales of timber or stone only.

(2) A direct sale of valuable materials may be sold to the applicant for cash at full appraised value without notice or advertising. The board must, by resolution, establish the value amount of a direct sale not to exceed ~~((twenty))~~ twenty-five thousand dollars in appraised sale value, and establish procedures to ensure that competitive market prices and accountability are guaranteed.

Sec. 2. RCW 79.15.080 and 2003 c 334 s 347 are each amended to read as follows:

(1) Sales, other than direct sales, appraised at an amount not exceeding ~~((one))~~ two hundred fifty thousand dollars, when authorized by the board for sale, shall be advertised by publishing not less than ten days prior to sale a notice of such sale in a newspaper of general circulation located nearest to the property from which the valuable material is to be sold.

(2) Except as provided in RCW 79.15.050, all other proposed sales of valuable materials must be advertised through individual notice of sale and publication of a statewide list of sales.

(a) The notice of sale:

(i) Must specify the place, date, and time of sale, the appraised value thereof, and describe with particularity each parcel of land from which valuable materials are to be sold. The estimated volume will be identified and the terms of sale will be available in the region headquarters and the department's Olympia office;

(ii) May prescribe that the bid deposit required in RCW 79.15.110 be considered an opening bid;

(iii) ~~((Must be published not less than two times during a four-week period prior to the time of sale in at least one newspaper of general circulation where the material is located))~~ May be advertised by newspaper or by other means of publishing the information such as on the internet; and

(iv) Must be posted in a conspicuous place in the department's Olympia office and in the region headquarters administering the sale, and in the office of the county auditor of the county where the material is located.

(b) The department shall print a list of all valuable material on public lands that are to be sold. The list should be organized by county and by alphabetical order.

(i) The list should be published in a pamphlet form, issued at least four weeks prior to the date of any sale and provide sale information to prospective buyers.

(ii) The department must retain for free distribution in the Olympia office and the region offices sufficient copies of the pamphlet, to be kept in a conspicuous place, and, when requested to do so, must mail copies of the pamphlet as issued to any requesting applicant.

(iii) The department may seek additional means of publishing the information in the pamphlet, such as on the internet, to increase the number of prospective buyers.

(3) The department is authorized to expend any sum in additional advertising of the sales as it deems necessary.

NEW SECTION. **Sec. 3.** The following acts or parts of acts are each repealed:

- (1) 2003 c 381 s 1;
- (2) 2003 c 381 s 2; and
- (3) 2003 c 381 s 3.

Passed by the House February 10, 2006.

Passed by the Senate March 1, 2006.

Approved by the Governor March 14, 2006.

Filed in Office of Secretary of State March 14, 2006.

CHAPTER 43

[Substitute House Bill 3128]

TIED-HOUSE LAW—WINE EXEMPTIONS

AN ACT Relating to the relationship between liquor manufacturers, importers, or distributors and nonprofit organizations holding a liquor license; and reenacting and amending RCW 66.28.010.

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

Sec. 1. RCW 66.28.010 and 2004 c 160 s 9 and 2004 c 62 s 1 are each reenacted and amended to read as follows:

(1)(a) No manufacturer, importer, distributor, or authorized representative, or person financially interested, directly or indirectly, in such business; whether resident or nonresident, shall have any financial interest, direct or indirect, in any licensed retail business, unless the retail business is owned by a corporation in which a manufacturer or importer has no direct stock ownership and there are no interlocking officers and directors, the retail license is held by a corporation that is not owned directly or indirectly by a manufacturer or importer, the sales of liquor are incidental to the primary activity of operating the property as a hotel, alcoholic beverages produced by the manufacturer or importer or their subsidiaries are not sold at the licensed premises, and the board reviews the ownership and proposed method of operation of all involved entities and determines that there will not be an unacceptable level of control or undue influence over the operation or the retail licensee; nor shall any manufacturer, importer, distributor, or authorized representative own any of the property upon which such licensed persons conduct their business; nor shall any such licensed person, under any arrangement whatsoever, conduct his or her business upon property in which any manufacturer, importer, distributor, or authorized representative has any interest unless title to that property is owned by a corporation in which a manufacturer has no direct stock ownership and there are no interlocking officers or directors, the retail license is held by a corporation that is not owned directly or indirectly by the manufacturer, the sales of liquor are incidental to the primary activity of operating the property either as a hotel or as an amphitheater offering live musical and similar live entertainment activities to the public, alcoholic beverages produced by the manufacturer or any of its subsidiaries are not sold at the licensed premises, and the board reviews the ownership and proposed method of operation of all involved entities and determines that there will not be an unacceptable level of control or undue influence over the operation of the retail licensee. Except as provided in subsection (3) of this section, no manufacturer, importer, distributor, or

authorized representative shall advance moneys or moneys' worth to a licensed person under an arrangement, nor shall such licensed person receive, under an arrangement, an advance of moneys or moneys' worth. "Person" as used in this section only shall not include those state or federally chartered banks, state or federally chartered savings and loan associations, state or federally chartered mutual savings banks, or institutional investors which are not controlled directly or indirectly by a manufacturer, importer, distributor, or authorized representative as long as the bank, savings and loan association, or institutional investor does not influence or attempt to influence the purchasing practices of the retailer with respect to alcoholic beverages. Except as otherwise provided in this section, no manufacturer, importer, distributor, or authorized representative shall be eligible to receive or hold a retail license under this title, nor shall such manufacturer, importer, distributor, or authorized representative sell at retail any liquor as herein defined. A corporation granted an exemption under this subsection may use debt instruments issued in connection with financing construction or operations of its facilities.

(b) Nothing in this section shall prohibit a licensed domestic brewery or microbrewery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the brewery premises and nothing in this section shall prohibit a domestic winery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the winery premises. Such beer and wine so sold at retail shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210 and to reporting and bonding requirements as prescribed by regulations adopted by the board pursuant to chapter 34.05 RCW, and beer and wine that is not produced by the brewery or winery shall be purchased from a licensed beer or wine distributor.

(c) Nothing in this section shall prohibit a licensed distiller, domestic brewery, microbrewery, domestic winery, or a lessee of a licensed domestic brewer, microbrewery, or domestic winery, from being licensed as a spirits, beer, and wine restaurant pursuant to chapter 66.24 RCW for the purpose of selling liquor at a spirits, beer, and wine restaurant premises on the property on which the primary manufacturing facility of the licensed distiller, domestic brewer, microbrewery, or domestic winery is located or on contiguous property owned or leased by the licensed distiller, domestic brewer, microbrewery, or domestic winery as prescribed by rules adopted by the board pursuant to chapter 34.05 RCW.

(d) Nothing in this section prohibits retail licensees with a caterer's endorsement issued under RCW 66.24.320 or 66.24.420 from operating on a domestic winery premises.

(e) Nothing in this section prohibits an organization qualifying under RCW 66.24.375 formed for the purpose of constructing and operating a facility to promote Washington wines from holding retail licenses on the facility property or leasing all or any portion of such facility property to a retail licensee on the facility property if the members of the board of directors or officers of the board for the organization include officers, directors, owners, or employees of a licensed domestic winery. Financing for the construction of the facility must include both public and private money.

(f) Nothing in this section prohibits a bona fide charitable nonprofit society or association registered as a 501(c)(3) under the internal revenue code and

having an officer, director, owner, or employee of a licensed domestic winery or a wine certificate of approval holder on its board of directors from holding a special occasion license under RCW 66.24.380.

(2) Financial interest, direct or indirect, as used in this section, shall include any interest, whether by stock ownership, mortgage, lien, or through interlocking directors, or otherwise. Pursuant to rules promulgated by the board in accordance with chapter 34.05 RCW manufacturers, distributors, and importers may perform, and retailers may accept the service of building, rotating and restocking case displays and stock room inventories; rotating and rearranging can and bottle displays of their own products; provide point of sale material and brand signs; price case goods of their own brands; and perform such similar normal business services as the board may by regulation prescribe.

(3)(a) This section does not prohibit a manufacturer, importer, or distributor from providing services to a special occasion licensee for: (i) Installation of draft beer dispensing equipment or advertising, (ii) advertising, pouring, or dispensing of beer or wine at a beer or wine tasting exhibition or judging event, or (iii) a special occasion licensee from receiving any such services as may be provided by a manufacturer, importer, or distributor. Nothing in this section shall prohibit a retail licensee, or any person financially interested, directly or indirectly, in such a retail licensee from having a financial interest, direct or indirect, in a business which provides, for a compensation commensurate in value to the services provided, bottling, canning or other services to a manufacturer, so long as the retail licensee or person interested therein has no direct financial interest in or control of said manufacturer.

(b) A person holding contractual rights to payment from selling a liquor distributor's business and transferring the license shall not be deemed to have a financial interest under this section if the person (i) lacks any ownership in or control of the distributor, (ii) is not employed by the distributor, and (iii) does not influence or attempt to influence liquor purchases by retail liquor licensees from the distributor.

(c) The board shall adopt such rules as are deemed necessary to carry out the purposes and provisions of subsection (3)(a) of this section in accordance with the administrative procedure act, chapter 34.05 RCW.

(4) A license issued under RCW 66.24.395 does not constitute a retail license for the purposes of this section.

(5) A public house license issued under RCW 66.24.580 does not violate the provisions of this section as to a retailer having an interest directly or indirectly in a liquor-licensed manufacturer.

Passed by the House February 10, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 14, 2006.

Filed in Office of Secretary of State March 14, 2006.

CHAPTER 44

[House Bill 3154]

BEER SALES—OFF-PREMISES CONSUMPTION

AN ACT Relating to ensuring that brewers may sell beer of their own production from their restaurant premises; amending RCW 66.24.240; and reenacting and amending RCW 66.24.244.

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

Sec. 1. RCW 66.24.240 and 2003 c 154 s 1 are each amended to read as follows:

(1) There shall be a license for domestic breweries; fee to be two thousand dollars for production of sixty thousand barrels or more of malt liquor per year.

(2) Any domestic brewery, except for a brand owner of malt beverages under RCW 66.04.010(~~(5)~~) (6), licensed under this section may also act as a distributor and/or retailer for beer of its own production. Any domestic brewery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers. A domestic brewery holding a spirits, beer, and wine restaurant license may sell beer of its own production for off-premises consumption from its restaurant premises in kegs or in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap by the licensee at the time of sale.

(3) Any domestic brewery licensed under this section may contract-produce beer for a brand owner of malt beverages defined under RCW 66.04.010(~~(5)~~) (6), and this contract-production is not a sale for the purposes of RCW 66.28.170 and 66.28.180.

(4)(a) A domestic brewery licensed under this section and qualified for a reduced rate of taxation pursuant to RCW 66.24.290(3)(b) may apply to the board for an endorsement to sell bottled beer of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars.

(b) For each month during which a domestic brewery will sell beer at a qualifying farmers market, the domestic brewery must provide the board or its designee a list of the dates, times, and locations at which bottled beer may be offered for sale. This list must be received by the board before the domestic brewery may offer beer for sale at a qualifying farmers market.

(c) The beer sold at qualifying farmers markets must be produced in Washington.

(d) Each approved location in a qualifying farmers market is deemed to be part of the domestic brewery license for the purpose of this title. The approved locations under an endorsement granted under this subsection do not include the tasting or sampling privilege of a domestic brewery. The domestic brewery may not store beer at a farmers market beyond the hours that the domestic brewery offers bottled beer for sale. The domestic brewery may not act as a distributor from a farmers market location.

(e) Before a domestic brewery may sell bottled beer at a qualifying farmers market, the farmers market must apply to the board for authorization for any domestic brewery with an endorsement approved under this subsection to sell bottled beer at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved domestic brewery may sell bottled beer; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled beer may be sold. Before authorizing a qualifying farmers market to allow an approved domestic brewery to sell bottled beer at retail at its farmers market location, the board shall notify the persons or entities of such application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization

granted under this subsection (4)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and such additional rules as may be necessary to implement this section.

(g) For the purposes of this subsection:

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer.

Sec. 2. RCW 66.24.244 and 2003 c 167 s 1 and 2003 c 154 s 2 are each reenacted and amended to read as follows:

(1) There shall be a license for microbreweries; fee to be one hundred dollars for production of less than sixty thousand barrels of malt liquor, including strong beer, per year.

(2) Any microbrewery license under this section may also act as a distributor and/or retailer for beer and strong beer of its own production. Strong beer may not be sold at a farmers market or under any endorsement which may authorize microbreweries to sell beer at farmers markets. Any microbrewery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers. A microbrewery holding a spirits, beer, and wine restaurant license may sell beer of its own production for off-premises consumption from its restaurant premises in kegs or in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap by the licensee at the time of sale.

(3) The board may issue an endorsement to this license allowing for on-premises consumption of beer, including strong beer, wine, or both of other manufacture if purchased from a Washington state-licensed distributor. Each endorsement shall cost two hundred dollars per year, or four hundred dollars per year allowing the sale and service of both beer and wine.

(4) The microbrewer obtaining such endorsement must determine, at the time the endorsement is issued, whether the licensed premises will be operated either as a tavern with persons under twenty-one years of age not allowed as provided for in RCW 66.24.330, or as a beer and/or wine restaurant as described in RCW 66.24.320.

(5)(a) A microbrewery licensed under this section may apply to the board for an endorsement to sell bottled beer of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars.

(b) For each month during which a microbrewery will sell beer at a qualifying farmers market, the microbrewery must provide the board or its designee a list of the dates, times, and locations at which bottled beer may be offered for sale. This list must be received by the board before the microbrewery may offer beer for sale at a qualifying farmers market.

(c) The beer sold at qualifying farmers markets must be produced in Washington.

(d) Each approved location in a qualifying farmers market is deemed to be part of the microbrewery license for the purpose of this title. The approved locations under an endorsement granted under this subsection (5) do not constitute the tasting or sampling privilege of a microbrewery. The microbrewery may not store beer at a farmers market beyond the hours that the microbrewery offers bottled beer for sale. The microbrewery may not act as a distributor from a farmers market location.

(e) Before a microbrewery may sell bottled beer at a qualifying farmers market, the farmers market must apply to the board for authorization for any microbrewery with an endorsement approved under this subsection (5) to sell bottled beer at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved microbrewery may sell bottled beer; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled beer may be sold. Before authorizing a qualifying farmers market to allow an approved microbrewery to sell bottled beer at retail at its farmers market location, the board shall notify the persons or entities of the application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection (5)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and any additional rules necessary to implement this section.

(g) For the purposes of this subsection (5):

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer.

Passed by the House February 10, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 14, 2006.

Filed in Office of Secretary of State March 14, 2006.

CHAPTER 45

[Senate Bill 5439]

GUBERNATORIAL APPOINTEES—BACKGROUND CHECKS

AN ACT Relating to background checks on gubernatorial appointees; and adding a new section to chapter 43.06 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 43.06 RCW to read as follows:

When requested by the governor or the director of the department of personnel, nonconviction criminal history fingerprint record checks shall be conducted through the Washington state patrol identification and criminal history section and the federal bureau of investigation on applicants for agency head positions appointed by the governor. Information received pursuant to this section shall be confidential and made available only to the governor or director of the department of personnel or their employees directly involved in the selection, hiring, or background investigation of the subject of the record check. When necessary, applicants may be employed on a conditional basis pending completion of the criminal history record check. "Agency head" as used in this section has the same definition as provided in RCW 34.05.010.

Passed by the Senate February 14, 2006.

Passed by the House March 1, 2006.

Approved by the Governor March 14, 2006.

Filed in Office of Secretary of State March 14, 2006.

CHAPTER 46

[Senate Bill 6208]

SESSION LAW PUBLICATION

AN ACT Relating to session law publication; amending RCW 44.20.030 and 44.20.050; adding a new section to chapter 40.04 RCW; and repealing RCW 40.04.035 and 40.04.040.

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

Sec. 1. RCW 44.20.030 and 1982 1st ex.s. c 32 s 3 are each amended to read as follows:

The statute law committee, after ~~((each and))~~ every legislative session, whether regular or ~~((extraordinary))~~ special, shall ~~((cause to be reproduced or printed))~~ have available, on demand, for temporary use separate copies of each act filed in the office of secretary of state within ten days after the filing thereof.

~~((The committee shall cause to be reproduced or printed three thousand copies or such additional number as may be necessary of temporary bound sets of all acts filed in the office of secretary of state within seventy five days after the final adjournment of the legislature for that year.))~~

Sec. 2. RCW 44.20.050 and 1982 1st ex.s. c 32 s 4 are each amended to read as follows:

When all of the acts of any session of the legislature and initiative measures enacted by the people since the next preceding session have been certified to the statute law committee, the code reviser employed by the statute law committee shall make the proper headings and index of such acts or laws and, after such work has been completed, the statute law committee shall have published and bound ~~((in good buckram at least six hundred copies or such additional))~~ within seventy-five days after final adjournment of the legislature for that year as many copies as ~~((may be))~~ necessary of such acts and laws, with such headings and indexes, and such other matter as may be deemed essential, including a title page showing the session at which such acts were passed, the date of convening and adjournment of the session, and any other matter deemed proper, including a certificate by the secretary of state of such referendum measures as may have been enacted by the people since the next preceding session.

NEW SECTION. **Sec. 3.** A new section is added to chapter 40.04 RCW to read as follows:

The statute law committee, after each legislative session, shall distribute, sell, or exchange session laws as required under this section.

(1) One set shall be given to the following: The United States supreme court library; each state adult correctional institution; each state mental institution; the state historical society; the state bar association; the Olympia press corps library; the University of Washington library; the library of each of the regional universities; The Evergreen State College library; the Washington State University library; each county law library; and the municipal reference branch of the Seattle public library.

(2) One set shall be given to the following upon their request: Each member of the legislature; each state agency and its divisions; each state commission, committee, board, and council; each community college; each assistant attorney general; each member of the United States senate and house of representatives from this state; each state official whose office is created by the Constitution; each prosecuting attorney; and each public library in cities of the first class.

(3) Two sets shall be given to the following: The administrator for the courts; the library of congress; the law libraries of any accredited law schools established in this state; and the governor.

(4) Two sets shall be given to the following upon their request: Each United States district court in the state; and each office and branch office of the United States district attorneys in this state.

(5) Three sets shall be given to the library of the circuit court of appeals of the ninth circuit, upon its request.

(6) The following may request, and receive at no charge, as many sets as are needed for their official business: The senate and house of representatives; each county auditor, who shall receive and distribute sets for use by his or her county's officials; the office of the code reviser; the secretary of the senate; the chief clerk of the house of representatives; the supreme court; each court of appeals in the state; the superior courts; the state library; and the state law library.

(7) Surplus copies of the session laws shall be sold and delivered by the statute law committee, in which case the price of the bound volumes shall be sufficient to cover costs. All money received from the sale of the session law sets shall be paid into the state treasury for the general fund.

(8) The statute law committee may exchange session law sets for similar laws or legal materials of other states, territories, and governments, and make such other distribution of the sets as in its judgment seems proper.

NEW SECTION. Sec. 4. The following acts or parts of acts are each repealed:

(1) RCW 40.04.035 (Temporary edition of session laws—Distribution and sale) and 1995 c 24 s 2 & 1982 1st ex.s. c 32 s 5; and

(2) RCW 40.04.040 (Permanent edition of session laws—Distribution, sale, exchange—Sale of surplus copies) and 1995 c 24 s 3, 1982 1st ex.s. c 32 s 1, 1981 c 162 s 1, 1977 ex.s. c 169 s 94, 1973 c 33 s 1, 1969 c 6 s 8, & 1941 c 150 s 4.

Passed by the Senate February 14, 2006.

Passed by the House March 1, 2006.

Approved by the Governor March 14, 2006.

Filed in Office of Secretary of State March 14, 2006.

CHAPTER 47

[Substitute Senate Bill 6359]

UNEMPLOYMENT COMPENSATION—TRANSFER OF A BUSINESS

AN ACT Relating to ensuring employers do not evade their contribution rate; amending RCW 50.29.062 and 50.12.220; adding a new section to chapter 50.29 RCW; creating new sections; and declaring an emergency.

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

NEW SECTION. Sec. 1. A new section is added to chapter 50.29 RCW to read as follows:

(1) If it is found that a significant purpose of the transfer of a business was to obtain a reduced array calculation factor rate, then the following applies:

(a) If the successor was an employer at the time of the transfer, then the experience rating accounts of the employers involved shall be combined into a single account and the employers assigned the higher of the predecessor or successor array calculation factor rate to take effect as of the date of the transfer.

(b) If the successor was not an employer at the time of the transfer, then the experience rating account of the acquired business must not be transferred and, instead, the sum of the rate determined by the commissioner under RCW 50.29.025(2) (c)(ii) and (d)(ii), and 50.29.041 if applicable, shall be assigned.

(2) If any part of a delinquency for which an assessment is made under this title is due to an intent to knowingly evade the successorship provisions of RCW 50.29.062 and this section, then with respect to the employer, and to any business found to be knowingly promoting the evasion of such provisions:

(a) The commissioner shall, for the rate year in which the commissioner makes the determination under this subsection and for each of the three consecutive rate years following that rate year, assign to the employer or business the total rate, which is the sum of the recalculated array calculation factor rate and a civil penalty assessment rate, calculated as follows:

(i) Recalculate the array calculation factor rate as the array calculation factor rate that should have applied to the employer or business under RCW 50.29.025 and 50.29.062; and

(ii) Calculate a civil penalty assessment rate in an amount that, when added to the array calculation factor rate determined under (a)(i) of this subsection for the applicable rate year, results in a total rate equal to the maximum array calculation factor rate under RCW 50.29.025 plus two percent, which total rate is not limited by any maximum array calculation factor rate established in RCW 50.29.025(2)(b)(ii);

(b) The employer or business may be prosecuted under the penalties prescribed in RCW 50.36.020; and

(c) The employer or business must pay for the employment security department's reasonable expenses of auditing the employer's or business's books and collecting the civil penalty assessment.

(3) If the person knowingly evading the successorship provisions, or knowingly attempting to evade these provisions, or knowingly promoting the evasion of these provisions, is not an employer, the person is subject to a civil penalty assessment of five thousand dollars per occurrence. In addition, the person is subject to the penalties prescribed in RCW 50.36.020 as if the person were an employer. The person must also pay for the employment security department's reasonable expenses of auditing his or her books and collecting the civil penalty assessment.

(4) For purposes of this section:

(a) "Knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved and includes, but is not limited to, intent to evade, misrepresentation, or willful nondisclosure.

(b) "Person" means and includes an individual, a trust, estate, partnership, association, company, or corporation.

(c) "Transfer of a business" includes the transfer or acquisition of substantially all or a portion of the operating assets, which may include the employer's work force.

(5) Any decision to assess a penalty under this section shall be made by the chief administrative officer of the tax branch or his or her designee.

(6) Nothing in this section shall be construed to deny an employer the right to appeal the assessment of a penalty in the manner provided in RCW 50.32.030.

(7) All penalties and interest collected under this section shall be expended solely for prevention, detection, and collection activities related to evasion of the successorship provisions of RCW 50.29.062 and this section, and for no other purposes.

(8) The commissioner shall establish procedures to enforce this section.

Sec. 2. RCW 50.29.062 and 2003 2nd sp.s. c 4 s 18 are each amended to read as follows:

Except as provided in section 1 of this act, predecessor and successor employer contribution rates shall be computed in the following manner:

(1) If the successor is an employer, as defined in RCW 50.04.080, at the time of the transfer(~~(-its)~~) of a business, the following applies:

(a) The successor's contribution rate shall remain unchanged for the remainder of the rate year in which the transfer occurs(~~(-From and after)~~); and

(b) Beginning January 1st following the transfer, the successor's contribution rate for each rate year shall be based on (~~(its)~~) a combination of the following:

(i) The successor's experience with payrolls and benefits (~~(including the experience of the acquired business or portion of a business from the date of transfer, as of the regular computation date for that rate year)~~); and

(ii) Any experience assigned to the predecessor involved in the transfer. If only a portion of the business was transferred, then the experience attributable to the acquired portion is assigned to the successor.

(2) (~~For transfers before January 1, 2005, the following applies~~) If the successor is not an employer at the time of the transfer(~~(-)~~), the following applies:

(a) For transfers before January 1, 2005:

(i) Except as provided in (ii) of this subsection (2)(a), the successor shall pay contributions at the lowest rate determined under either of the following:

(~~(a)~~) (i) For transfers before January 1, 1997, the contribution rate of the rate class assigned to the predecessor employer at the time of the transfer for the remainder of that rate year and continuing until the successor qualifies for a different rate in its own right;

(~~ii~~) For transfers on or after January 1, 1997,))

(A) The contribution rate of the rate class assigned to the predecessor employer at the time of the transfer for the remainder of that rate year. Any experience relating to the assignment of that rate class attributable to the predecessor is transferred to the successor. Beginning with the January 1st following the transfer, the successor's contribution rate shall be based on a combination of the transferred experience of the acquired business and the successor's experience after the transfer; or

(~~(b)~~) (B) The contribution rate equal to the average industry rate as determined by the commissioner, but not less than one percent, and continuing until the successor qualifies for a different rate in its own right. Assignment of employers by the commissioner to industrial classification, for purposes of this subsection, must be in accordance with established classification practices found

in the (~~("Standard Industrial Classification Manual")~~) North American industry classification system issued by the federal office of management and budget to the (~~(third)~~) fourth digit provided in the (~~(standard industrial classification code, or in the)~~) North American industry classification (~~(code)~~) system.

~~((3))~~ For transfers before January 1, 2005, if the successor is not an employer at the time of the transfer and) (ii) If the successor simultaneously acquires the business or a portion of the business of two or more employers in different rate classes, its rate from the date the transfer occurred until the end of that rate year and until it qualifies in its own right for a new rate, shall be the rate of the highest rate class applicable at the time of the acquisition to any predecessor employer who is a party to the acquisition, but not less than one percent.

~~((4))~~ (b) For transfers on or after January 1, 2005(~~, the following applies if the successor is not an employer at the time of the transfer)~~):

~~((a))~~ (i) Except as provided in ~~((b))~~ (ii) and (iii) of this subsection (2)(b), the successor shall pay contributions:

~~((i))~~ (A) At the contribution rate (~~(determined for)~~) assigned to the predecessor employer at the time of the transfer for the remainder of ~~((the)) that~~ rate year. Any experience attributable to the predecessor relating to the assignment of the predecessor's rate class is transferred to the successor. (~~On and after)~~

(B) Beginning January 1st following the transfer, the successor's contribution rate for each rate year shall be based on an array calculation factor rate (~~(shall be based on the transferred experience of the acquired business and the successor's experience after the transfer; or~~

~~((ii))~~ (ii) that is a combination of the following: The successor's experience with payrolls and benefits; and any experience assigned to the predecessor involved in the transfer. If only a portion of the business was transferred, then the experience attributable to the acquired portion is assigned to the successor if qualified under RCW 50.29.010(6) by including the transferred experience. If not qualified under RCW 50.29.010(6), the contribution rate shall equal ~~((the))~~ the sum of the rates determined by the commissioner under RCW 50.29.025(2) (c)(ii) and (d)(ii), and 50.29.041, if applicable, and continuing until the successor qualifies for a different rate ~~((in its own right)), including the transferred experience.~~

~~((b))~~ (ii) If there is a substantial continuity of ownership, control, or management by the successor of the business of the predecessor, the successor shall pay contributions at the contribution rate determined for the predecessor employer at the time of the transfer for the remainder of that rate year. Any experience attributable to the predecessor relating to the assignment of the predecessor's rate class is transferred to the successor. (~~On and after)~~ Beginning January 1st following the transfer, the successor's array calculation factor rate shall be based on a combination of the transferred experience of the acquired business and the successor's experience after the transfer.

~~((c))~~ (iii) If the successor simultaneously acquires the business or a portion of the business of two or more employers with different contribution rates, the successor's rate from the date the transfer occurred until the end of that rate year and until it qualifies in its own right for a new rate, shall be the sum of the rates determined by the commissioner under RCW 50.29.025(2) (a) and (b), and

50.29.041, applicable at the time of the acquisition, to the predecessor employer who, among the parties to the acquisition, had the largest ~~((taxable))~~ total payroll in the completed calendar quarter immediately preceding the date of transfer, but not less than the sum of the rates determined by the commissioner under RCW 50.29.025(2) (c)(ii) and (d)(ii), and 50.29.041, if applicable.

~~((5))~~ (3) With respect to predecessor employers:

(a) The contribution rate on any payroll retained by a predecessor employer shall remain unchanged for the remainder of the rate year in which the transfer occurs.

~~((6))~~ (b) In all cases, ~~((from and after))~~ beginning January 1st following the transfer, the predecessor's contribution rate or ~~((beginning January 1, 2005,))~~ the predecessor's array calculation factor for each rate year shall be based on its experience with payrolls and benefits as of the regular computation date for that rate year ~~((including))~~ excluding the experience of the ~~((acquired))~~ transferred business or transferred portion of business ~~((up to the date of transfer))~~ as that experience has transferred to the successor: PROVIDED, That if all of the predecessor's business is transferred to a successor or successors, the predecessor shall not be a qualified employer until it satisfies the requirements of a "qualified employer" as set forth in RCW 50.29.010.

(4) For purposes of this section, "transfer of a business" means the same as section 1(4)(c) of this act.

Sec. 3. RCW 50.12.220 and 2004 c 97 s 1 are each amended to read as follows:

(1)(a) If an employer fails to file in a timely and complete manner a report required by RCW 50.12.070, or the rules adopted pursuant thereto, the employer shall be subject to a penalty to be determined by the commissioner, but not to exceed two hundred fifty dollars or ten percent of the quarterly contributions for each such offense, whichever is less.

(b) If an employer knowingly misrepresents to the employment security department the amount of his or her payroll upon which contributions under this title are based, the employer shall be liable to the state for up to ten times the amount of the difference in contributions paid, if any, and the amount the employer should have paid and for the reasonable expenses of auditing his or her books and collecting such sums. Such liability may be enforced in the name of the department.

~~((c) If any part of a delinquency for which an assessment is made under this title is due to an intent to evade the successorship provisions of RCW 50.29.062, then for the calendar year in which the commissioner makes the determination under this subsection, the commissioner shall assign to the employer, and to any business found to be promoting the evasion of such provisions, the contribution rate determined for that calendar year under RCW 50.29.025, including the solvency surcharge, if any, for rate class 20 or rate class 40, as applicable, plus two percent.))~~

(2) If contributions are not paid on the date on which they are due and payable as prescribed by the commissioner, there shall be assessed a penalty of five percent of the amount of the contributions for the first month or part thereof of delinquency; there shall be assessed a total penalty of ten percent of the amount of the contributions for the second month or part thereof of delinquency; and there shall be assessed a total penalty of twenty percent of the amount of the

contributions for the third month or part thereof of delinquency. No penalty so added shall be less than ten dollars. These penalties are in addition to the interest charges assessed under RCW 50.24.040.

(3) Penalties shall not accrue on contributions from an estate in the hands of a receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer subsequent to the date when such receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer qualifies as such, but contributions accruing with respect to employment of persons by a receiver, executor, administrator, trustee in bankruptcy, common law assignee, or other liquidating officer shall become due and shall be subject to penalties in the same manner as contributions due from other employers.

(4) Where adequate information has been furnished to the department and the department has failed to act or has advised the employer of no liability or inability to decide the issue, penalties shall be waived by the commissioner. Penalties may also be waived for good cause if the commissioner determines that the failure to timely file reports or pay contributions was not due to the employer's fault.

(5) Any decision to assess a penalty as provided by this section shall be made by the chief administrative officer of the tax branch or his or her designee.

(6) Nothing in this section shall be construed to deny an employer the right to appeal the assessment of any penalty. Such appeal shall be made in the manner provided in RCW 50.32.030.

NEW SECTION. Sec. 4. The commissioner of the employment security department may adopt rules necessary to implement this act.

NEW SECTION. Sec. 5. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state.

NEW SECTION. Sec. 6. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 7. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

NEW SECTION. Sec. 8. This act is remedial in nature and shall be applied retroactively to January 1, 2006.

Passed by the Senate February 6, 2006.

Passed by the House March 1, 2006.

Approved by the Governor March 14, 2006.

Filed in Office of Secretary of State March 14, 2006.

CHAPTER 48

[Senate Bill 6463]

BANKS—LIMITED LIABILITY COMPANY FORMATION

AN ACT Relating to banks and savings banks; amending RCW 25.15.030 and 25.15.270; adding a new section to chapter 30.08 RCW; and adding a new section to chapter 32.08 RCW.

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

Sec. 1. RCW 25.15.030 and 1994 c 211 s 106 are each amended to read as follows:

(1) Every limited liability company formed under this chapter may carry on any lawful business or activity unless a more limited purpose is set forth in the certificate of formation. A limited liability company may not be formed under this chapter for the purposes of ~~((banking or))~~ engaging in business as an insurer.

(2) Unless this chapter, its certificate of formation, or its limited liability company agreement provides otherwise, a limited liability company has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs.

NEW SECTION. Sec. 2. A new section is added to chapter 30.08 RCW to read as follows:

(1) Notwithstanding any other provision of this title, if the conditions of this section are met, a bank, or a holding company of a bank, may be organized as, or convert to, a limited liability company under the Washington limited liability company act, chapter 25.15 RCW. As used in this section, "bank" includes an applicant to become a bank or holding company of a bank, and "holding company" means a holding company of a bank.

(2)(a) Before a bank or holding company may organize as, or convert to, a limited liability company, the bank or holding company must obtain approval of the director.

(b)(i) To obtain approval under this section from the director, the bank or holding company must file a request for approval with the director at least ninety days before the day on which the bank or holding company becomes a limited liability company.

(ii) If the director does not disapprove the request for approval within ninety days from the day on which the director receives the request, the request is considered approved.

(iii) When taking action on a request for approval filed under this section, the director may:

(A) Approve the request;

(B) Approve the request subject to terms and conditions the director considers necessary; or

(C) Disapprove the request.

(3) To approve a request for approval, the director must find that the bank or holding company:

(a) Will operate in a safe and sound manner; and

(b) Has the following characteristics:

(i) The certificate of formation and limited liability company require or set forth that the duration of the limited liability company is perpetual;

(ii) The bank or holding company is not otherwise subject to automatic termination, dissolution, or suspension upon the happening of some event other than the passage of time;

(iii) The exclusive authority to manage the bank or holding company is vested in a board of managers or directors that:

(A) Is elected or appointed by the owners;

(B) Is not required to have owners of the bank or holding company included on the board;

(C) Possesses adequate independence and authority to supervise the operation of the bank or holding company; and

(D) Operates with substantially the same rights, powers, privileges, duties, and responsibilities as the board of directors of a corporation;

(iv) Neither state law, nor the bank's or holding company's operating agreement, bylaws, or other organizational documents provide that an owner of the bank or holding company is liable for the debts, liabilities, and obligations of the bank or holding company in excess of the amount of the owner's investment;

(v) Neither state law, nor the bank's or holding company's operating agreement, bylaws, or other organizational documents require the consent of any other owner of the bank or holding company in order for any owner to transfer an ownership interest in the bank or holding company, including voting rights;

(vi) The bank or holding company is able to obtain new investment funding if needed to maintain adequate capital;

(vii) The bank or holding company is able to comply with all legal and regulatory requirements for a federally insured depository bank, or holding company of a federally insured depository bank, under applicable federal and state law; and

(viii) A bank or holding company that is organized as a limited liability company shall maintain the characteristics listed in this subsection (3)(b) during such time as it is authorized to conduct business under this title as a limited liability company.

(4)(a) All rights, privileges, powers, duties, and obligations of a bank or holding company, that is organized as a limited liability company, and its members and managers are governed by the Washington limited liability company act, chapter 25.15 RCW, except:

(i) To the extent chapter 25.15 RCW is in conflict with federal law or regulation respecting the organization of a federally insured depository institution as a limited liability company, such federal law or regulation supersedes the conflicting provisions contained in chapter 25.15 RCW in relation to a bank or holding company organized as a limited liability company pursuant to this section; and

(ii) Without limitation, the following are inapplicable to a bank or holding company organized as a limited liability company:

(A) Permitting automatic dissolution or suspension of a limited liability company as set forth in RCW 25.15.270(1), pursuant to a statement of limited duration which, though impermissible under subsection (3)(b)(i) of this section, has been provided for in a certificate of formation;

(B) Permitting automatic dissolution or suspension of a limited liability company, pursuant to the limited liability company agreement, as set forth in RCW 25.15.270(2);

(C) Permitting dissolution of the limited liability company agreement based upon agreement of all the members, as set forth in RCW 25.15.270(3);

(D) Permitting dissociation of all the members of the limited liability company, as set forth in RCW 25.15.270(4); and

(E) Permitting automatic dissolution or suspension of a limited liability company, pursuant to operation of law, as otherwise set forth in chapter 25.15 RCW.

(b) Notwithstanding (a) of this subsection:

(i) For purposes of transferring a member's interests in the bank or holding company, a member's interest in the bank or holding company is treated like a share of stock in a corporation; and

(ii) If a member's interest in the bank or holding company is transferred voluntarily or involuntarily to another person, the person who receives the member's interest obtains the member's entire rights associated with the member's interest in the bank or holding company including, all economic rights and all voting rights.

(c) A bank or holding company may not by agreement or otherwise change the application of (a) of this subsection to the bank or holding company.

(5)(a) Notwithstanding any provision of chapter 25.15 RCW or this section to the contrary, all voting members remain liable and responsible as fiduciaries of a bank or holding company organized as a limited liability company, regardless of resignation, dissociation, or disqualification, to the same extent that directors of a bank or holding company organized as a corporation would be or remain liable or responsible to the department and applicable federal banking regulators; and

(b) If death, incapacity, or disqualification of all members of the limited liability company would result in a complete dissociation of all members, then the bank or holding company, or both, as applicable is deemed nonetheless to remain in existence for purposes of the department or an applicable federal regulator, or both, having standing under RCW 30.44.270 or applicable federal law, or both, to exercise the powers and authorities of a receiver for the bank or holding company.

(6) For the purposes of this section, and unless the context clearly requires otherwise, for the purpose of applying chapter 25.15 RCW to a bank or holding company organized as a limited liability company:

(a) "Articles of incorporation" includes a limited liability company's certificate of formation, as that term is used in RCW 25.15.005(1) and 25.15.070, and a limited liability company agreement as that term is used in RCW 25.15.005(5);

(b) "Board of directors" includes one or more persons who have, with respect to a bank or holding company described in subsection (1) of this section, authority that is substantially similar to that of a board of directors of a corporation;

(c) "Bylaws" includes a limited liability company agreement as that term is defined in RCW 25.15.005(5);

(d) "Corporation" includes a limited liability company organized under chapter 25.15 RCW;

(e) "Director" includes any of the following of a limited liability company:

(i) A manager;

- (ii) A director; or
- (iii) Other person who has, with respect to the bank or holding company described in subsection (1) of this section, authority substantially similar to that of a director of a corporation;
- (f) "Dividend" includes distributions made by a limited liability company under RCW 25.15.215;
- (g) "Incorporator" includes the person or persons executing the certificate of formation as provided in RCW 25.15.085(1);
- (h) "Officer" includes any of the following of a bank or holding company:
 - (i) An officer; or
 - (ii) Other person who has, with respect to the bank or holding company, authority substantially similar to that of an officer of a corporation;
- (i) "Security," "shares," or "stock" of a corporation includes a membership interest in a limited liability company and any certificate or other evidence of an ownership interest in a limited liability company; and
- (j) "Stockholder" or "shareholder" includes an owner of an equity interest in a bank or holding company, including a member as defined in RCW 25.15.005(8) and 25.15.115.

NEW SECTION. Sec. 3. A new section is added to chapter 32.08 RCW to read as follows:

(1) Notwithstanding any other provision of this title, if the conditions of this section are met, a savings bank, or a holding company of a savings bank, may be organized as, or convert to, a limited liability company under the Washington limited liability company act, chapter 25.15 RCW. As used in this section, "savings bank" includes an applicant to become a savings bank or holding company of a savings bank, and "holding company" means a holding company of a savings bank.

(2)(a) Before a savings bank or holding company may organize as, or convert to, a limited liability company, the savings bank or holding company must obtain approval of the director.

(b)(i) To obtain approval under this section from the director, the savings bank or holding company must file a request for approval with the director at least ninety days before the day on which the savings bank or holding company becomes a limited liability company.

(ii) If the director does not disapprove the request for approval within ninety days from the day on which the director receives the request, the request is considered approved.

(iii) When taking action on a request for approval filed under this section, the director may:

(A) Approve the request;

(B) Approve the request subject to terms and conditions the director considers necessary; or

(C) Disapprove the request.

(3) To approve a request for approval, the director must find that the savings bank or holding company:

(a) Will operate in a safe and sound manner; and

(b) Has the following characteristics:

(i) The certificate of formation and limited liability company require or set forth that the duration of the limited liability company is perpetual;

(ii) The savings bank or holding company is not otherwise subject to automatic termination, dissolution, or suspension upon the happening of some event other than the passage of time;

(iii) The exclusive authority to manage the savings bank or holding company is vested in a board of managers or directors that:

(A) Is elected or appointed by the owners;

(B) Is not required to have owners of the savings bank or holding company included on the board;

(C) Possesses adequate independence and authority to supervise the operation of the savings bank or holding company; and

(D) Operates with substantially the same rights, powers, privileges, duties, and responsibilities as the board of directors of a corporation;

(iv) Neither state law, nor the savings bank's or holding company's operating agreement, bylaws, or other organizational documents provide that an owner of the savings bank or holding company is liable for the debts, liabilities, and obligations of the savings bank or holding company in excess of the amount of the owner's investment;

(v) Neither state law, nor the savings bank's or holding company's operating agreement, bylaws, or other organizational documents require the consent of any other owner of the savings bank or holding company in order for any owner to transfer an ownership interest in the savings bank or holding company, including voting rights;

(vi) The savings bank or holding company is able to obtain new investment funding if needed to maintain adequate capital;

(vii) The savings bank or holding company is able to comply with all legal and regulatory requirements for a federally insured depository bank, or holding company of a federally insured depository bank, under applicable federal and state law; and

(viii) A savings bank or holding company that is organized as a limited liability company shall maintain the characteristics listed in this subsection (3)(b) during such time as it is authorized to conduct business under this title as a limited liability company.

(4)(a) All rights, privileges, powers, duties, and obligations of a savings bank or holding company, that is organized as a limited liability company, and its members and managers are governed by the Washington limited liability company act, chapter 25.15 RCW, except:

(i) To the extent chapter 25.15 RCW is in conflict with federal law or regulation respecting the organization of a federally insured depository institution as a limited liability company, such federal law or regulation supersedes the conflicting provisions contained in chapter 25.15 RCW in relation to a savings bank or holding company organized as a limited liability company pursuant to this section; and

(ii) Without limitation, the following are inapplicable to a savings bank or holding company organized as a limited liability company:

(A) Permitting automatic dissolution or suspension of a limited liability company as set forth in RCW 25.15.270(1), pursuant to a statement of limited duration which, though impermissible under subsection (3)(b)(i) of this section, has been provided for in a certificate of formation;

(B) Permitting automatic dissolution or suspension of a limited liability company, pursuant to the limited liability company agreement, as set forth in RCW 25.15.270(2);

(C) Permitting dissolution of the limited liability company agreement based upon agreement of all the members, as set forth in RCW 25.15.270(3);

(D) Permitting dissociation of all the members of the limited liability company, as set forth in RCW 25.15.270(4); and

(E) Permitting automatic dissolution or suspension of a limited liability company, pursuant to operation of law, as otherwise set forth in chapter 25.15 RCW.

(b) Notwithstanding (a) of this subsection:

(i) For purposes of transferring a member's interests in the savings bank or holding company, a member's interest in the savings bank or holding company is treated like a share of stock in a corporation; and

(ii) If a member's interest in the savings bank or holding company is transferred voluntarily or involuntarily to another person, the person who receives the member's interest obtains the member's entire rights associated with the member's interest in the savings bank or holding company including, all economic rights and all voting rights.

(c) A savings bank or holding company may not by agreement or otherwise change the application of (a) of this subsection to the savings bank or holding company.

(5)(a) Notwithstanding any provision of chapter 25.15 RCW or this section to the contrary, all voting members remain liable and responsible as fiduciaries of a savings bank or holding company organized as a limited liability company, regardless of resignation, dissociation, or disqualification, to the same extent that directors of a savings bank or holding company organized as a corporation would be or remain liable or responsible to the department and applicable federal banking regulators; and

(b) If death, incapacity, or disqualification of all members of the limited liability company would result in a complete dissociation of all members, then the savings bank or holding company, or both, as applicable is deemed nonetheless to remain in existence for purposes of the department or an applicable federal regulator, or both, having standing under RCW 32.24.090 or applicable federal law, or both, to exercise the powers and authorities of a receiver for the savings bank or holding company.

(6) For the purposes of this section, and unless the context clearly requires otherwise, for the purpose of applying chapter 25.15 RCW to a savings bank or holding company organized as a limited liability company:

(a) "Articles of incorporation" includes a limited liability company's certificate of formation, as that term is used in RCW 25.15.005(1) and 25.15.070, and a limited liability company agreement as that term is used in RCW 25.15.005(5);

(b) "Board of directors" includes one or more persons who have, with respect to a savings bank or holding company described in subsection (1) of this section, authority that is substantially similar to that of a board of directors of a corporation;

(c) "Bylaws" includes a limited liability company agreement as that term is defined in RCW 25.15.005(5);

(d) "Corporation" includes a limited liability company organized under chapter 25.15 RCW;

(e) "Director" includes any of the following of a limited liability company:

(i) A manager;

(ii) A director; or

(iii) Other person who has, with respect to the savings bank or holding company described in subsection (1) of this section, authority substantially similar to that of a director of a corporation;

(f) "Dividend" includes distributions made by a limited liability company under RCW 25.15.215;

(g) "Incorporator" includes the person or persons executing the certificate of formation as provided in RCW 25.15.085(1);

(h) "Officer" includes any of the following of a savings bank or holding company:

(i) An officer; or

(ii) Other person who has, with respect to the savings bank or holding company, authority substantially similar to that of an officer of a corporation;

(i) "Security," "shares," or "stock" of a corporation includes a membership interest in a limited liability company and any certificate or other evidence of an ownership interest in a limited liability company; and

(j) "Stockholder" or "shareholder" includes an owner of an equity interest in a savings bank or holding company, including a member as defined in RCW 25.15.005(8) and 25.15.115.

Sec. 4. RCW 25.15.270 and 2000 c 169 s 4 are each amended to read as follows:

A limited liability company is dissolved and its affairs shall be wound up upon the first to occur of the following:

(1)(a) The dissolution date, if any, specified in the certificate of formation. If a dissolution date is not specified in the certificate of formation, the limited liability company's existence will continue until the first to occur of the events described in subsections (2) through (6) of this section. If a dissolution date is specified in the certificate of formation, the certificate of formation may be amended and the existence of the limited liability company may be extended by vote of all the members;

(b) This subsection does not apply to a limited liability company formed under section 2 or 3 of this act.

(2) The happening of events specified in a limited liability company agreement;

(3) The written consent of all members;

(4) Unless the limited liability company agreement provides otherwise, ninety days following an event of dissociation of the last remaining member, unless those having the rights of assignees in the limited liability company under RCW 25.15.130(1) have, by the ninetieth day, voted to admit one or more members, voting as though they were members, and in the manner set forth in RCW 25.15.120(1);

(5) The entry of a decree of judicial dissolution under RCW 25.15.275; or

(6) The expiration of two years after the effective date of dissolution under RCW 25.15.285 without the reinstatement of the limited liability company.

Passed by the Senate February 13, 2006.
Passed by the House February 28, 2006.
Approved by the Governor March 14, 2006.
Filed in Office of Secretary of State March 14, 2006.

CHAPTER 49

[Engrossed Senate Bill 6537]

WINE—DIRECT SALES TO RESIDENTS

AN ACT Relating to the shipment of wine from wine manufacturers directly to Washington consumers; amending RCW 66.24.210; adding new sections to chapter 66.20 RCW; and repealing RCW 66.12.190, 66.12.200, 66.12.210, and 66.12.220.

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

NEW SECTION. Sec. 1. The holder of a license to manufacture wine issued by this state or another state may ship its wine to a person who is a resident of Washington and is twenty-one years of age or older for that person's personal use and not for resale.

NEW SECTION. Sec. 2. Before wine may be shipped by a domestic winery or an out-of-state winery to a person who is a resident of Washington, the winery must:

- (1) Obtain a wine shipper's permit under procedures prescribed by the board by rule and pay a fee established by the board, if the winery is located outside the state; or
- (2) Be licensed as a domestic winery by the board and have paid the annual license fee.

NEW SECTION. Sec. 3. (1) An applicant for a wine shipper's permit under section 2 of this act must:

- (a) Operate a winery located in the United States;
- (b) Provide the board a copy of its valid license to manufacture wine issued by another state;
- (c) Certify that it holds all state and federal licenses and permits necessary to operate a winery; and
- (d) Register with the department of revenue under RCW 82.32.030.

(2) Holders of a winery certificate of approval under RCW 66.24.206(1)(a) are deemed to hold a wine shipper's permit without further application or fee, if the holder meets all requirements for a wine shipper's permit. A winery certificate of approval holder who wants to ship wine under its wine shipper's permit privilege must notify the liquor control board in a manner determined by the board before shipping any wine to a Washington consumer.

(3) Holders of a wine shipper's permit must:

- (a) Pay the tax under RCW 66.24.210 for sales of wine to Washington state residents; and
- (b) Collect and remit to the department of revenue all applicable state and local sales and use taxes imposed by or under the authority of chapters 82.08, 82.12, and 82.14 RCW on all sales of wine delivered to buyers in this state, regardless of whether the permit holder has a physical presence in this state.

NEW SECTION. Sec. 4. (1) A domestic winery or a wine shipper's permit holder must clearly label all wine cases or outside shipping packages of wine

sent into or out of this state under this act to indicate that the package cannot be delivered to a person under twenty-one years of age or to an intoxicated person.

(2) A domestic winery or a wine shipper's permit holder must ensure that the private carrier used to deliver wine (a) obtains the signature of the person who receives the wine upon delivery, (b) verifies the age of the recipient, and (c) verifies that the recipient does not appear intoxicated at the time of delivery.

NEW SECTION. Sec. 5. (1) A wine shipper's permit holder and a domestic winery must report to the board, on or before the twentieth day of each month, all shipments of wine made during the preceding calendar month directly to Washington consumers under a wine shipper's permit or a domestic winery license in effect for all or any portion of the preceding year. All reports will be on forms prescribed by the board.

(2) A wine shipper's permit holder, a winery certificate of approval holder, or domestic winery who advertises or offers wine for direct shipment to customers within this state must clearly and conspicuously display the permit or license number in its advertising.

NEW SECTION. Sec. 6. A fee for a wine shipper's permit may be established by the board.

NEW SECTION. Sec. 7. (1) Holders of a wine shipper's permit are deemed to have consented to the jurisdiction of Washington concerning enforcement of this act and all laws, rules, and regulations related to the shipment of wine from wine manufacturers directly to consumers.

(2)(a) A permit issued under this act to a wine manufacturer located outside this state who fails to comply with the provisions of this act shall be suspended or revoked.

(b) The privilege to ship wine directly to Washington consumers under a domestic winery license shall be suspended or revoked if the domestic winery fails to comply with the provisions of this act.

Sec. 8. RCW 66.24.210 and 2001 c 124 s 1 are each amended to read as follows:

(1) There is hereby imposed upon all wines except cider sold to wine distributors and the Washington state liquor control board, within the state a tax at the rate of twenty and one-fourth cents per liter. There is hereby imposed on all cider sold to wine distributors and the Washington state liquor control board within the state a tax at the rate of three and fifty-nine one-hundredths cents per liter: PROVIDED, HOWEVER, That wine sold or shipped in bulk from one winery to another winery shall not be subject to such tax. The tax provided for in this section shall be collected by direct payments based on wine purchased by wine distributors. Except as provided in subsection (7) of this section, every person purchasing wine under the provisions of this section shall on or before the twentieth day of each month report to the board all purchases during the preceding calendar month in such manner and upon such forms as may be prescribed by the board, and with such report shall pay the tax due from the purchases covered by such report unless the same has previously been paid. Any such purchaser of wine whose applicable tax payment is not postmarked by the twentieth day following the month of purchase will be assessed a penalty at the rate of two percent a month or fraction thereof. The board may require that every such person shall execute to and file with the board a bond to be approved

by the board, in such amount as the board may fix, securing the payment of the tax. If any such person fails to pay the tax when due, the board may forthwith suspend or cancel the license until all taxes are paid.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section. All revenues collected during any month from this additional tax shall be transferred to the state general fund by the twenty-fifth day of the following month.

(3) An additional tax is imposed on wines subject to tax under subsection (1) of this section, at the rate of one-fourth of one cent per liter for wine sold after June 30, 1987. After June 30, 1996, such additional tax does not apply to cider. An additional tax of five one-hundredths of one cent per liter is imposed on cider sold after June 30, 1996. All revenues collected under this subsection (3) shall be disbursed quarterly to the Washington wine commission for use in carrying out the purposes of chapter 15.88 RCW.

(4) An additional tax is imposed on all wine subject to tax under subsection (1) of this section. The additional tax is equal to twenty-three and forty-four one-hundredths cents per liter on fortified wine as defined in RCW 66.04.010(~~(38)~~) (39) when bottled or packaged by the manufacturer, one cent per liter on all other wine except cider, and eighteen one-hundredths of one cent per liter on cider. All revenues collected during any month from this additional tax shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520 by the twenty-fifth day of the following month.

(5)(a) An additional tax is imposed on all cider subject to tax under subsection (1) of this section. The additional tax is equal to two and four one-hundredths cents per liter of cider sold after June 30, 1996, and before July 1, 1997, and is equal to four and seven one-hundredths cents per liter of cider sold after June 30, 1997.

(b) All revenues collected from the additional tax imposed under this subsection (5) shall be deposited in the health services account under RCW 43.72.900.

(6) For the purposes of this section, "cider" means table wine that contains not less than one-half of one percent of alcohol by volume and not more than seven percent of alcohol by volume and is made from the normal alcoholic fermentation of the juice of sound, ripe apples or pears. "Cider" includes, but is not limited to, flavored, sparkling, or carbonated cider and cider made from condensed apple or pear must.

(7) For the purposes of this section, out-of-state wineries shall pay taxes under this section on wine sold and shipped directly to Washington state residents in a manner consistent with the requirements of a wine distributor under subsections (1) through (4) of this section, except wineries shall be responsible for the tax and not the resident purchaser.

NEW SECTION. Sec. 9. Sections 1 through 7 of this act are each added to chapter 66.20 RCW.

NEW SECTION. Sec. 10. The following acts or parts of acts are each repealed:

(1) RCW 66.12.190 (Wine shipments from out of state—Limitations) and 1991 c 149 s 1;

(2) RCW 66.12.200 (Out-of-state wine shipments—Labeling) and 1991 c 149 s 2;

(3) RCW 66.12.210 (Wine shipments from out of state from unlicensed shipper—Penalties) and 1994 c 70 s 1 & 1991 c 149 s 3; and

(4) RCW 66.12.220 (Out-of-state wine shipper's license—Revocation) and 1991 c 149 s 4.

Passed by the Senate February 9, 2006.

Passed by the House March 1, 2006.

Approved by the Governor March 14, 2006.

Filed in Office of Secretary of State March 14, 2006.

CHAPTER 50

[Senate Bill 6549]

COMMERCIAL VEHICLES

AN ACT Relating to commercial vehicles; and amending RCW 46.25.010, 46.32.005, 46.37.395, and 46.44.105.

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

Sec. 1. RCW 46.25.010 and 2005 c 325 s 2 are each amended to read as follows:

The definitions set forth in this section apply throughout this chapter.

(1) "Alcohol" means any substance containing any form of alcohol, including but not limited to ethanol, methanol, propanol, and isopropanol.

(2) "Alcohol concentration" means:

(a) The number of grams of alcohol per one hundred milliliters of blood; or

(b) The number of grams of alcohol per two hundred ten liters of breath.

(3) "Commercial driver's license" (CDL) means a license issued in accordance with the requirements of this chapter to an individual that authorizes the individual to drive a class of commercial motor vehicle.

(4) The "commercial driver's license information system" (CDLIS) is the information system established pursuant to the CMVSA to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

(5) "Commercial driver's instruction permit" means a permit issued under RCW 46.25.060(5).

(6) "Commercial motor vehicle" means a motor vehicle (~~designed~~) or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(a) ~~((If the vehicle))~~ Has a gross vehicle weight rating of ((26,001 or more pounds)) 11,794 kilograms or more (26,001 pounds or more) inclusive of a towed unit with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds or more); or

(b) ~~((If the vehicle is designed to transport sixteen or more passengers, including the driver))~~ Has a gross vehicle weight rating of 11,794 kilograms or more (26,001 pounds or more); or

(c) ~~((If the vehicle is transporting hazardous materials as defined in this section))~~ Is designed to transport sixteen or more passengers, including the driver; or

(d) ~~((If the vehicle))~~ Is of any size and is used in the transportation of hazardous materials as defined in this section; or

(e) Is a school bus regardless of weight or size.

(7) "Conviction" has the definition set forth in RCW 46.20.270.

(8) "Disqualification" means a prohibition against driving a commercial motor vehicle.

(9) "Drive" means to drive, operate, or be in physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic. For purposes of RCW 46.25.100, 46.25.110, and 46.25.120, "drive" includes operation or physical control of a motor vehicle anywhere in the state.

(10) "Drugs" are those substances as defined by RCW 69.04.009, including, but not limited to, those substances defined by 49 C.F.R. 40.3.

(11) "Employer" means any person, including the United States, a state, or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns a person to drive a commercial motor vehicle.

(12) "Gross vehicle weight rating" (GVWR) means the value specified by the manufacturer as the maximum loaded weight of a single ~~((or a combination or articulated vehicle, or the registered gross weight, where this value cannot be determined))~~ vehicle. The GVWR of a combination or articulated vehicle, commonly referred to as the "gross combined weight rating" or GCWR, is the GVWR of the power unit plus the GVWR of the towed unit or units. If the GVWR of any unit cannot be determined, the actual gross weight will be used. If a vehicle with a GVWR of less than 11,794 kilograms (26,001 pounds or less) has been structurally modified to carry a heavier load, then the actual gross weight capacity of the modified vehicle, as determined by RCW 46.44.041 and 46.44.042, will be used as the GVWR.

(13) "Hazardous materials" means any material that has been designated as hazardous under 49 U.S.C. Sec. 5103 and is required to be placarded under subpart F of 49 C.F.R. part 172 or any quantity of a material listed as a select agent or toxin in 42 C.F.R. part 73.

(14) "Motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power used on highways, or any other vehicle required to be registered under the laws of this state, but does not include a vehicle, machine, tractor, trailer, or semitrailer operated exclusively on a rail.

(15) "Out-of-service order" means a temporary prohibition against driving a commercial motor vehicle.

(16) "Positive alcohol confirmation test" means an alcohol confirmation test that:

(a) Has been conducted by a breath alcohol technician under 49 C.F.R. 40; and

(b) Indicates an alcohol concentration of 0.04 or more.

A report that a person has refused an alcohol test, under circumstances that constitute the refusal of an alcohol test under 49 C.F.R. 40, will be considered equivalent to a report of a positive alcohol confirmation test for the purposes of this chapter.

(17) "School bus" means a commercial motor vehicle used to transport preprimary, primary, or secondary school students from home to school, from

school to home, or to and from school-sponsored events. School bus does not include a bus used as a common carrier.

(18) "Serious traffic violation" means:

(a) Excessive speeding, defined as fifteen miles per hour or more in excess of the posted limit;

(b) Reckless driving, as defined under state or local law;

(c) A violation of a state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with an accident or collision resulting in death to any person;

(d) Driving a commercial motor vehicle without obtaining a commercial driver's license;

(e) Driving a commercial motor vehicle without a commercial driver's license in the driver's possession; however, any individual who provides proof to the court by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the date the citation was issued, is not guilty of a "serious traffic offense";

(f) Driving a commercial motor vehicle without the proper class of commercial driver's license endorsement or endorsements for the specific vehicle group being operated or for the passenger or type of cargo being transported; and

(g) Any other violation of a state or local law relating to motor vehicle traffic control, other than a parking violation, that the department determines by rule to be serious.

(19) "State" means a state of the United States and the District of Columbia.

(20) "Substance abuse professional" means an alcohol and drug specialist meeting the credentials, knowledge, training, and continuing education requirements of 49 C.F.R. 40.281.

(21) "Tank vehicle" means a vehicle that is designed to transport a liquid or gaseous material within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Tank vehicles include, but are not limited to cargo tanks and portable tanks. However, this definition does not include portable tanks having a rated capacity under one thousand gallons.

(22) "United States" means the fifty states and the District of Columbia.

(23) "Verified positive drug test" means a drug test result or validity testing result from a laboratory certified under the authority of the federal department of health and human services that:

(a) Indicates a drug concentration at or above the cutoff concentration established under 49 C.F.R. 40.87; and

(b) Has undergone review and final determination by a medical review officer.

A report that a person has refused a drug test, under circumstances that constitute the refusal of a federal department of transportation drug test under 49 C.F.R. 40, will be considered equivalent to a report of a verified positive drug test for the purposes of this chapter.

Sec. 2. RCW 46.32.005 and 1993 c 403 s 1 are each amended to read as follows:

For the purpose of this chapter "commercial motor vehicle" means a self-propelled or towed vehicle (~~designed or~~) used on a highway in interstate or intrastate commerce to transport passengers or property, (~~if~~) when the vehicle:

(1) Has a gross vehicle weight rating or gross combination weight rating ~~((of ten thousand one or more pounds))~~ or gross weight or gross combination weight of 4,536 kilograms or more (10,001 pounds or more); or

(2) Is designed or used to transport ~~((sixteen or))~~ more than eight passengers, including the driver, for compensation; or

(3) ~~((Is transporting hazardous materials and is required to be identified by a placard in accordance with 49 C.F.R. Sec. 172.500-.560 (1991).))~~ Is designed or used to transport more than fifteen passengers, including the driver, and is not used to transport passengers for compensation; or

(4) Is used in transporting materials found by the secretary of transportation to be hazardous under 49 U.S.C. Sec. 5103 and transported in a quantity requiring placarding under regulations prescribed by the secretary under 49 C.F.R., subtitle B, Chapter I, subchapter C.

A recreational vehicle used for noncommercial purposes is not considered a commercial motor vehicle. "Recreational vehicle" includes a vehicle towing a horse trailer for a noncommercial purpose.

Sec. 3. RCW 46.37.395 and 2005 c 320 s 1 are each amended to read as follows:

(1) This section applies to all motor vehicles with a ~~((declared gross weight in excess of 10,000 pounds))~~ gross vehicle weight rating of 4,536 kilograms or more (10,001 pounds or more), registered and domiciled in Washington state, operated on public roads and equipped with engine compression brake devices. An engine compression brake device is any device that uses the engine and transmission to impede the forward motion of the motor vehicle by compression of the engine.

(2) The driver of a motor vehicle equipped with a device that uses the compression of the motor vehicle engine shall not use the device unless:

~~((a))~~ The motor vehicle is equipped with an operational muffler and exhaust system to prevent excess noise. ((The muffler and exhaust system must maintain the noise level at eighty-three decibels or less for motor vehicles manufactured after January 1, 1979, and eighty decibels or less for motor vehicles manufactured after January 1, 1988; or

~~(b) The driver reasonably believes that an emergency exists which requires the use of the device to: (i) Protect against an immediate threat to the physical safety of the driver or others; (ii) protect against immediate threat of damage to property; or (iii) effectively reduce the speed of the motor vehicle using the manufacturer's motor vehicle braking system when declining from an elevated roadway))~~ A muffler is part of an engine exhaust system which acts as a noise dissipative device. A turbocharger is not permitted to be used as a muffler or a noise dissipative device.

(3) The monetary penalty for violating subsection (2) of this section is: (a) Two hundred fifty dollars for the first violation; (b) five hundred dollars for the second violation; and (c) seven hundred fifty dollars for each violation thereafter.

~~(4) ((The Washington state patrol must establish rules for Washington state law enforcement agencies to enforce subsection (2) of this section.~~

~~(5))~~ All medium and heavy trucks must comply with federal code 205 - transportation equipment noise emission controls, subpart B.

~~((6))~~ (5) Nothing in this section prohibits a local jurisdiction from implementing an ordinance that is more restrictive than the state law and Washington state patrol rules regarding the use of compression brakes.

Sec. 4. RCW 46.44.105 and 2002 c 254 s 1 are each amended to read as follows:

(1) Violation of any of the provisions of this chapter is a traffic infraction, and upon the first finding thereof shall be assessed a basic penalty of not less than fifty dollars; and upon a second finding thereof shall be assessed a basic penalty of not less than seventy-five dollars; and upon a third or subsequent finding shall be assessed a basic penalty of not less than one hundred dollars.

(2) In addition to the penalties imposed in subsection (1) of this section, any person violating RCW 46.44.041, 46.44.042, 46.44.047, 46.44.090, 46.44.091, or 46.44.095 shall be assessed a penalty for each pound overweight, as follows:

(a) One pound through four thousand pounds overweight is three cents for each pound;

(b) Four thousand one pounds through ten thousand pounds overweight is one hundred twenty dollars plus twelve cents per pound for each additional pound over four thousand pounds overweight;

(c) Ten thousand one pounds through fifteen thousand pounds overweight is eight hundred forty dollars plus sixteen cents per pound for each additional pound over ten thousand pounds overweight;

(d) Fifteen thousand one pounds through twenty thousand pounds overweight is one thousand six hundred forty dollars plus twenty cents per pound for each additional pound over fifteen thousand pounds overweight;

(e) Twenty thousand one pounds and more is two thousand six hundred forty dollars plus thirty cents per pound for each additional pound over twenty thousand pounds overweight.

Upon a first violation in any calendar year, the court may suspend the penalty for five hundred pounds of excess weight for each axle on any vehicle or combination of vehicles, not to exceed a two thousand pound suspension. In no case may the basic penalty assessed in subsection (1) of this section or the additional penalty assessed in subsection (2) of this section, except as provided for the first violation, be suspended.

(3) Whenever any vehicle or combination of vehicles is involved in two violations of RCW 46.44.041, 46.44.042, 46.44.047, 46.44.090, 46.44.091, or 46.44.095 during any twelve-month period, the court may suspend the certificate of license registration of the vehicle or combination of vehicles for not less than thirty days. Upon a third or succeeding violation in any twelve-month period, the court shall suspend the certificate of license registration for not less than thirty days. Whenever the certificate of license registration is suspended, the court shall secure such certificate and immediately forward the same to the director with information concerning the suspension.

(4) Any person found to have violated any posted limitations of a highway or section of highway shall be assessed a monetary penalty of not less than one hundred and fifty dollars, and the court shall in addition thereto upon second violation within a twelve-month period involving the same power unit, suspend the certificate of license registration for not less than thirty days.

(5) It is unlawful for the driver of a vehicle to fail or refuse to stop and submit the vehicle and load to a weighing, or to fail or refuse, when directed by

an officer upon a weighing of the vehicle to stop the vehicle and otherwise comply with the provisions of this section. It is unlawful for a driver of a commercial motor vehicle as defined in RCW 46.32.005, other than the driver of a bus as defined in RCW 46.32.005~~((2))~~ (3) or a vehicle with a gross vehicle weight rating or gross combination weight (~~not over sixteen thousand pounds~~) rating of 7,257 kilograms or less (16,000 pounds or less) and not transporting hazardous materials in accordance with RCW 46.32.005~~((3))~~ (4), to fail or refuse to stop at a weighing station when proper traffic control signs indicate scales are open. However, unladen tow trucks regardless of weight and farm vehicles carrying farm produce with a gross vehicle weight rating or gross combination weight (~~not over twenty six thousand pounds~~) rating of 11,794 kilograms or less (26,000 pounds or less) may fail or refuse to stop at a weighing station when proper traffic control signs indicate scales are open.

Any police officer is authorized to require the driver of any vehicle or combination of vehicles to stop and submit to a weighing either by means of a portable or stationary scale and may require that the vehicle be driven to the nearest public scale. Whenever a police officer, upon weighing a vehicle and load, determines that the weight is unlawful, the officer may require the driver to stop the vehicle in a suitable location and remain standing until such portion of the load is removed as may be necessary to reduce the gross weight of the vehicle to the limit permitted by law. If the vehicle is loaded with grain or other perishable commodities, the driver shall be permitted to proceed without removing any of the load, unless the gross weight of the vehicle and load exceeds by more than ten percent the limit permitted by this chapter. The owner or operator of the vehicle shall care for all materials unloaded at the risk of the owner or operator.

Any vehicle whose driver or owner represents that the vehicle is disabled or otherwise unable to proceed to a weighing location shall have its load sealed or otherwise marked by any police officer. The owner or driver shall be directed that upon completion of repairs, the vehicle shall submit to weighing with the load and markings and/or seal intact and undisturbed. Failure to report for weighing, appearing for weighing with the seal broken or the markings disturbed, or removal of any cargo prior to weighing is unlawful. Any person so convicted shall be fined one thousand dollars, and in addition the certificate of license registration shall be suspended for not less than thirty days.

(6) Any other provision of law to the contrary notwithstanding, district courts having venue have concurrent jurisdiction with the superior courts for the imposition of any penalties authorized under this section.

(7) For the purpose of determining additional penalties as provided by subsection (2) of this section, "overweight" means the poundage in excess of the maximum allowable gross weight or axle/axle grouping weight prescribed by RCW 46.44.041, 46.44.042, 46.44.047, 46.44.091, and 46.44.095.

(8) The penalties provided in subsections (1) and (2) of this section shall be remitted as provided in chapter 3.62 RCW or RCW 10.82.070. For the purpose of computing the basic penalties and additional penalties to be imposed under subsections (1) and (2) of this section, the convictions shall be on the same vehicle or combination of vehicles within a twelve-month period under the same ownership.

(9) Any state patrol officer or any weight control officer who finds any person operating a vehicle or a combination of vehicles in violation of the conditions of a permit issued under RCW 46.44.047, 46.44.090, and 46.44.095 may confiscate the permit and forward it to the state department of transportation which may return it to the permittee or revoke, cancel, or suspend it without refund. The department of transportation shall keep a record of all action taken upon permits so confiscated, and if a permit is returned to the permittee the action taken by the department of transportation shall be endorsed thereon. Any permittee whose permit is suspended or revoked may upon request receive a hearing before the department of transportation or person designated by that department. After the hearing the department of transportation may reinstate any permit or revise its previous action.

Every permit issued as provided for in this chapter shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any law enforcement officer or authorized agent of any authority granting such a permit.

Upon the third finding within a calendar year of a violation of the requirements and conditions of a permit issued under RCW 46.44.095, the permit shall be canceled, and the canceled permit shall be immediately transmitted by the court or the arresting officer to the department of transportation. The vehicle covered by the canceled permit is not eligible for a new permit for a period of thirty days.

(10) For the purposes of determining gross weights the actual scale weight taken by the arresting officer is prima facie evidence of the total gross weight.

(11) It is a traffic infraction to direct the loading of a vehicle with knowledge that it violates the requirements in RCW 46.44.041, 46.44.042, 46.44.047, 46.44.090, 46.44.091, or 46.44.095 and that it is to be operated on the public highways of this state.

(12) The chief of the state patrol, with the advice of the department, may adopt reasonable rules to aid in the enforcement of this section.

Passed by the Senate February 11, 2006.

Passed by the House March 1, 2006.

Approved by the Governor March 14, 2006.

Filed in Office of Secretary of State March 14, 2006.

CHAPTER 51

[Substitute Senate Bill 6572]

LANDLORD-TENANT ACT

AN ACT Relating to the unlawful detainer process under the residential landlord-tenant act; and amending RCW 59.18.365 and 59.18.375.

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

Sec. 1. RCW 59.18.365 and 2005 c 130 s 3 are each amended to read as follows:

(1) The summons must contain the names of the parties to the proceeding, the attorney or attorneys if any, the court in which the same is brought, the nature of the action, in concise terms, and the relief sought, and also the return day; and must notify the defendant to appear and answer within the time designated or

that the relief sought will be taken against him or her. The summons must contain a street address for service of the notice of appearance or answer and, if available, a facsimile number for the plaintiff or the plaintiff's attorney, if represented. The summons must be served and returned in the same manner as a summons in other actions is served and returned.

(2) A defendant may serve a copy of an answer or notice of appearance, and if required by the summons, the sworn statement regarding nonpayment of rent described in RCW 59.18.375, by any of the following methods:

(a) By delivering a copy of the answer or notice of appearance to the person who signed the summons at the street address listed on the summons;

(b) By mailing a copy of the answer or notice of appearance addressed to the person who signed the summons to the street address listed on the summons;

(c) By facsimile to the facsimile number listed on the summons. Service by facsimile is complete upon successful transmission to the facsimile number listed upon the summons;

(d) As otherwise authorized by the superior court civil rules.

(3) The summons for unlawful detainer actions for tenancies covered by this chapter shall be substantially in the following form. In unlawful detainer actions based on nonpayment of rent, the summons may contain the provisions authorized by RCW 59.18.375.

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON IN AND FOR COUNTY

Plaintiff,

vs.

Defendant.

NO.

EVICITION SUMMONS
(Residential)

THIS IS NOTICE OF A LAWSUIT TO EVICT YOU.
PLEASE READ IT CAREFULLY. THE DEADLINE FOR
YOUR WRITTEN RESPONSE IS: 5:00 p.m., on

TO: (Name)
. (Address)

This is notice of a lawsuit to evict you from the property which you are renting. Your landlord is asking the court to terminate your tenancy, direct the sheriff to remove you and your belongings from the property, enter a money judgment against you for unpaid rent and/or damages for your use of the property, and for court costs and attorneys' fees.

If you want to defend yourself in this lawsuit, you must respond to the eviction complaint in writing on or before the deadline stated above. You must respond in writing even if no case number has been assigned by the court yet.

You can respond to the complaint in writing by delivering a copy of a notice of appearance or answer ~~(, and if required by this summons, a sworn statement regarding nonpayment of rent,)~~ to your landlord's attorney (or your landlord if there is no attorney) by personal delivery, mailing, or facsimile to the address or facsimile number stated below **TO BE RECEIVED NO LATER THAN THE DEADLINE STATED ABOVE.** Service by facsimile is complete upon successful transmission to the facsimile number, if any, listed in the summons.

The notice of appearance or answer must include the name of this case (plaintiff(s) and defendant(s)), your name, the street address where further legal papers may be sent, your telephone number (if any), and your signature.

If there is a number on the upper right side of the eviction summons and complaint, you must also file your original notice of appearance or answer with the court clerk by the deadline for your written response.

You may demand that the plaintiff file this lawsuit with the court. If you do so, the demand must be in writing and must be served upon the person signing the summons. Within fourteen days after you serve the demand, the plaintiff must file this lawsuit with the court, or the service on you of this summons and complaint will be void.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

You may also be instructed in a separate order to appear for a court hearing on your eviction. If you receive an order to show cause you must personally appear at the hearing on the date indicated in the order to show cause **IN ADDITION** to delivering and filing your notice of appearance or answer by the deadline stated above.

IF YOU DO NOT RESPOND TO THE COMPLAINT IN WRITING BY THE DEADLINE STATED ABOVE YOU WILL LOSE BY DEFAULT. YOUR LANDLORD MAY PROCEED WITH THE LAWSUIT, EVEN IF YOU HAVE MOVED OUT OF THE PROPERTY.

The notice of appearance or answer must be delivered to:

.....
Name
.....
Street Address
.....
Telephone Number
.....
Facsimile Number (Required if Available)

Sec. 2. RCW 59.18.375 and 1983 c 264 s 13 are each amended to read as follows:

(1) The remedies provided by this section are in addition to other remedies provided by this chapter.

(2) In an action of forcible entry, detainer, or unlawful detainer, commenced under this chapter which is based upon nonpayment of rent as provided in RCW 59.12.030(3), the defendant shall pay into the court registry the amount alleged due in the complaint and continue to pay into the court registry the monthly rent as it becomes due under the terms of the rental agreement while the action is pending. If the defendant submits to the court a written statement signed and sworn under penalty of perjury denying that the rent alleged due in the complaint is owing based upon a legal or equitable defense or set-off arising out of the tenancy, such payment shall not be required.

(3) A defendant must comply with subsection (2) of this section within seven days after completed service of a filed summons and complaint or, in the case of service of an unfilled summons and complaint, seven days after delivering written notice to the defendant, in the manner provided in RCW 59.12.040, advising the defendant of the date of filing, the cause number for the action, and the date by which the defendant must comply with this section to avoid the immediate issuance of a writ of restitution. Failure of the defendant to comply with this section shall be grounds for the immediate issuance of a writ of restitution without bond directing the sheriff to deliver possession of the premises to the plaintiff. Issuance of a writ of restitution under this section shall not affect the defendant's right to a hearing to contest the amount of rent alleged to be due.

(4) The defendant shall send written notice that the rent has been paid into the court registry or send a copy of the sworn statement referred to in subsection (2) of this section to the ~~((address of the))~~ person whose name is signed on the unlawful detainer summons. A defendant may serve the written notice or a copy of the sworn statement by any of the methods described in RCW 59.18.365.

(5) Before applying to the court for a writ of restitution under this section, the plaintiff must check with the clerk of the court to determine if the defendant has complied with subsection (2) of this section.

(6) If the plaintiff intends to use the procedures in this section, the summons must contain notice to the defendant of the payment requirements of this section and be substantially in the following form:

NOTICE

This unlawful detainer action is based upon nonpayment of rent in an amount alleged to be \$. The plaintiff is entitled to an order from the court directing the sheriff to evict you without a hearing unless you pay into the court registry the amount of delinquent rent alleged to be due in the complaint and continue paying into the court registry the monthly rent as it becomes due while this lawsuit is pending. If you deny that you owe the rent claimed to be due and you do not want to be evicted immediately without a hearing, you must file with the clerk of the court a written statement signed and sworn under penalty of perjury setting forth why you do not owe the amount claimed in the complaint to be due. The sworn statement must be filed IN ADDITION TO your written answer to the complaint.

Payment or the sworn statement must be submitted to the clerk of the superior court within seven days after you have been served with this summons or, if the summons has not yet been filed, within seven days after service of written notice that the lawsuit has been filed.

You must also deliver written notice that the rent has been paid into the court registry or send a copy of your sworn statement to the person whose signature appears below by personal delivery, mail, or facsimile.

This complaint:

- () is filed with the superior court;
- () is not filed. The plaintiff must notify you in writing when it is filed.

IMPORTANT

If you intend to contest this action, you must also file a written answer as indicated above on this summons.

Passed by the Senate February 10, 2006.

Passed by the House February 28, 2006.

Approved by the Governor March 14, 2006.

Filed in Office of Secretary of State March 14, 2006.

CHAPTER 52

[Senate Bill 6596]

CORPORATIONS—DISSOLUTION

AN ACT Relating to the dissolution of Washington corporations; amending RCW 7.60.025, 23B.06.400, 23B.08.310, 23B.12.010, 23B.14.010, 23B.14.020, 23B.14.030, 23B.14.050, 23B.14.060, 23B.14.210, 23B.14.220, 23B.14.300, 23B.14.310, 23B.14.320, 23B.14.340, and 23B.14.400; and adding new sections to chapter 23B.14 RCW.

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

Sec. 1. RCW 7.60.025 and 2004 c 165 s 4 are each amended to read as follows:

(1) A receiver may be appointed by the superior court of this state in the following instances, but except in any case in which a receiver's appointment is expressly required by statute, or any case in which a receiver's appointment is sought by a state agent whose authority to seek the appointment of a receiver is expressly conferred by statute, or any case in which a receiver's appointment with respect to real property is sought under (b)(ii) of this subsection, a receiver shall be appointed only if the court additionally determines that the appointment of a receiver is reasonably necessary and that other available remedies either are not available or are inadequate:

(a) On application of any party, when the party is determined to have a probable right to or interest in property that is a subject of the action and in the possession of an adverse party, or when the property or its revenue-producing potential is in danger of being lost or materially injured or impaired. A receiver may be appointed under this subsection (1)(a) whether or not the application for appointment of a receiver is combined with, or is ancillary to, an action seeking a money judgment or other relief;

(b) Provisionally, during the pendency of any action to foreclose upon any lien against or for forfeiture of any interest in real or personal property, or after notice of a trustee's sale has been given under RCW 61.24.040, or after notice of forfeiture has been given under RCW 61.30.040, on application of any person, when the interest in the property that is the subject of foreclosure or forfeiture of the person seeking the receiver's appointment is determined to be probable and either:

(i) The property or its revenue-producing potential is in danger of being lost or materially injured or impaired; or

(ii) The appointment of a receiver with respect to the real or personal property that is the subject of the action, the notice of trustee's sale or notice of forfeiture is provided for by agreement or is reasonably necessary to effectuate or enforce an assignment of rents or other revenues from the property;

- (c) After judgment, in order to give effect to the judgment;
- (d) To dispose of property according to provisions of a judgment dealing with its disposition;
- (e) To the extent that property is not exempt from execution, at the instance of a judgment creditor either before or after the issuance of any execution, to preserve or protect it, or prevent its transfer;
- (f) If and to the extent that property is subject to execution to satisfy a judgment, to preserve the property during the pendency of an appeal, or when an execution has been returned unsatisfied, or when an order requiring a judgment debtor to appear for proceedings supplemental to judgment has been issued and the judgment debtor fails to submit to examination as ordered;
- (g) Upon an attachment of real or personal property when the property attached is of a perishable nature or is otherwise in danger of waste, impairment, or destruction, or where the abandoned property's owner has absconded with, secreted, or abandoned the property, and it is necessary to collect, conserve, manage, control, or protect it, or to dispose of it promptly, or when the court determines that the nature of the property or the exigency of the case otherwise provides cause for the appointment of a receiver;
- (h) In an action by a transferor of real or personal property to avoid or rescind the transfer on the basis of fraud, or in an action to subject property or a fund to the payment of a debt;
- (i) In an action against any person who is not an individual if the object of the action is the dissolution of that person, or if that person has been dissolved, or if that person is insolvent or is not generally paying the person's debts as those debts become due unless they are the subject of bona fide dispute, or if that person is in imminent danger of insolvency;
- (j) In accordance with RCW 7.08.030 (4) and (6), in cases in which a general assignment for the benefit of creditors has been made;
- (k) In quo warranto proceedings under chapter 7.56 RCW;
- (l) As provided under RCW 11.64.022;
- (m) In an action by the department of licensing under RCW 18.35.220(3) with respect to persons engaged in the business of dispensing of hearing aids, RCW 18.85.350 in the case of persons engaged in the business of a real estate broker, associate real estate broker, or real estate salesperson, or RCW 19.105.470 with respect to persons engaged in the business of camping resorts;
- (n) In an action under RCW 18.44.470 or 18.44.490 in the case of persons engaged in the business of escrow agents;
- (o) Upon a petition with respect to a nursing home in accordance with and subject to receivership provisions under chapter 18.51 RCW;
- (p) Under RCW 19.40.071(3), in connection with a proceeding for relief with respect to a transfer fraudulent as to a creditor or creditors;
- (q) Under RCW 19.100.210(1), in an action by the attorney general or director of financial institutions to restrain any actual or threatened violation of the franchise investment protection act;
- (r) In an action by the attorney general or by a prosecuting attorney under RCW 19.110.160 with respect to a seller of business opportunities;
- (s) In an action by the director of financial institutions under RCW 21.20.390 in cases involving actual or threatened violations of the securities act of Washington or under RCW 21.30.120 in cases involving actual or threatened

violations of chapter 21.30 RCW with respect to certain businesses and transactions involving commodities;

(t) In an action for or relating to dissolution of a business corporation under section 10 of this act, RCW 23B.14.300, 23B.14.310, or 23B.14.320, for dissolution of a nonprofit corporation under RCW 24.03.270, for dissolution of a mutual corporation under RCW 24.06.305, or in any other action for the dissolution or winding up of any other entity provided for by Title 23, 23B, 24, or 25 RCW;

(u) In any action in which the dissolution of any public or private entity is sought, in any action involving any dispute with respect to the ownership or governance of such an entity, or upon the application of a person having an interest in such an entity when the appointment is reasonably necessary to protect the property of the entity or its business or other interests;

(v) Under RCW 25.05.215, in aid of a charging order with respect to a partner's interest in a partnership;

(w) Under and subject to RCW 30.44.100, 30.44.270, and 30.56.030, in the case of a bank or trust company or, under and subject to RCW 32.24.070 through 32.24.090, in the case of a mutual savings bank;

(x) Under and subject to RCW 31.12.637 and 31.12.671 through 31.12.724, in the case of credit unions;

(y) Upon the application of the director of financial institutions under RCW 31.35.090 in actions to enforce chapter 31.35 RCW applicable to agricultural lenders, under RCW 31.40.120 in actions to enforce chapter 31.40 RCW applicable to entities engaged in federally guaranteed small business loans, under RCW 31.45.160 in actions to enforce chapter 31.45 RCW applicable to persons licensed as check cashers or check sellers, or under RCW 19.230.230 in actions to enforce chapter 19.230 RCW applicable to persons licensed under the uniform money services act;

(z) Under RCW 35.82.090 or 35.82.180, with respect to a housing project;

(aa) Under RCW 39.84.160 or 43.180.360, in proceedings to enforce rights under any revenue bonds issued for the purpose of financing industrial development facilities or bonds of the Washington state housing finance commission, or any financing document securing any such bonds;

(bb) Under and subject to RCW 43.70.195, in an action by the secretary of health or by a local health officer with respect to a public water system;

(cc) As contemplated by RCW 61.24.030, with respect to real property that is the subject of nonjudicial foreclosure proceedings under chapter 61.24 RCW;

(dd) As contemplated by RCW 61.30.030(3), with respect to real property that is the subject of judicial or nonjudicial forfeiture proceedings under chapter 61.30 RCW;

(ee) Under RCW 64.32.200(2), in an action to foreclose upon a lien for common expenses against a dwelling unit subject to the horizontal property regimes act, chapter 64.32 RCW;

(ff) Under RCW 64.34.364(10), in an action by a unit owners' association to foreclose a lien for nonpayment of delinquent assessments against condominium units;

(gg) Upon application of the attorney general under RCW 64.36.220(3), in aid of any writ or order restraining or enjoining violations of chapter 64.36 RCW applicable to timeshares;

(hh) Under RCW 70.95A.050(3), in aid of the enforcement of payment or performance of municipal bonds issued with respect to facilities used to abate, control, or prevent pollution;

(ii) Upon the application of the department of social and health services under RCW 74.42.580, in cases involving nursing homes;

(jj) Upon the application of the utilities and transportation commission under RCW 80.28.040, with respect to a water company that has failed to comply with an order of such commission within the time deadline specified therein;

(kk) Under RCW 87.56.065, in connection with the dissolution of an irrigation district;

(ll) Upon application of the attorney general or the department of licensing, in any proceeding that either of them are authorized by statute to bring to enforce Title 18 or 19 RCW; the securities act of Washington, chapter 21.20 RCW; the Washington commodities act, chapter 21.30 RCW; the land development act, chapter 58.19 RCW; or under chapter 64.36 RCW relating to the regulation of timeshares;

(mm) Upon application of the director of financial institutions in any proceeding that the director of financial institutions is authorized to bring to enforce chapters 31.35, 31.40, and 31.45 RCW; or

(nn) In such other cases as may be provided for by law, or when, in the discretion of the court, it may be necessary to secure ample justice to the parties.

(2) The superior courts of this state shall appoint as receiver of property located in this state a person who has been appointed by a federal or state court located elsewhere as receiver with respect to the property specifically or with respect to the owner's property generally, upon the application of the person or of any party to that foreign proceeding, and following the appointment shall give effect to orders, judgments, and decrees of the foreign court affecting the property in this state held by the receiver, unless the court determines that to do so would be manifestly unjust or inequitable. The venue of such a proceeding may be any county in which the person resides or maintains any office, or any county in which any property over which the receiver is to be appointed is located at the time the proceeding is commenced.

(3) At least seven days' notice of any application for the appointment of a receiver shall be given to the owner of property to be subject thereto and to all other parties in the action, and to other parties in interest as the court may require. If any execution by a judgment creditor under Title 6 RCW or any application by a judgment creditor for the appointment of a receiver, with respect to property over which the receiver's appointment is sought, is pending in any other action at the time the application is made, then notice of the application for the receiver's appointment also shall be given to the judgment creditor in the other action. The court may shorten or expand the period for notice of an application for the appointment of a receiver upon good cause shown.

(4) The order appointing a receiver in all cases shall reasonably describe the property over which the receiver is to take charge, by category, individual items, or both if the receiver is to take charge of less than all of the owner's property. If the order appointing a receiver does not expressly limit the receiver's authority to designated property or categories of property of the owner, the receiver is a

general receiver with the authority to take charge over all of the owner's property, wherever located.

(5) The court may condition the appointment of a receiver upon the giving of security by the person seeking the receiver's appointment, in such amount as the court may specify, for the payment of costs and damages incurred or suffered by any person should it later be determined that the appointment of the receiver was wrongfully obtained.

Sec. 2. RCW 23B.06.400 and 1990 c 178 s 10 are each amended to read as follows:

(1) A board of directors may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection (2) of this section.

(2) No distribution may be made if, after giving it effect:

(a) The corporation would not be able to pay its (~~debts~~) liabilities as they become due in the usual course of business; or

(b) The corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(3) For purposes of determinations under subsection (2) of this section:

(a) The board of directors may base a determination that a distribution is not prohibited under subsection (2) of this section either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances; and

(b) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section.

(4) The effect of a distribution under subsection (2) of this section is measured:

(a) In the case of a distribution of indebtedness, the terms of which provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made; or

(b) In the case of any other distribution:

(i) If the distribution is by purchase, redemption, or other acquisition of the corporation's shares, the effect of the distribution is measured as of the earlier of the date any money or other property is transferred or debt incurred by the corporation, or the date the shareholder ceases to be a shareholder with respect to the acquired shares;

(ii) If the distribution is of indebtedness other than that described in subsection (4) (a) and (b)(i) of this section, the effect of the distribution is measured as of the date the indebtedness is distributed; and

(iii) In all other cases, the effect of the distribution is measured as of the date the distribution is authorized if payment occurs within one hundred twenty days

after the date of authorization, or the date the payment is made if it occurs more than one hundred twenty days after the date of authorization.

(5) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent provided otherwise by agreement.

(6) In circumstances to which this section and related sections of this title are applicable, such provisions supersede the applicability of any other statutes of this state with respect to the legality of distributions.

(7) A transfer of the assets of a dissolved corporation to a trust or other successor entity of the type described in RCW 23B.14.030(4) constitutes a distribution subject to subsection (2) of this section only when and to the extent that the trust or successor entity distributes assets to shareholders.

Sec. 3. RCW 23B.08.310 and 1989 c 165 s 98 are each amended to read as follows:

(1) A director who votes for or assents to a distribution made in violation of RCW 23B.06.400 or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds (~~what~~) the amount that could have been distributed without violating RCW 23B.06.400 or the articles of incorporation if it is established that the director did not perform the director's duties in compliance with RCW 23B.08.300. In any proceeding commenced under this section, a director has all of the defenses ordinarily available to a director.

(2) A director held liable under subsection (1) of this section for an unlawful distribution is entitled to contribution:

(a) From every other director who could be held liable under subsection (1) of this section for the unlawful distribution; and

(b) From each shareholder for the amount the shareholder accepted knowing the distribution was made in violation of RCW 23B.06.400 or the articles of incorporation.

(3) A shareholder who accepts a distribution made in violation of RCW 23B.06.400 or the articles of incorporation is personally liable to the corporation for the amount of any distribution received by the shareholder to the extent it exceeds the amount that could have been distributed to the shareholder without violating RCW 23B.06.400 or the articles of incorporation, if it is established that the shareholder accepted the distribution knowing that it was made in violation of RCW 23B.06.400 or the articles of incorporation.

(4) A shareholder held liable under subsection (3) of this section for an unlawful distribution is entitled to contribution from every other shareholder who could be held liable under subsection (3) of this section for the unlawful distribution.

(5) A proceeding under this section is barred unless it is commenced (~~within~~) prior to the earlier of (a) the expiration of two years after the date on which the effect of the distribution was measured under RCW 23B.06.400(4), or (b) the expiration of the survival period specified in RCW 23B.14.340.

Sec. 4. RCW 23B.12.010 and 1990 c 178 s 12 are each amended to read as follows:

(1) A corporation may on the terms and conditions and for the consideration determined by the board of directors:

(a) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual ~~((and regular))~~ course of business; or

(b) Mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property whether or not any of these actions are in the usual ~~((and regular))~~ course of business.

(2) Unless the articles of incorporation require it, approval by the shareholders of a transaction described in subsection (1) of this section is not required.

(3) A dedication of a corporation's assets to the repayment of its creditors may be effected by the board of directors through an assignment for the benefit of creditors in accordance with chapter 7.08 RCW or by obtaining the appointment of a general receiver in accordance with chapter 7.60 RCW, and the assumption of control over the corporation's assets by an assignee for the benefit of creditors or by a general receiver relieves the directors of any further duties with respect to the liquidation of the corporation's assets or the application of any assets or proceeds toward satisfaction of the claims of creditors.

Sec. 5. RCW 23B.14.010 and 1989 c 165 s 154 are each amended to read as follows:

(1) A majority of the initial directors, or, if initial directors were not named in the articles of incorporation and have not been elected, a majority of the incorporators, of a corporation that ~~((either))~~ has not issued shares ~~((or has not commenced business))~~ may ~~((dissolve))~~ authorize dissolution of the corporation ~~((by delivering to the secretary of state for filing:~~

~~(1) A copy of a revenue clearance certificate issued pursuant to RCW 82.32.260; and~~

~~(2) Articles of dissolution that set forth:~~

~~(a) The name of the corporation;~~

~~(b) The date of its incorporation;~~

~~(c) Either (i) that none of the corporation's shares have been issued or (ii) that the corporation has not commenced business;~~

~~(d) That no debt of the corporation remains unpaid;~~

~~(e) That the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued; and~~

~~(f) That a majority of the initial directors authorized the dissolution, or that initial directors were not named in the articles of incorporation and have not been elected and a majority of incorporators authorized the dissolution)).~~

(2) Unless prohibited by the articles of incorporation, a majority of the board of directors may authorize dissolution of the corporation without approval by the shareholders, upon a finding by the board of directors that:

(a) The corporation is not able to pay its liabilities as they become due in the usual course of business, or the corporation's assets are less than the sum of its total liabilities; and

(b) Ten or more days have elapsed since the corporation gave notice to all shareholders, whether or not they would otherwise be entitled to vote under RCW 23B.14.020, of the intent of the board of directors to authorize dissolution under this subsection.

Sec. 6. RCW 23B.14.020 and 2003 c 35 s 10 are each amended to read as follows:

(1) A corporation's board of directors may propose dissolution for submission to the shareholders.

(2) For a proposal to dissolve to be adopted:

(a) The board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

(b) The shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (5) of this section.

(3) The board of directors may condition its submission of the proposal for dissolution on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled under this title or the articles of incorporation to vote as a separate voting group on the proposed dissolution.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed dissolution either (a) by giving notice of a shareholders' meeting in accordance with RCW 23B.07.050~~((The notice must also state))~~ and stating that the purpose~~((;))~~ or one of the purposes~~((;))~~ of the meeting is to consider dissolving the corporation, or (b) in accordance with the requirements of RCW 23B.07.040 for taking action on the proposal without a meeting.

(5) In addition to any other voting conditions imposed by the board of directors under subsection (3) of this section, the proposal to dissolve must be approved by two-thirds of the voting group comprising all the votes entitled to be cast on the proposal, and of each other voting group entitled under the articles of incorporation to vote separately on the proposal. The articles of incorporation may require a greater or lesser vote than provided in this subsection, or a greater or lesser vote by any separate voting groups provided for in the articles of incorporation, so long as the required vote is not less than a majority of all the votes entitled to be cast on the proposal and of each other voting group entitled to vote separately on the proposal.

Sec. 7. RCW 23B.14.030 and 1989 c 165 s 156 are each amended to read as follows:

(1) At any time after dissolution is authorized under RCW 23B.14.010 or 23B.14.020, the corporation may dissolve by delivering to the secretary of state for filing:

(a) A copy of a revenue clearance certificate issued pursuant to RCW 82.32.260; and

(b) Articles of dissolution setting forth:

(i) The name of the corporation;

(ii) The date dissolution was authorized; and

(iii) ~~((If shareholder approval was required for dissolution,))~~ A statement that dissolution was duly authorized by the initial directors, the incorporators, or the board of directors in accordance with RCW 23B.14.010, or was duly proposed by the board of directors and approved by the shareholders in accordance with RCW 23B.14.020.

(2) A corporation is dissolved upon the effective date of its articles of dissolution.

(3) A dissolved corporation shall, within thirty days after the effective date of its articles of dissolution, publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice. The notice must be published once a week for three consecutive weeks in a newspaper of general circulation in the county where the dissolved corporation's principal office (or, if none in this state, its registered office) is or was last located. The notice must also describe the information that must be included in a claim, provide a mailing address where a claim may be sent, and state that claims against the dissolved corporation may be barred in accordance with the provisions of this chapter if not timely asserted. A dissolved corporation's failure to publish notice in accordance with this subsection does not affect the validity or the effective date of its dissolution.

(4) For purposes of this chapter, "dissolved corporation" means a corporation whose dissolution has been authorized in accordance with RCW 23B.14.010 or 23B.14.020 and whose articles of dissolution have become effective, and includes any trust or other successor entity to which the remaining assets of such a corporation are transferred subject to its liabilities for purposes of liquidation in accordance with RCW 23B.14.050.

Sec. 8. RCW 23B.14.050 and 1989 c 165 s 158 are each amended to read as follows:

(1) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(a) Collecting its assets;

(b) Disposing of its properties that will be applied toward satisfaction or making reasonable provision for satisfaction of its liabilities or will otherwise not be distributed in kind to its shareholders, but in any case subject to applicable liens and security interests as well as any applicable contractual restrictions on the disposition of its properties;

(c) ~~((Discharging))~~ Satisfying or making reasonable provision for ~~((discharging))~~ satisfying its liabilities, in accordance with their priorities as established by law, and on a pro rata basis within each class of liabilities;

(d) Subject to the limitations imposed by RCW 23B.06.400, distributing its remaining property among its shareholders according to their interests; and

(e) Doing every other act necessary to wind up and liquidate its business and affairs.

(2) Except as otherwise provided in this chapter, dissolution of a corporation does not:

(a) Transfer title to the corporation's property;

(b) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;

(c) Subject its directors or officers to standards of conduct different from those prescribed in chapter 23B.08 RCW;

(d) Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;

(e) Prevent commencement of a proceeding by or against the corporation in its corporate name;

(f) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(g) Terminate the authority of the registered agent of the corporation.

(3) A dissolved corporation's board of directors may make a determination that reasonable provision for the satisfaction of any liability, whether arising in tort or by contract, statute, or otherwise, and whether matured or unmatured, contingent, or conditional, has been made by means of a purchase of insurance coverage, provision of security therefor, contractual assumption thereof by a solvent person, or any other means, that the board of directors determines is reasonably calculated to provide for satisfaction of the reasonably estimated amount of such liability. Upon making such a determination, the board of directors shall, for purposes of determining whether a subsequent distribution to shareholders is prohibited under RCW 23B.06.400(2), be entitled to treat such liability as fully satisfied by the assets used or committed in order to make such provision. In making determinations under RCW 23B.06.400(2), the board of directors of a dissolved corporation may also disregard, and make no provision for the satisfaction of, any liabilities that are barred in accordance with RCW 23B.14.060(2), or that may exceed any provision for their satisfaction ordered by a superior court pursuant to section 10 of this act, or that the board of directors does not consider, based on the facts known to it, reasonably likely to arise prior to expiration of the survival period specified in RCW 23B.14.340.

(4) The board of directors of a dissolved corporation may at any time petition to have the dissolution continued under court supervision in accordance with RCW 23B.14.300, or, upon a finding that the corporation is not able to pay its liabilities as they become due in the usual course of business or that its assets are less than the sum of its total liabilities, may dedicate the corporation's assets to the repayment of its creditors by making an assignment for the benefit of creditors in accordance with chapter 7.08 RCW or obtaining the appointment of a general receiver in accordance with chapter 7.60 RCW. The assumption of control over the corporation's assets by a court, an assignee for the benefit of creditors, or a general receiver relieves the directors of any further duties with respect to the liquidation of the corporation's assets or the application of any assets or proceeds toward satisfaction of its liabilities.

(5) Actions and decisions to be taken by a corporation that has been dissolved under RCW 23B.14.030 or 23B.14.210, which are within the scope of activities permitted in this chapter, may be taken by the corporation's board of directors and, if required, by its shareholders, membership in both groups determined as of the effective date of the dissolution. If vacancies in the board of directors occur after the effective date of dissolution, the shareholders, or the remaining directors, even if less than a quorum of the board, may fill the vacancies. A special meeting of the shareholders for purposes of authorizing any action required or permitted to be authorized by shareholders, or for purposes of electing directors, may be called by any person who was an officer, director, or shareholder of the corporation at the effective date of the dissolution.

Sec. 9. RCW 23B.14.060 and 1989 c 165 s 159 are each amended to read as follows:

(1) A dissolved corporation that has published notice of its dissolution in accordance with RCW 23B.14.030(3) may dispose of any or all of the known claims against it by ~~(following the procedure described in this section).~~

~~(2) The dissolved corporation shall notify its known claimants in writing of the dissolution))~~ giving written notice of its dissolution to the holders of the known claims at any time after ~~((#s))~~ the effective date of dissolution. The written notice of dissolution must:

~~(a) ~~((Describe information that must be included in a claim))~~~~ Provide, for each known claim of the holder to whom the notice is addressed that is sought to be disposed of under this section, either (i) a general description of the known facts specified in subsection (3)(b)(i) or (ii) of this section relating to a matured and legally assertable claim or liability, or (ii) an identification of the executory contract with respect to which unmatured, conditional, or contingent claims or liabilities are sought to be disposed of under this section;

(b) Provide a mailing address where a notice of claim may be sent;

(c) State the deadline, which may not be fewer than one hundred twenty days from the effective date of the written notice of dissolution, by which a written notice of claim must be delivered to the dissolved corporation ~~((must receive the claim)); ~~((and))~~~~

(d) State that the known claim will be barred if a written notice of claim describing the known claim with reasonable particularity is not ~~((received))~~ delivered to the dissolved corporation by the deadline; and

(e) State that the known claim or any executory contract on which the known claim is based may be rejected by the dissolved corporation, in which case the holder of the known claim will have a limited period of ninety days from the effective date of the rejection notice in which to commence a proceeding to enforce the known claim.

~~((3))~~ (2) A known claim against the dissolved corporation is barred:

(a) If ~~((a claimant))~~ the holder of the known claim who was given written notice of dissolution under subsection ~~((2))~~ (1) of this section does not deliver the written notice of claim to the dissolved corporation by the deadline; or

(b) If a ~~((claimant whose))~~ holder of a known claim that was rejected by the dissolved corporation does not commence a proceeding to enforce the known claim within ninety days from the effective date of the rejection notice.

~~((4) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.))~~

(3) For purposes of this section, "known claim" means any claim or liability:

(a) That either: (i) Has matured sufficiently, before or after the effective date of the dissolution, to be legally capable of assertion against the dissolved corporation, whether or not the amount of the claim or liability is known or determinable; or (ii) is unmatured, conditional, or otherwise contingent but may subsequently arise under any executory contract to which the dissolved corporation is a party, other than under an implied or statutory warranty as to any product manufactured, sold, distributed, or handled by the dissolved corporation; and

(b) As to which the dissolved corporation has knowledge of the identity and the mailing address of the holder of the claim or liability and, in the case of a matured and legally assertable claim or liability, actual knowledge of existing facts that either (i) could be asserted to give rise to, or (ii) indicate an intention by the holder to assert, such a matured claim or liability.

NEW SECTION. Sec. 10. A new section is added to chapter 23B.14 RCW to read as follows:

(1) A dissolved corporation that has published notice of its dissolution in accordance with RCW 23B.14.030(3) may file an application, with the superior court of the county where its principal office or, if none in this state, its registered office is located, for a determination of:

(a) The amount and form of reasonable provision to be made for the satisfaction of any one or more claims or liabilities, known or unknown, arising in tort or by contract, statute or otherwise, matured or unmatured, contingent or conditional, that have arisen or are reasonably likely to arise prior to expiration of the survival period specified in RCW 23B.14.340; or

(b) Whether the provision made or proposed to be made by the board of directors for the satisfaction of any one or more claims or liabilities is reasonable.

Any determination under this subsection is conclusive for purposes of determining the legality of any subsequent distributions under RCW 23B.06.400 and 23B.14.050(3).

(2) Within ten days after filing the application, the dissolved corporation shall give written notice of the judicial proceeding to each person to whom written notice has been given pursuant to RCW 23B.14.060 and each other person whose claim or potential claim, identity, and mailing address are known to the dissolved corporation. However, written notice of the judicial proceeding need not be given to any person whose claim or potential claim is not sought to be determined under the application filed by the dissolved corporation.

(3) The superior court may appoint a guardian ad litem to represent all persons whose claims or potential claims are sought to be determined in the judicial proceeding but whose identities or mailing addresses are not known to the dissolved corporation. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, shall be paid by the dissolved corporation.

(4) Provision by the dissolved corporation for satisfaction of claims or potential claims in the amount and form ordered by the superior court shall satisfy the dissolved corporation's obligations with respect to those claims or potential claims, and any further or greater claims based on the same facts, dealings, or contract shall be barred.

NEW SECTION. Sec. 11. A new section is added to chapter 23B.14 RCW to read as follows:

(1) The holder of an unpaid claim against a dissolved corporation that is not barred under RCW 23B.14.060(2) or section 10(4) of this act or by expiration of the survival period specified in RCW 23B.14.340 may, within the statute of limitations applicable to the claim, commence a proceeding against the dissolved corporation to collect the amount of the claim from any remaining undistributed assets of the corporation. If the undistributed assets of the corporation are not or may not be sufficient to satisfy the amount of the unpaid claim, and there have been distributions to shareholders as to which the limitations period specified in RCW 23B.08.310(5) has not expired at the time the proceeding is commenced, the holder of the unpaid claim may include as a part of the relief claimed against the dissolved corporation a petition to compel the dissolved corporation to collect any amounts owing to it by directors or shareholders under RCW

23B.08.310 and to apply the collections toward payment of the claim. The filing of such a petition to compel the corporation to collect unlawfully distributed amounts from directors or shareholders tolls the limitations periods specified in RCW 23B.08.310(5) and 23B.14.340 with respect to the unpaid claim, as to directors and shareholders who may be liable under RCW 23B.08.310. If the dissolved corporation fails, within a reasonable period of time after the filing of such a petition to compel it to collect amounts owing under RCW 23B.08.310, to join those directors and shareholders who may be liable for the amounts, the holder of the unpaid claim may join those directors and shareholders as additional defendants in the proceeding. The holder of the unpaid claim may also join all directors and shareholders who may be liable under RCW 23B.08.310 as additional defendants in the proceeding, at any time upon establishing to the satisfaction of the court that any of such shareholders, with intent to delay or defraud or place property beyond the reach of the corporation's creditors, has removed or is about to remove from this state, or has assigned, secreted, or disposed of, or is about to assign, secrete, or dispose of, any of the property distributed by the corporation as to which the shareholder may be liable under RCW 23B.08.310(3). Except as permitted by this section, the holder of the unpaid claim may not, by means of any proceeding or otherwise, seek to enforce the claim directly against any of the dissolved corporation's officers or directors in those capacities, or against any of its shareholders on account of their receipt of distributions after the effective date of dissolution.

(2) Claims against a dissolved corporation that are barred under RCW 23B.14.060(2) or section 10(4) of this act or by expiration of the survival period specified in RCW 23B.14.340 may not be enforced against the dissolved corporation, any of its officers or directors in those capacities, or any of its shareholders on account of their receipt of distributions after the effective date of dissolution.

Sec. 12. RCW 23B.14.210 and 1989 c 165 s 161 are each amended to read as follows:

(1) If the secretary of state determines that one or more grounds exist under RCW 23B.14.200 or 23B.14.203 for dissolving a corporation, the secretary of state shall give the corporation written notice of the determination by first-class mail, postage prepaid.

(2) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after notice is effective, the secretary of state shall administratively dissolve the corporation and give the corporation written notice of the dissolution that recites the ground or grounds therefor and its effective date.

(3) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs (~~under~~) in a manner consistent with RCW 23B.14.050 (~~and notify claimants under RCW 23B.14.060~~).

(4) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

Sec. 13. RCW 23B.14.220 and 1995 c 47 s 2 are each amended to read as follows:

(1) A corporation administratively dissolved under RCW 23B.14.210 may apply to the secretary of state for reinstatement within five years after the effective date of dissolution. The application must:

(a) Recite the name of the corporation and the effective date of its administrative dissolution;

(b) State that the ground or grounds for dissolution either did not exist or have been eliminated; and

(c) State that the corporation's name satisfies the requirements of RCW 23B.04.010.

(2) If the secretary of state determines that the application contains the information required by subsection (1) of this section and that the name is available, the secretary of state shall reinstate the corporation and give the corporation written notice of the reinstatement that recites the effective date of reinstatement. If the name is not available, the corporation must file articles of amendment changing its name with its application for reinstatement.

(3) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

~~((4) The application must be authorized either by action of the shareholders, or of the corporation's board of directors, membership in both groups determined as of the date of administrative dissolution. If vacancies in the board of directors occur after the date of dissolution, the shareholders, or the remaining directors, even if less than a quorum of the board, may fill the vacancies. A special meeting of the shareholders for purposes of authorizing the application for reinstatement, or for purposes of electing directors, may be called by any person who was an officer, director, or shareholder of the corporation at the time of administrative dissolution.))~~

Sec. 14. RCW 23B.14.300 and 1995 c 47 s 3 are each amended to read as follows:

The superior courts may dissolve a corporation:

(1) In a proceeding by the attorney general if it is established that:

(a) The corporation obtained its articles of incorporation through fraud; or

(b) The corporation has continued to exceed or abuse the authority conferred upon it by law;

(2) In a proceeding by a shareholder if it is established that:

(a) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;

(b) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(c) The shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;

(d) The corporate assets are being misapplied or wasted; or
 (e) The corporation has ceased all business activity and has failed, within a reasonable time, to dissolve, to liquidate its assets, or to distribute its remaining assets among its shareholders;

(3) In a proceeding by a creditor if it is established that:

(a) The creditor's claim has been reduced to judgment, the execution on the judgment was returned unsatisfied, and the corporation is ~~((insolvent))~~ not able to pay its liabilities as they become due in the usual course of business or its assets are less than the sum of its total liabilities; or

(b) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is ~~((insolvent; or))~~ not able to pay its liabilities as they become due in the usual course of business or its assets are less than the sum of its total liabilities.

~~((4))~~ The superior courts may also assume control over a dissolved corporation's assets and the process for winding up and liquidating its business and affairs, in a proceeding instituted by the dissolved corporation to have its voluntary dissolution continued under court supervision.

Sec. 15. RCW 23B.14.310 and 1989 c 165 s 164 are each amended to read as follows:

(1) Venue for any proceeding to dissolve a corporation or to supervise a voluntary dissolution brought by any party named in RCW 23B.14.300 lies in the county where a corporation's registered office is or was last located.

(2) It is not necessary to make shareholders or directors parties to a proceeding to dissolve a corporation or to supervise a voluntary dissolution unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a corporation or to supervise a voluntary dissolution may issue injunctions, appoint a general or custodial receiver ~~((or custodian pendente lite))~~ with all powers and duties the court directs, and take other action required to preserve the corporate assets wherever located ~~((and))~~. A court in a proceeding brought to dissolve a corporation may also carry on the business of the corporation until a full hearing can be held.

Sec. 16. RCW 23B.14.320 and 2004 c 165 s 40 are each amended to read as follows:

~~((1))~~ A court in a judicial proceeding brought ~~((to dissolve a corporation))~~ under RCW 23B.14.300 may appoint one or more general receivers to wind up and liquidate ~~((; or one or more custodians to manage,))~~ the business and affairs of the corporation, or, if the corporation is not yet dissolved, may appoint one or more custodial receivers to manage its business and affairs. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a general or custodial receiver ~~((or custodian))~~. The hearing, and any resulting receivership, shall be conducted in accordance with chapter 7.60 RCW.

~~((2))~~ The court may appoint an individual or a domestic or foreign corporation, authorized to transact business in this state, as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

~~((3))~~ The receiver or custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent

~~necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.~~

~~(4) The court, during a receivership, may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders, and creditors.~~

~~(5) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and counsel from the assets of the corporation or proceeds from the sale of the assets.)~~

Sec. 17. RCW 23B.14.340 and 1995 c 47 s 5 are each amended to read as follows:

The dissolution of a corporation either~~(=)~~ (1) by the filing ~~((by))~~ with the secretary of state of its articles of dissolution, (2) by administrative dissolution by the secretary of state, (3) by a decree of court, or (4) by expiration of its period of duration shall not take away or impair any remedy available against such corporation, its directors, officers, or shareholders, for any right or claim existing, or any liability incurred, prior to such dissolution ~~((#))~~ or arising thereafter, unless action or other proceeding thereon is not commenced within two years after the effective date of ~~((such))~~ any dissolution that was effective prior to the effective date of this section or within three years after the effective date of any dissolution that is effective on or after the effective date of this section. Any such action or proceeding against the corporation may be defended by the corporation in its corporate name.

Sec. 18. RCW 23B.14.400 and 1989 c 165 s 168 are each amended to read as follows:

Following its dissolution, the assets of a ~~((dissolved))~~ corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them may be reduced to cash and deposited with the state treasurer for safekeeping. If assets are transferred to the state treasurer, and if the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the state treasurer or other appropriate state official shall pay such person or such person's representative that amount.

Passed by the Senate February 11, 2006.

Passed by the House March 1, 2006.

Approved by the Governor March 14, 2006.

Filed in Office of Secretary of State March 14, 2006.

CHAPTER 53

[Engrossed Substitute Senate Bill 6870]

BOARD OF PILOTAGE COMMISSIONERS

AN ACT Relating to the board of pilotage commissioners' training program; amending RCW 88.16.035; amending 2005 c 313 s 204 (uncodified); creating a new section; making an appropriation; and declaring an emergency.

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

Sec. 1. RCW 88.16.035 and 2005 c 26 s 1 are each amended to read as follows:

(1) The board of pilotage commissioners shall:

~~((1))~~ (a) Adopt rules, pursuant to chapter 34.05 RCW, necessary for the enforcement and administration of this chapter;

~~((2)(a))~~ (b)(i) Issue training licenses and pilot licenses to pilot applicants meeting the qualifications provided for in RCW 88.16.090 and such additional qualifications as may be determined by the board;

~~((b))~~ (ii) Establish a comprehensive training program to assist in the training and evaluation of pilot applicants before final licensing; and

~~((c))~~ (iii) Establish additional training requirements, including a program of continuing education developed after consultation with pilot organizations, including those located within the state of Washington, as required to maintain a competent pilotage service;

~~((3))~~ (c) Maintain a register of pilots, records of pilot accidents and other history pertinent to pilotage, along with a roster of vessels, agents, owners, operators, and masters necessary for the maintenance of a roster of persons interested in and concerned with pilotage and maritime safety;

~~((4))~~ (d) Determine from time to time the number of pilots necessary to be licensed in each district of the state to optimize the operation of a safe, fully regulated, efficient, and competent pilotage service in each district;

~~((5))~~ (e) Annually fix the pilotage tariffs for pilotage services performed aboard vessels as required by this chapter: PROVIDED, That the board may fix extra compensation for extra services to vessels in distress, for awaiting vessels, or for being carried to sea on vessels against the will of the pilot, and for such other services as may be determined by the board;

~~((6))~~ (f) File annually with the governor and the chairs of the transportation committees of the senate and house of representatives a report which includes, but is not limited to, the following: The number, names, addresses, ages, pilot license number, training license number, and years of service as a Washington licensed pilot of any person licensed by the board as a Washington state pilot or trainee; the names, employment, and other information of the members of the board; the total number of pilotage assignments by pilotage district, including information concerning the various types and sizes of vessels and the total annual tonnage; the annual earnings or stipends of individual pilots and trainees before and after deduction for expenses of pilot organizations, including extra compensation as a separate category; the annual expenses of private pilot associations, including personnel employed and capital expenditures; the status of pilotage tariffs, extra compensation, and travel; the retirement contributions paid to pilots and the disposition thereof; the number of groundings, mishaps, or other incidents which are reported to or investigated by the board, and which are determined to be accidents, as defined by the board, including the vessel name, location of incident, pilot's or trainee's name, and disposition of the case together with information received before the board acted from all persons concerned, including the United States coast guard; the names, qualifications, time scheduled for examinations, and the district of persons desiring to apply for Washington state pilotage licenses; summaries of dispatch records, quarterly reports from pilots, and the bylaws and operating rules of pilotage organizations; the names, sizes in deadweight tons, surcharges, if any,

port of call, name of the pilot or trainee, and names and horsepower of tug boats for any and all oil tankers subject to the provisions of RCW 88.16.190 together with the names of any and all vessels for which the United States coast guard requires special handling pursuant to their authority under the Ports and Waterways Safety Act of 1972; the expenses of the board; and any and all other information which the board deems appropriate to include;

~~((7))~~ (g) Publish a manual which includes the pilotage act and other statutes of Washington state and the federal government which affect pilotage, including the rules of the board, together with such additional information as may be informative for pilots, agents, owners, operators, and masters. Such manual shall be distributed without cost to all pilots and governmental agencies upon request. All other copies shall be sold for a five dollar fee with proceeds to be credited to the pilotage account;

~~((8))~~ (h) Appoint advisory committees and employ marine experts as necessary to carry out its duties under this chapter;

~~((9))~~ (i) Provide for the maintenance of efficient and competent pilotage service on all waters covered by this chapter; and do such other things as are reasonable, necessary, and expedient to insure proper and safe pilotage upon the waters covered by this chapter and facilitate the efficient administration of this chapter.

(2) The board may pay stipends to pilot trainees under subsection (1)(b) of this section.

Sec. 2. 2005 c 313 s 204 (uncodified) is amended to read as follows:

FOR THE BOARD OF PILOTAGE COMMISSIONERS

Pilotage Account—State Appropriation ~~(\$417,000)~~
\$1,017,000

The appropriation in this section is subject to the following conditions and limitations: \$500,000 of the appropriation is provided solely for stipends to trainees in the training program as set forth in rules adopted by the board.

NEW SECTION. Sec. 3. This act is intended to clarify the authority of the board of pilotage commissioners to pay stipends to pilot trainees that have indicated they wish to receive a stipend during the board of pilotage commissioners' training program. Section 1 of this act is remedial and curative in nature and applies retroactively to December 1, 2005. Specifically, the board may pay stipends, pursuant to the rules established by the board, to any pilot trainees that qualified for the stipends on, or after, December 1, 2005.

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

Passed by the Senate February 8, 2006.

Passed by the House March 1, 2006.

Approved by the Governor March 14, 2006.

Filed in Office of Secretary of State March 14, 2006.

CHAPTER 54

[Engrossed Second Substitute House Bill 2353]

QUALITY FAMILY CHILD CARE ACT

AN ACT Relating to improving access to and the stability of quality child care through providing collective bargaining and other representation rights for family child care providers and licensees; amending RCW 41.56.030, 41.56.113, 41.04.810, 43.01.047, and 74.15.030; reenacting and amending RCW 74.15.020; adding a new section to chapter 41.56 RCW; adding a new section to chapter 74.15 RCW; creating new sections; and declaring an emergency.

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

PART I - FAMILY CHILD CARE PROVIDERS

NEW SECTION. Sec. 1. A new section is added to chapter 41.56 RCW to read as follows:

(1) In addition to the entities listed in RCW 41.56.020, this chapter applies to the governor with respect to family child care providers. Solely for the purposes of collective bargaining and as expressly limited under subsections (2) and (3) of this section, the governor is the public employer of family child care providers who, solely for the purposes of collective bargaining, are public employees. The public employer shall be represented for bargaining purposes by the governor or the governor's designee appointed under chapter 41.80 RCW.

(2) This chapter governs the collective bargaining relationship between the governor and family child care providers, except as follows:

(a) A statewide unit of all family child care providers is the only unit appropriate for purposes of collective bargaining under RCW 41.56.060.

(b) The exclusive bargaining representative of family child care providers in the unit specified in (a) of this subsection shall be the representative chosen in an election conducted pursuant to RCW 41.56.070, except that in the initial election conducted under this act, if more than one labor organization is on the ballot and none of the choices receives a majority of the votes cast, a run-off election shall be held.

(c) Notwithstanding the definition of "collective bargaining" in RCW 41.56.030(4), the scope of collective bargaining for child care providers under this section shall be limited solely to: (i) Economic compensation, such as manner and rate of subsidy and reimbursement, including tiered reimbursements; (ii) health and welfare benefits; (iii) professional development and training; (iv) labor-management committees; (v) grievance procedures; and (vi) other economic matters. Retirement benefits shall not be subject to collective bargaining. By such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.

(d) The mediation and interest arbitration provisions of RCW 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

(i) With respect to commencement of negotiations between the governor and the exclusive bargaining representative of family child care providers, negotiations shall be commenced initially upon certification of an exclusive bargaining representative under (a) of this subsection and, thereafter, by February 1st of any even-numbered year;

(ii) In addition to the factors to be taken into consideration by an interest arbitration panel under RCW 41.56.465, the panel shall consider the financial

ability of the state to pay for the compensation and benefit provisions of a collective bargaining agreement; and

(iii) The decision of the arbitration panel is not binding on the legislature and, if the legislature does not approve the request for funds necessary to implement the compensation and benefit provisions of the arbitrated collective bargaining agreement, is not binding on the state.

(e) Family child care providers do not have the right to strike.

(3) Family child care providers who are public employees solely for the purposes of collective bargaining under subsection (1) of this section are not, for that reason, employees of the state for any purpose. This section applies only to the governance of the collective bargaining relationship between the employer and family child care providers as provided in subsections (1) and (2) of this section.

(4) This section does not create or modify:

(a) The parents' or legal guardians' right to choose and terminate the services of any family child care provider that provides care for their child or children;

(b) The secretary of the department of social and health services' right to adopt requirements under RCW 74.15.030, except for requirements related to grievance procedures and collective negotiations on personnel matters as specified in subsection (2)(c) of this section;

(c) Chapter 26.44 RCW, RCW 43.43.832, 43.20A.205, and 74.15.130; and

(d) The legislature's right to make programmatic modifications to the delivery of state services through child care subsidy programs, including standards of eligibility of parents, legal guardians, and family child care providers participating in child care subsidy programs, and the nature of services provided. The governor shall not enter into, extend, or renew any agreement under this section that does not expressly reserve the legislative rights described in this subsection (4)(d).

(5) Upon meeting the requirements of subsection (6) of this section, the governor must submit, as a part of the proposed biennial or supplemental operating budget submitted to the legislature under RCW 43.88.030, a request for funds necessary to implement the compensation and benefit provisions of a collective bargaining agreement entered into under this section or for legislation necessary to implement such agreement.

(6) A request for funds necessary to implement the compensation and benefit provisions of a collective bargaining agreement entered into under this section shall not be submitted by the governor to the legislature unless such request has been:

(a) Submitted to the director of financial management by October 1st before the legislative session at which the request is to be considered, except that, for initial negotiations under this section, the request must be submitted by November 15, 2006; and

(b) Certified by the director of financial management as being feasible financially for the state or reflects the binding decision of an arbitration panel reached under this section.

(7) The legislature must approve or reject the submission of the request for funds as a whole. If the legislature rejects or fails to act on the submission, any such agreement will be reopened solely for the purpose of renegotiating the funds necessary to implement the agreement.

(8) The governor shall periodically consult with the joint committee on employment relations established by RCW 41.80.010 regarding appropriations necessary to implement the compensation and benefit provisions of any collective bargaining agreement and, upon completion of negotiations, advise the committee on the elements of the agreement and on any legislation necessary to implement such agreement.

(9) After the expiration date of any collective bargaining agreement entered into under this section, all of the terms and conditions specified in any such agreement remain in effect until the effective date of a subsequent agreement, not to exceed one year from the expiration date stated in the agreement, except as provided in subsection (4)(d) of this section.

(10) If, after the compensation and benefit provisions of an agreement 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.

(11) In enacting this section, the legislature intends to provide state action immunity under federal and state antitrust laws for the joint activities of family child care providers and their exclusive bargaining representative to the extent such activities are authorized by this chapter.

Sec. 2. RCW 41.56.030 and 2004 c 3 s 6 are each amended to read as follows:

As used in this chapter:

(1) "Public employer" means any officer, board, commission, council, or other person or body acting on behalf of any public body governed by this chapter, or any subdivision of such public body. For the purposes of this section, the public employer of district court or superior court employees for wage-related matters is the respective county legislative authority, or person or body acting on behalf of the legislative authority, and the public employer for nonwage-related matters is the judge or judge's designee of the respective district court or superior court.

(2) "Public employee" means any employee of a public employer except any person (a) elected by popular vote, or (b) appointed to office pursuant to statute, ordinance or resolution for a specified term of office as a member of a multimember board, commission, or committee, whether appointed by the executive head or body of the public employer, or (c) whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to (i) the executive head or body of the applicable bargaining unit, or (ii) any person elected by popular vote, or (iii) any person appointed to office pursuant to statute, ordinance or resolution for a specified term of office as a member of a multimember board, commission, or committee, whether appointed by the executive head or body of the public employer, or (d) who is a court commissioner or a court magistrate of superior court, district court, or a department of a district court organized under chapter 3.46 RCW, or (e) who is a personal assistant to a district court judge, superior court judge, or court commissioner(~~(, or (f) excluded from a bargaining unit under RCW 41.56.201(2)(a))~~). For the purpose of (e) of this subsection, no more than one assistant for each judge or commissioner may be excluded from a bargaining unit.

(3) "Bargaining representative" means any lawful organization which has as one of its primary purposes the representation of employees in their employment relations with employers.

(4) "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.

(5) "Commission" means the public employment relations commission.

(6) "Executive director" means the executive director of the commission.

(7) "Uniformed personnel" means: (a) Law enforcement officers as defined in RCW 41.26.030 employed by the governing body of any city or town with a population of two thousand five hundred or more and law enforcement officers employed by the governing body of any county with a population of ten thousand or more; (b) correctional employees who are uniformed and nonuniformed, commissioned and noncommissioned security personnel employed in a jail as defined in RCW 70.48.020(5), by a county with a population of seventy thousand or more, and who are trained for and charged with the responsibility of controlling and maintaining custody of inmates in the jail and safeguarding inmates from other inmates; (c) general authority Washington peace officers as defined in RCW 10.93.020 employed by a port district in a county with a population of one million or more; (d) security forces established under RCW 43.52.520; (e) fire fighters as that term is defined in RCW 41.26.030; (f) employees of a port district in a county with a population of one million or more whose duties include crash fire rescue or other fire fighting duties; (g) employees of fire departments of public employers who dispatch exclusively either fire or emergency medical services, or both; or (h) employees in the several classes of advanced life support technicians, as defined in RCW 18.71.200, who are employed by a public employer.

(8) "Institution of higher education" means the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, and the various state community colleges.

(9) "Home care quality authority" means the authority under chapter 74.39A RCW.

(10) "Individual provider" means an individual provider as defined in RCW 74.39A.240(4) who, solely for the purposes of collective bargaining, is a public employee as provided in RCW 74.39A.270.

(11) "Child care subsidy" means a payment from the state through a child care subsidy program established pursuant to RCW 74.12.340 or 74.08A.340, 45 C.F.R. Sec. 98.1 through 98.17, or any successor program.

(12) "Family child care provider" means a person who: (a) Provides regularly scheduled care for a child or children in the home of the provider or in the home of the child or children for periods of less than twenty-four hours or, if necessary due to the nature of the parent's work, for periods equal to or greater

than twenty-four hours; (b) receives child care subsidies; and (c) is either licensed by the state under RCW 74.15.030 or is exempt from licensing under chapter 74.15 RCW.

Sec. 3. RCW 41.56.113 and 2004 c 3 s 7 are each amended to read as follows:

(1) Upon the written authorization of an individual provider or a family child care provider within the bargaining unit and after the certification or recognition of the bargaining unit's exclusive bargaining representative, the state as payor, but not as the employer, shall, subject to subsection (3) of this section, deduct from the payments to an individual provider or a family child care provider the monthly amount of dues as certified by the secretary of the exclusive bargaining representative and shall transmit the same to the treasurer of the exclusive bargaining representative.

(2) If the governor and the exclusive bargaining representative of a bargaining unit of individual providers or family child care providers enter into a collective bargaining agreement that:

(a) Includes a union security provision authorized in RCW 41.56.122, the state as payor, but not as the employer, shall, subject to subsection (3) of this section, enforce the agreement by deducting from the payments to bargaining unit members the dues required for membership in the exclusive bargaining representative, or, for nonmembers thereof, a fee equivalent to the dues; or

(b) Includes requirements for deductions of payments other than the deduction under (a) of this subsection, the state, as payor, but not as the employer, shall, subject to subsection (3) of this section, make such deductions upon written authorization of the individual provider or the family child care provider.

(3)(a) The initial additional costs to the state in making deductions from the payments to individual providers or family child care providers under this section shall be negotiated, agreed upon in advance, and reimbursed to the state by the exclusive bargaining representative.

(b) The allocation of ongoing additional costs to the state in making deductions from the payments to individual providers or family child care providers under this section shall be an appropriate subject of collective bargaining between the exclusive bargaining representative and the governor unless prohibited by another statute. If no collective bargaining agreement containing a provision allocating the ongoing additional cost is entered into between the exclusive bargaining representative and the governor, or if the legislature does not approve funding for the collective bargaining agreement as provided in RCW 74.39A.300 or section 1 of this act, as applicable, the ongoing additional costs to the state in making deductions from the payments to individual providers or family child care providers under this section shall be negotiated, agreed upon in advance, and reimbursed to the state by the exclusive bargaining representative.

(4) The governor and the exclusive bargaining representative of a bargaining unit of family child care providers may not enter into a collective bargaining agreement that contains a union security provision unless the agreement contains a process, to be administered by the exclusive bargaining representative of a bargaining unit of family child care providers, for hardship

dispensation for license-exempt family child care providers who are also temporary assistance for needy families recipients or WorkFirst participants.

Sec. 4. RCW 41.04.810 and 2004 c 3 s 3 are each amended to read as follows:

Individual providers, as defined in RCW 74.39A.240, and family child care providers, as defined in RCW 41.56.030, are not employees of the state or any of its political subdivisions and are specifically and entirely excluded from all provisions of this title, except as provided in RCW 74.39A.270 and section 1 of this act.

Sec. 5. RCW 43.01.047 and 2004 c 3 s 4 are each amended to read as follows:

RCW 43.01.040 through 43.01.044 do not apply to individual providers under RCW 74.39A.220 through 74.39A.300 or to family child care providers under section 1 of this act.

PART II - FAMILY CHILD CARE LICENSEES

NEW SECTION. **Sec. 6.** A new section is added to chapter 74.15 RCW to read as follows:

(1) Solely for the purposes of negotiated rule making pursuant to RCW 34.05.310(2)(a) and 74.15.030, a statewide unit of all family child care licensees is appropriate. As of the effective date of this act, the exclusive representative of family child care licensees in the statewide unit shall be the representative selected as the majority representative in the election held under the directive of the governor to the secretary of the department of social and health services, dated September 16, 2005. If family child care licensees seek to select a different representative thereafter, the family child care licensees may request that the American arbitration association conduct an election and certify the results of the election.

(2) In enacting this section, the legislature intends to provide state action immunity under federal and state antitrust laws for the joint activities of family child care licensees and their exclusive representative to the extent such activities are authorized by this chapter.

Sec. 7. RCW 74.15.020 and 2001 c 230 s 1, 2001 c 144 s 1, and 2001 c 137 s 3 are each reenacted and amended to read as follows:

For the purpose of this chapter (~~74.15 RCW~~) and RCW 74.13.031, and unless otherwise clearly indicated by the context thereof, the following terms shall mean:

(1) "Agency" means any person, firm, partnership, association, corporation, or facility which receives children, expectant mothers, or persons with developmental disabilities for control, care, or maintenance outside their own homes, or which places, arranges the placement of, or assists in the placement of children, expectant mothers, or persons with developmental disabilities for foster care or placement of children for adoption, and shall include the following irrespective of whether there is compensation to the agency or to the children, expectant mothers or persons with developmental disabilities for services rendered:

(a) "Child day-care center" means an agency which regularly provides care for a group of children for periods of less than twenty-four hours;

(b) "Child-placing agency" means an agency which places a child or children for temporary care, continued care, or for adoption;

(c) "Community facility" means a group care facility operated for the care of juveniles committed to the department under RCW 13.40.185. A county detention facility that houses juveniles committed to the department under RCW 13.40.185 pursuant to a contract with the department is not a community facility;

(d) "Crisis residential center" means an agency which is a temporary protective residential facility operated to perform the duties specified in chapter 13.32A RCW, in the manner provided in RCW 74.13.032 through 74.13.036;

(e) "Emergency respite center" is an agency that may be commonly known as a crisis nursery, that provides emergency and crisis care for up to seventy-two hours to children who have been admitted by their parents or guardians to prevent abuse or neglect. Emergency respite centers may operate for up to twenty-four hours a day, and for up to seven days a week. Emergency respite centers may provide care for children ages birth through seventeen, and for persons eighteen through twenty with developmental disabilities who are admitted with a sibling or siblings through age seventeen. Emergency respite centers may not substitute for crisis residential centers or HOPE centers, or any other services defined under this section, and may not substitute for services which are required under chapter 13.32A or 13.34 RCW;

(f) "Family day-care provider" means a child day-care provider who regularly provides child day care for not more than twelve children in the provider's home in the family living quarters;

(g) "Foster-family home" means an agency which regularly provides care on a twenty-four hour basis to one or more children, expectant mothers, or persons with developmental disabilities in the family abode of the person or persons under whose direct care and supervision the child, expectant mother, or person with a developmental disability is placed;

(h) "Group-care facility" means an agency, other than a foster-family home, which is maintained and operated for the care of a group of children on a twenty-four hour basis;

(i) "HOPE center" means an agency licensed by the secretary to provide temporary residential placement and other services to street youth. A street youth may remain in a HOPE center for thirty days while services are arranged and permanent placement is coordinated. No street youth may stay longer than thirty days unless approved by the department and any additional days approved by the department must be based on the unavailability of a long-term placement option. A street youth whose parent wants him or her returned to home may remain in a HOPE center until his or her parent arranges return of the youth, not longer. All other street youth must have court approval under chapter 13.34 or 13.32A RCW to remain in a HOPE center up to thirty days;

(j) "Maternity service" means an agency which provides or arranges for care or services to expectant mothers, before or during confinement, or which provides care as needed to mothers and their infants after confinement;

(k) "Responsible living skills program" means an agency licensed by the secretary that provides residential and transitional living services to persons ages sixteen to eighteen who are dependent under chapter 13.34 RCW and who have

been unable to live in his or her legally authorized residence and, as a result, the minor lived outdoors or in another unsafe location not intended for occupancy by the minor. Dependent minors ages fourteen and fifteen may be eligible if no other placement alternative is available and the department approves the placement;

(1) "Service provider" means the entity that operates a community facility.

(2) "Agency" shall not include the following:

(a) Persons related to the child, expectant mother, or person with developmental disability in the following ways:

(i) Any blood relative, including those of half-blood, and including first cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law;

(iv) Spouses of any persons named in (i), (ii), or (iii) of this subsection (2)(a), even after the marriage is terminated; or

(v) Extended family members, as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent who provides care in the family abode on a twenty-four-hour basis to an Indian child as defined in 25 U.S.C. Sec. 1903(4);

(b) Persons who are legal guardians of the child, expectant mother, or persons with developmental disabilities;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where: (i) The person providing care for periods of less than twenty-four hours does not conduct such activity on an ongoing, regularly scheduled basis for the purpose of engaging in business, which includes, but is not limited to, advertising such care; or (ii) the parent and person providing care on a twenty-four-hour basis have agreed to the placement in writing and the state is not providing any payment for the care;

(d) Parents on a mutually cooperative basis exchange care of one another's children;

(e) A person, partnership, corporation, or other entity that provides placement or similar services to exchange students or international student exchange visitors or persons who have the care of an exchange student in their home;

(f) A person, partnership, corporation, or other entity that provides placement or similar services to international children who have entered the country by obtaining visas that meet the criteria for medical care as established by the United States immigration and naturalization service, or persons who have the care of such an international child in their home;

(g) Nursery schools or kindergartens which are engaged primarily in educational work with preschool children and in which no child is enrolled on a regular basis for more than four hours per day;

(h) Schools, including boarding schools, which are engaged primarily in education, operate on a definite school year schedule, follow a stated academic

curriculum, accept only school-age children and do not accept custody of children;

(i) Seasonal camps of three months' or less duration engaged primarily in recreational or educational activities;

(j) Hospitals licensed pursuant to chapter 70.41 RCW when performing functions defined in chapter 70.41 RCW, nursing homes licensed under chapter 18.51 RCW and boarding homes licensed under chapter 18.20 RCW;

(k) Licensed physicians or lawyers;

(l) Facilities providing care to children for periods of less than twenty-four hours whose parents remain on the premises to participate in activities other than employment;

(m) Facilities approved and certified under chapter 71A.22 RCW;

(n) Any agency having been in operation in this state ten years prior to June 8, 1967, and not seeking or accepting moneys or assistance from any state or federal agency, and is supported in part by an endowment or trust fund;

(o) Persons who have a child in their home for purposes of adoption, if the child was placed in such home by a licensed child-placing agency, an authorized public or tribal agency or court or if a replacement report has been filed under chapter 26.33 RCW and the placement has been approved by the court;

(p) An agency operated by any unit of local, state, or federal government or an agency, located within the boundaries of a federally recognized Indian reservation, licensed by the Indian tribe;

(q) A maximum or medium security program for juvenile offenders operated by or under contract with the department;

(r) An agency located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter.

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

(4) "Family child care licensee" means a person who: (a) Provides regularly scheduled care for a child or children in the home of the provider for periods of less than twenty-four hours or, if necessary due to the nature of the parent's work, for periods equal to or greater than twenty-four hours; (b) does not receive child care subsidies; and (c) is licensed by the state under RCW 74.15.030.

(5) "Juvenile" means a person under the age of twenty-one who has been sentenced to a term of confinement under the supervision of the department under RCW 13.40.185.

~~((5))~~ (6) "Probationary license" means a license issued as a disciplinary measure to an agency that has previously been issued a full license but is out of compliance with licensing standards.

~~((6))~~ (7) "Requirement" means any rule, regulation, or standard of care to be maintained by an agency.

~~((7))~~ (8) "Secretary" means the secretary of social and health services.

~~((8))~~ (9) "Street youth" means a person under the age of eighteen who lives outdoors or in another unsafe location not intended for occupancy by the minor and who is not residing with his or her parent or at his or her legally authorized residence.

~~((9))~~ (10) "Transitional living services" means at a minimum, to the extent funds are available, the following:

(a) Educational services, including basic literacy and computational skills training, either in local alternative or public high schools or in a high school equivalency program that leads to obtaining a high school equivalency degree;

(b) Assistance and counseling related to obtaining vocational training or higher education, job readiness, job search assistance, and placement programs;

(c) Counseling and instruction in life skills such as money management, home management, consumer skills, parenting, health care, access to community resources, and transportation and housing options;

(d) Individual and group counseling; and

(e) Establishing networks with federal agencies and state and local organizations such as the United States department of labor, employment and training administration programs including the job training partnership act which administers private industry councils and the job corps; vocational rehabilitation; and volunteer programs.

Sec. 8. RCW 74.15.030 and 2005 c 490 s 11 are each amended to read as follows:

The secretary shall have the power and it shall be the secretary's duty:

(1) In consultation with the children's services advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to designate categories of facilities for which separate or different requirements shall be developed as may be appropriate whether because of variations in the ages, sex and other characteristics of persons served, variations in the purposes and services offered or size or structure of the agencies to be licensed hereunder, or because of any other factor relevant thereto;

(2) In consultation with the children's services advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to adopt and publish minimum requirements for licensing applicable to each of the various categories of agencies to be licensed.

The minimum requirements shall be limited to:

(a) The size and suitability of a facility and the plan of operation for carrying out the purpose for which an applicant seeks a license;

(b) The character, suitability and competence of an agency and other persons associated with an agency directly responsible for the care and treatment of children, expectant mothers or developmentally disabled persons. In consultation with law enforcement personnel, the secretary shall investigate the conviction record or pending charges and dependency record information under chapter 43.43 RCW of each agency and its staff seeking licensure or relicensure. No unfounded allegation of child abuse or neglect as defined in RCW 26.44.020 may be disclosed to a child-placing agency, private adoption agency, or any other provider licensed under this chapter. In order to determine the suitability of applicants for an agency license, licensees, their employees, and other persons who have unsupervised access to children in care, and who have not resided in the state of Washington during the three-year period before being authorized to care for children shall be fingerprinted. The fingerprints shall be forwarded to the Washington state patrol and federal bureau of investigation for a criminal history records check. The fingerprint criminal history records checks will be at the expense of the licensee except that in the case of a foster family home, if this expense would work a hardship on the licensee, the department shall pay the expense. The licensee may not pass this cost on to the employee or prospective

employee, unless the employee is determined to be unsuitable due to his or her criminal history record. The secretary shall use the information solely for the purpose of determining eligibility for a license and for determining the character, suitability, and competence of those persons or agencies, excluding parents, not required to be licensed who are authorized to care for children, expectant mothers, and developmentally disabled persons. Criminal justice agencies shall provide the secretary such information as they may have and that the secretary may require for such purpose;

(c) The number of qualified persons required to render the type of care and treatment for which an agency seeks a license;

(d) The safety, cleanliness, and general adequacy of the premises to provide for the comfort, care and well-being of children, expectant mothers or developmentally disabled persons;

(e) The provision of necessary care, including food, clothing, supervision and discipline; physical, mental and social well-being; and educational, recreational and spiritual opportunities for those served;

(f) The financial ability of an agency to comply with minimum requirements established pursuant to chapter 74.15 RCW and RCW 74.13.031; and

(g) The maintenance of records pertaining to the admission, progress, health and discharge of persons served;

(3) To investigate any person, including relatives by blood or marriage except for parents, for character, suitability, and competence in the care and treatment of children, expectant mothers, and developmentally disabled persons prior to authorizing that person to care for children, expectant mothers, and developmentally disabled persons. However, if a child is placed with a relative under RCW 13.34.065 or 13.34.130, and if such relative appears otherwise suitable and competent to provide care and treatment the criminal history background check required by this section need not be completed before placement, but shall be completed as soon as possible after placement;

(4) On reports of alleged child abuse and neglect, to investigate agencies in accordance with chapter 26.44 RCW, including child day-care centers and family day-care homes, to determine whether the alleged abuse or neglect has occurred, and whether child protective services or referral to a law enforcement agency is appropriate;

(5) To issue, revoke, or deny licenses to agencies pursuant to chapter 74.15 RCW and RCW 74.13.031. Licenses shall specify the category of care which an agency is authorized to render and the ages, sex and number of persons to be served;

(6) To prescribe the procedures and the form and contents of reports necessary for the administration of chapter 74.15 RCW and RCW 74.13.031 and to require regular reports from each licensee;

(7) To inspect agencies periodically to determine whether or not there is compliance with chapter 74.15 RCW and RCW 74.13.031 and the requirements adopted hereunder;

(8) To review requirements adopted hereunder at least every two years and to adopt appropriate changes after consultation with affected groups for child day-care requirements and with the children's services advisory committee for requirements for other agencies; ~~(and)~~

(9) To engage in negotiated rule making pursuant to RCW 34.05.310(2)(a) with the exclusive representative of the family child care licensees selected in accordance with section 6 of this act and with other affected interests before adopting requirements that affect family child care licensees; and

(10) To consult with public and private agencies in order to help them improve their methods and facilities for the care of children, expectant mothers and developmentally disabled persons.

PART III - GENERAL PROVISIONS

NEW SECTION. Sec. 9. Part headings used in this act are not any part of the law.

NEW SECTION. Sec. 10. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 11. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

NEW SECTION. Sec. 12. This act may be known and cited as the access to quality family child care act.

NEW SECTION. Sec. 13. Sections 1 through 5 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately.

Passed by the House March 4, 2006.

Passed by the Senate February 28, 2006.

Approved by the Governor March 15, 2006.

Filed in Office of Secretary of State March 15, 2006.

CHAPTER 55

[Second Engrossed Senate Bill 5714]

BREAST AND CERVICAL CANCER SCREENING

AN ACT Relating to an early detection breast and cervical cancer screening program; and adding a new section to chapter 43.70 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 43.70 RCW to read as follows:

(1) The legislature finds that Washington state has the highest incidence of breast cancer in the nation. Despite this, mortality rates from breast cancer have declined due largely to early screening and detection. Invasive cervical cancer is the most preventable type of cancer. The Pap test, used to detect early signs of

this disease, has been called "medicine's most successful screening test." Applied consistently, invasive cervical cancer could nearly be eliminated. The legislature further finds that increasing access to breast and cervical cancer screening is critical to reducing incidence and mortality rates, and eliminating the disparities of this disease in women in Washington state. Furthermore, the legislature finds there is a need for a permanent program providing early detection and screening to the women and families of Washington state.

It is the intent of the legislature to establish an early detection breast and cervical cancer screening program as a voluntary screening program directed at reducing mortalities through early detection to be offered to eligible women only as funds are available.

(2) As used in this section:

(a) "Eligible woman" means a woman who is age forty to sixty-four, and whose income is at or below two hundred fifty percent of the federal poverty level, as published annually by the federal department of health and human services. Priority enrollment shall be given to women as defined by the federal national breast and cervical cancer early detection program, under P.L. 101-354.

(b) "Approved providers" means those state-supported health providers, radiology facilities, and cytological laboratories that are recognized by the department as meeting the minimum program policies and procedures adopted by the department to qualify under the federal national breast and cervical cancer early detection program, and are designated as eligible for funding by the department.

(c) "Comprehensive" means a screening program that focuses on breast and cervical cancer screening as a preventive health measure, and includes diagnostic and case management services.

(3) The department of health is authorized to administer a state-supported early detection breast and cervical cancer screening program to assist eligible women with preventive health services. To the extent of available funding, eligible women may be enrolled in the early detection breast and cervical cancer screening program and additional eligible women may be enrolled to the extent that grants and contributions from community sources provide sufficient funds for expanding the program.

(4) Funds appropriated for the state program shall be used only to operate early detection breast and cervical cancer screening programs that have been approved by the department, or to increase access to existing state-approved programs, and shall not supplant federally supported breast and cervical cancer early detection programs.

(5) Enrollment in the early detection breast and cervical cancer screening program shall not result in expenditures that exceed the amount that has been appropriated for the program in the operating budget. If it appears that continued enrollment will result in expenditures exceeding the appropriated level for a particular fiscal year, the department may freeze new enrollment in the program. Nothing in this section prevents the department from continuing enrollment in the program if there are adequate private or public funds in addition to those appropriated in the biennial budget to support the cost of such enrollment.

(6) The department shall establish a medical advisory committee composed of interested medical professionals and consumer liaisons with expertise in a

variety of areas relevant to breast and cervical health to provide expert medical advice and guidance. The medical advisory committee shall address national, state, and local concerns regarding best practices in the field of early prevention and detection for breast and cervical cancer and assist the early detection breast and cervical cancer screening program in implementing program policy that follows the best practices of high quality health care for clinical, diagnostic, pathologic, radiological, and oncology services.

Passed by the Senate March 3, 2006.

Passed by the House February 28, 2006.

Approved by the Governor March 15, 2006.

Filed in Office of Secretary of State March 15, 2006.

CHAPTER 56

[Engrossed Substitute Senate Bill 6896]

PENSION FUNDING STABILIZATION ACCOUNT

AN ACT Relating to funding state budgetary reserves including an adjustment to the state expenditure limit; amending RCW 43.135.025 and 43.135.035; reenacting and amending RCW 43.84.092 and 43.84.092; adding new sections to chapter 41.45 RCW; making appropriations; providing an effective date; providing expiration dates; and declaring an emergency.

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

NEW SECTION. Sec. 1. A new section is added to chapter 41.45 RCW to read as follows:

The pension funding stabilization account is created in the state treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for payment of state government employer contributions for members of the public employees' retirement system, the teachers' retirement system, the school employees' retirement system, and the public safety employees' retirement system. The account may not be used to pay for any new benefit or for any benefit increase that takes effect after July 1, 2005. An increase that is provided in accordance with a formula that is in existence on July 1, 2005, is not considered a benefit increase for this purpose. Moneys in the account shall be for the exclusive use of the specified retirement systems and invested by the state investment board pursuant to RCW 43.33A.030 and 43.33A.170. For purposes of RCW 43.135.035, expenditures from the pension funding stabilization account shall not be considered a state program cost shift from the state general fund to another account.

NEW SECTION. Sec. 2. A new section is added to chapter 41.45 RCW to read as follows:

(1) The state investment board has the full power to invest, reinvest, manage, contract, sell, or exchange investment moneys in the pension funding stabilization account. The pension funding stabilization account shall be considered to be a public pension or retirement fund within the meaning of Article XXIX, section 1 of the state Constitution, for the purpose of determining eligible investments and deposits of the moneys therein. All investment and operating costs associated with the investment of money shall be paid pursuant to RCW 43.33A.160 and 43.84.160. With the exception of these expenses, the earnings from the investment of the money shall be retained by the account.

(2) All investments made by the state investment board shall be made with the exercise of that degree of judgment and care pursuant to RCW 43.33A.140 and the investment policies established by the state investment board.

(3) As deemed appropriate by the state investment board, moneys in the account may be commingled for investment with other funds subject to investment by the board.

NEW SECTION. Sec. 3. A new section is added to chapter 41.45 RCW to read as follows:

(1) It is the intent of the legislature to provide for the systematic funding of the plan 1 unfunded accrued actuarial liabilities in a manner that promotes contribution rate adequacy and stability for the affected systems. The rates established in this section shall be collected in addition to the rates established pursuant to RCW 41.45.062.

(2) Beginning September 1, 2006, a 1.29 percent contribution is established as part of the basic state and employer contribution rate for the teachers' retirement system, to be used for the sole purpose of amortizing the unfunded accrued actuarial liability in the teachers' retirement system plan 1.

(3) Beginning September 1, 2006, a 0.87 percent contribution is established as part of the basic state and employer contribution rate for the school employees' retirement system, to be used for the sole purpose of amortizing the unfunded accrued actuarial liability in the public employees' retirement system plan 1.

(4) Beginning January 1, 2007, a 1.77 percent contribution is established as part of the basic state and employer contribution rate for the public employees' retirement system and the public safety employees' retirement system, to be used for the sole purpose of amortizing the unfunded accrued actuarial liability in the public employees' retirement system plan 1.

(5) The contribution rates in this section shall be collected through June 30, 2007, for the public employees' retirement system and the public safety employees' retirement system and August 31, 2007, for the teachers' retirement system and the school employees' retirement system.

(6) Upon completion of the 2005 actuarial valuation, the pension funding council and the state actuary shall review the contribution rates for the plan 1 unfunded actuarial accrued liability for fiscal year 2008 and fiscal year 2009 and by September 30, 2006, the pension funding council shall adopt contribution rates to complete the three-year phase-in schedule, adjusted for any material changes in benefits or actuarial assumptions, methods, and experience. The expected present value of projected contributions during the three-year phase-in period shall be the same as the expected present value of projected contributions that would have been collected without the phase-in, as determined by the state actuary and adjusted for any material changes in benefits or actuarial assumptions, methods, or experience.

NEW SECTION. Sec. 4. The sum of three hundred fifty million dollars is appropriated for the fiscal year ending June 30, 2006, from the general fund to the pension funding stabilization account for the purposes of section 1 of this act.

NEW SECTION. Sec. 5. The sum of two hundred million dollars is appropriated for the fiscal year ending June 30, 2006, from the general fund to

the health services account for the purposes of providing fiscal stability for the account.

NEW SECTION. Sec. 6. The sum of two hundred seventy-five million dollars is appropriated for the fiscal year ending June 30, 2006, from the general fund to the student achievement fund for the purposes of providing fiscal stability for the fund.

Sec. 7. RCW 43.135.025 and 2000 2nd sp.s. c 2 s 1 are each amended to read as follows:

(1) The state shall not expend from the general fund during any fiscal year state moneys in excess of the state expenditure limit established under this chapter.

(2) Except pursuant to a declaration of emergency under RCW 43.135.035 or pursuant to an appropriation under RCW 43.135.045(4)(b), the state treasurer shall not issue or redeem any check, warrant, or voucher that will result in a state general fund expenditure for any fiscal year in excess of the state expenditure limit established under this chapter. A violation of this subsection constitutes a violation of RCW 43.88.290 and shall subject the state treasurer to the penalties provided in RCW 43.88.300.

(3) The state expenditure limit for any fiscal year shall be the previous fiscal year's state expenditure limit increased by a percentage rate that equals the fiscal growth factor.

(4) For purposes of computing the state expenditure limit for the fiscal year beginning July 1, 1995, the phrase "the previous fiscal year's state expenditure limit" means the total state expenditures from the state general fund, not including federal funds, for the fiscal year beginning July 1, 1989, plus the fiscal growth factor. This calculation is then computed for the state expenditure limit for fiscal years 1992, 1993, 1994, and 1995, and as required under RCW 43.135.035(4).

(5) A state expenditure limit committee is established for the purpose of determining and adjusting the state expenditure limit as provided in this chapter. The members of the state expenditure limit committee are the director of financial management, the attorney general or the attorney general's designee, and the chairs of the senate committee on ways and means and the house of representatives committee on appropriations. All actions of the state expenditure limit committee taken pursuant to this chapter require an affirmative vote of at least three members.

(6) Each November, the state expenditure limit committee shall adjust the expenditure limit for the preceding fiscal year based on actual expenditures and known changes in the fiscal growth factor and then project an expenditure limit for the next two fiscal years. In calculating the expenditure limit for fiscal year 2006, the calculation shall be the expenditure limit established by the state expenditure limit committee in November 2005 adjusted as provided by this chapter and adjusted to include the fiscal year 2006 state general fund appropriations to the pension funding stabilization account, the health services account, and the student achievement fund in chapter . . . , Laws of 2006 (this act). If, by November 30th, the state expenditure limit committee has not adopted the expenditure limit adjustment and projected expenditure limit as

provided in subsection (5) of this section, the attorney general or his or her designee shall adjust or project the expenditure limit, as necessary.

(7) "Fiscal growth factor" means the average of the sum of inflation and population change for each of the prior three fiscal years.

(8) "Inflation" means the percentage change in the implicit price deflator for the United States for each fiscal year as published by the federal bureau of labor statistics.

(9) "Population change" means the percentage change in state population for each fiscal year as reported by the office of financial management.

Sec. 8. RCW 43.135.035 and 2005 c 72 s 2 are each amended to read as follows:

(1) After July 1, 1995, any action or combination of actions by the legislature that raises state revenue or requires revenue-neutral tax shifts may be taken only if approved by a two-thirds vote of each house, and then only if state expenditures in any fiscal year, including the new revenue, will not exceed the state expenditure limits established under this chapter. However, for legislation enacted between the effective date of this 2005 act and June 30, (~~2007~~) 2006, any action or combination of actions by the legislature that raises state revenue or requires revenue-neutral tax shifts may be taken with the approval of a majority of members elected to each house, so long as state expenditures in any fiscal year, including the new revenue, will not exceed the state expenditure limits established under this chapter.

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

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

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

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

(b) Additional taxes required for an emergency under this section may be imposed only until thirty days following the next general election, unless an extension is approved at that general election. The additional taxes shall expire upon expiration of the declaration of emergency. The legislature shall not

impose additional taxes for emergency purposes under this subsection unless funds in the education construction fund have been exhausted.

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

(4) If the cost of any state program or function is shifted from the state general fund on or after January 1, 1993, to another source of funding, or if moneys are transferred from the state general fund to another fund or account, the state expenditure limit committee, acting pursuant to RCW 43.135.025(5), shall lower the state expenditure limit to reflect the shift. For purposes of this section, expenditures from the pension funding stabilization account shall not be considered a state program cost shift from the state general fund to another account. For the purposes of this section, a transfer of money from the state general fund to another fund or account includes any state legislative action taken that has the effect of reducing revenues from a particular source, where such revenues would otherwise be deposited into the state general fund, while increasing the revenues from that particular source to another state or local government account. This subsection does not apply to the dedication or use of lottery revenues under RCW 67.70.240(3) or property taxes under RCW 84.52.068, in support of education or education expenditures.

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

Sec. 9. RCW 43.84.092 and 2005 c 514 s 1105, 2005 c 353 s 3, 2005 c 339 s 22, 2005 c 314 s 109, 2005 c 312 s 7, and 2005 c 94 s 1 are each reenacted and amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no

appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the common school construction fund, the county criminal justice assistance account, the county sales and use tax equalization account, the data processing building construction account, the deferred compensation administrative account, the deferred compensation principal account, the department of retirement systems expense account, the developmental disabilities community trust account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the education construction fund, the education legacy trust account, the election account, the emergency reserve fund, The Evergreen State College capital projects account, the federal forest revolving account, the freight mobility investment account, the health services account, the public health services account, the health system capacity account, the personal health services account, the state higher education construction account, the higher education construction account, the highway infrastructure account, the high-occupancy toll lanes operations account, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the medical aid account, the mobile home park relocation fund, the multimodal transportation account, the municipal criminal justice assistance account, the municipal sales and use tax equalization account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the Puyallup tribal settlement account, the real estate appraiser commission account, the regional transportation investment district account, the resource management cost account, the rural Washington loan fund, the site closure account, the small city pavement and sidewalk account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the transportation infrastructure account, the transportation partnership account, the tuition recovery trust fund, the University of Washington bond

retirement fund, the University of Washington building account, the volunteer fire fighters' and reserve officers' relief and pension principal fund, the volunteer fire fighters' and reserve officers' administrative fund, the Washington fruit express account, the Washington judicial retirement system account, the Washington law enforcement officers' and fire fighters' system plan 1 retirement account, the Washington law enforcement officers' and fire fighters' system plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts. All earnings to be distributed under this subsection (4)(a) shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(b) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the county arterial preservation account, the department of licensing services account, the essential rail assistance account, the ferry bond retirement fund, the grade crossing protective fund, the high capacity transportation account, the highway bond retirement fund, the highway safety account, the motor vehicle fund, the motorcycle safety education account, the pilotage account, the public transportation systems account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the recreational vehicle account, the rural arterial trust account, the safety and education account, the special category C account, the state patrol highway account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, and the urban arterial trust account.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

Sec. 10. RCW 43.84.092 and 2005 c 514 s 1106, 2005 c 353 s 4, 2005 c 339 s 23, 2005 c 314 s 110, 2005 c 312 s 8, and 2005 c 94 s 2 are each reenacted and amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management

improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the common school construction fund, the county criminal justice assistance account, the county sales and use tax equalization account, the data processing building construction account, the deferred compensation administrative account, the deferred compensation principal account, the department of retirement systems expense account, the developmental disabilities community trust account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the education construction fund, the education legacy trust account, the election account, the emergency reserve fund, The Evergreen State College capital projects account, the federal forest revolving account, the freight mobility investment account, the health services account, the public health services account, the health system capacity account, the personal health services account, the state higher education construction account, the higher education construction account, the highway infrastructure account, the high-occupancy toll lanes operations account, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the medical aid account, the mobile home park relocation fund, the multimodal transportation account, the municipal criminal justice assistance account, the municipal sales and use tax equalization account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental

account, the public works assistance account, the Puyallup tribal settlement account, the real estate appraiser commission account, the regional transportation investment district account, the resource management cost account, the rural Washington loan fund, the site closure account, the small city pavement and sidewalk account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the transportation infrastructure account, the transportation partnership account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer fire fighters' and reserve officers' relief and pension principal fund, the volunteer fire fighters' and reserve officers' administrative fund, the Washington fruit express account, the Washington judicial retirement system account, the Washington law enforcement officers' and fire fighters' system plan 1 retirement account, the Washington law enforcement officers' and fire fighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts. All earnings to be distributed under this subsection (4)(a) shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(b) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the county arterial preservation account, the department of licensing services account, the essential rail assistance account, the ferry bond retirement fund, the grade crossing protective fund, the high capacity transportation account, the highway bond retirement fund, the highway safety account, the motor vehicle fund, the motorcycle safety education account, the pilotage account, the public transportation systems account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the recreational vehicle account, the rural arterial trust account, the safety and education account, the special category C account, the state patrol highway account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, and the urban arterial trust account.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

NEW SECTION. Sec. 11. Section 9 of this act expires July 1, 2006.

NEW SECTION. Sec. 12. Sections 7 and 8 of this act expire July 1, 2007.

NEW SECTION. Sec. 13. 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, except section 10 of this act, which takes effect July 1, 2006.

Passed by the Senate March 6, 2006.

Passed by the House March 7, 2006.

Approved by the Governor March 15, 2006.

Filed in Office of Secretary of State March 15, 2006.

CHAPTER 57

[Senate Bill 6159]

FISHING LICENSES—ALBACORE TUNA

AN ACT Relating to recreational fishing for albacore tuna; and amending RCW 77.32.010.

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

Sec. 1. RCW 77.32.010 and 2001 c 253 s 49 are each amended to read as follows:

(1) Except as otherwise provided in this chapter, a recreational license issued by the director is required to hunt for or take wild animals or wild birds, fish for, take, or harvest fish, shellfish, and seaweed. A recreational fishing or shellfish license is not required for carp, smelt, (~~albacore~~) and crawfish, and a hunting license is not required for bullfrogs.

(2) A permit issued by the department is required to park a motor vehicle upon improved department access facilities.

Passed by the Senate February 8, 2006.

Passed by the House March 1, 2006.

Approved by the Governor March 15, 2006.

Filed in Office of Secretary of State March 15, 2006.

CHAPTER 58

[Engrossed Senate Bill 6169]

HOMEOWNERS' ASSOCIATIONS—DISCRIMINATORY PROVISIONS

AN ACT Relating to discriminatory provisions in the governing documents of homeowners' associations; amending RCW 49.60.227; adding a new section to chapter 64.38 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that some homeowners' associations have governing documents that contain discriminatory covenants, conditions, or restrictions that are void and unenforceable under both the Federal Fair Housing Amendments Act of 1988 and RCW 49.60.224. The continued existence of these discriminatory covenants, conditions, or restrictions is

contrary to public policy and repugnant to many property owners. It is the intent of this act to allow homeowners' associations to remove all remnants of discrimination from their governing documents.

NEW SECTION. Sec. 2. A new section is added to chapter 64.38 RCW to read as follows:

(1) The association, acting through a simple majority vote of its board, may amend the association's governing documents for the purpose of removing:

(a) Every covenant, condition, or restriction that purports to forbid or restrict the conveyance, encumbrance, occupancy, or lease thereof to individuals of a specified race, creed, color, sex, or national origin; families with children status; individuals with any sensory, mental, or physical disability; or individuals who use a trained dog guide or service animal because they are blind or deaf or have a physical disability; and

(b) Every covenant, condition, restriction, or prohibition, including a right of entry or possibility of reverter, that directly or indirectly limits the use or occupancy of real property on the basis of race, creed, color, sex, national origin; families with children status; the presence of any sensory, mental, or physical disability; or the use of a trained dog guide or service animal by a person with a physical disability or who is blind or deaf.

(2) Upon the board's receipt of a written request by a member of the association that the board exercise its amending authority granted under subsection (1) of this section, the board must, within a reasonable time, amend the governing documents, as provided under this section.

(3) Amendments under subsection (1) of this section may be executed by any board officer.

(4) Amendments made under subsection (1) of this section must be recorded in the public records and state the following:

"This amendment strikes from these covenants, conditions, and restrictions those provisions that are void under RCW 49.60.224. Specifically, this amendment strikes:

(a) Those provisions that forbid or restrict use, occupancy, conveyance, encumbrance, or lease of real property to individuals of a specified race, creed, color, sex, or national origin; families with children status; individuals with any sensory, mental, or physical disability; or individuals who use a trained dog guide or service animal because they are blind or deaf or have a physical disability; and

(b) Every covenant, condition, restriction, or prohibition, including a right of entry or possibility of reverter, that directly or indirectly limits the use or occupancy of real property on the basis of race, creed, color, sex, national origin; families with children status; the presence of any sensory, mental, or physical disability; or the use of a trained dog guide or service animal by a person with a physical disability or who is blind or deaf."

(5) Board action under this section does not require the vote or approval of the owners.

(6) As provided in RCW 49.60.227, any owner, occupant, or tenant in the association or board may bring an action in superior court to have any provision of a written instrument that is void pursuant to RCW 49.60.224 stricken from the public records.

(7) Nothing in this section prohibiting discrimination based on families with children status applies to housing for older persons as defined by the federal fair housing amendments act of 1988, 42 U.S.C. Sec. 3607(b)(1) through (3), as amended by the housing for older persons act of 1995, P.L. 104-76, as enacted on December 28, 1995. Nothing in this section authorizes requirements for housing for older persons different than the requirements in the federal fair housing amendments act of 1988, 42 U.S.C. Sec. 3607(b)(1) through (3), as amended by the housing for older persons act of 1995, P.L. 104-76, as enacted on December 28, 1995.

(8) Except as otherwise provided in subsection (2) of this section, (a) nothing in this section creates a duty on the part of owners, occupants, tenants, associations, or boards to amend the governing documents as provided in this section, or to bring an action as authorized under this section and RCW 49.60.227; and (b) an owner, occupant, tenant, association, or board is not liable for failing to amend the governing documents or to pursue an action in court as authorized under this section and RCW 49.60.227.

Sec. 3. RCW 49.60.227 and 1995 c 292 s 18 are each amended to read as follows:

If a written instrument contains a provision that is void by reason of RCW 49.60.224, the owner, occupant, or tenant of the property which is subject to the provision or the homeowners' association board may cause the provision to be stricken from the public records by bringing an action in the superior court in the county in which the property is located. The action shall be an in rem, declaratory judgment action whose title shall be the description of the property. The necessary party to the action shall be the owner, occupant, or tenant of the property or any portion thereof. The person bringing the action shall pay a fee set under RCW 36.18.012.

If the court finds that any provisions of the written instrument are void under RCW 49.60.224, it shall enter an order striking the void provisions from the public records and eliminating the void provisions from the title or lease of the property described in the complaint.

Passed by the Senate February 13, 2006.

Passed by the House March 1, 2006.

Approved by the Governor March 15, 2006.

Filed in Office of Secretary of State March 15, 2006.

CHAPTER 59

[Substitute Senate Bill 6185]

FAMILY AND MEDICAL LEAVE

AN ACT Relating to family and medical leave; amending RCW 49.78.010 and 49.78.020; adding new sections to chapter 49.78 RCW; creating a new section; repealing RCW 49.78.005, 49.78.030, 49.78.040, 49.78.050, 49.78.060, 49.78.070, 49.78.080, 49.78.100, 49.78.110, 49.78.120, 49.78.130, 49.78.140, 49.78.150, 49.78.160, 49.78.170, 49.78.180, 49.78.190, and 49.78.200; and prescribing penalties.

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

Sec. 1. RCW 49.78.010 and 1989 1st ex.s. c 11 s 1 are each amended to read as follows:

The legislature finds that the demands of the workplace and of families need to be balanced to promote family stability and economic security. ~~((Changes in))~~ Workplace leave policies are desirable to accommodate changes in the work force such as rising numbers of dual-career couples ~~((and)),~~ working single parents, and an aging population. In addition, given the mobility of American society, many people no longer have available community or family support networks and therefore need additional flexibility in the workplace. The legislature declares it to be in the public interest to provide reasonable ~~((family leave upon the birth or adoption of a child and to care for a child under eighteen years old with a terminal))~~ leave for medical reasons, for the birth or placement of a child, and for the care of a family member who has a serious health condition.

Sec. 2. RCW 49.78.020 and 1996 c 178 s 14 are each amended to read as follows:

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

(1) "Child" means a biological ~~((or)),~~ adopted, or foster child, ~~((or))~~ a stepchild, ~~((living with the employee))~~ a legal ward, or a child of a person standing in loco parentis, who is: (a) Under eighteen years of age; or (b) eighteen years of age or older and incapable of self-care because of a mental or physical disability.

(2) "Department" means the department of labor and industries.

(3) "Director" means the director of the department.

~~((4))~~ (a) "Employee" means a person ~~((other than an independent contractor employed by an employer on a continuous basis for the previous fifty-two weeks for at least thirty-five hours per week))~~ who has been employed: (i) For at least twelve months by the employer with respect to whom leave is requested under section 3 of this act; and (ii) for at least one thousand two hundred fifty hours of service with the employer during the previous twelve-month period.

(b) "Employee" does not mean a person who is employed at a worksite at which the employer as defined in (a) of this subsection employs less than fifty employees if the total number of employees employed by that employer within seventy-five miles of that worksite is less than fifty.

~~((4))~~ (5) "Employer" means: (a) Any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and includes any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political subdivision, which ~~((i) employed a daily average of one hundred or more employees during the last calendar quarter at the place where the employee requesting leave reports for work, or (ii) employed a daily average of one hundred or more employees during the last calendar quarter within a twenty mile radius of the place where the employee requesting leave reports for work, where the employer maintains a central hiring location and customarily transfers employees among workplaces; and))~~ employs fifty or more employees for each

working day during each of twenty or more calendar workweeks in the current or preceding calendar year; (b) the state, state institutions, and state agencies; and (c) any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political subdivision.

~~((5))~~ "Family leave" means leave from employment to care for a newborn or newly adopted child under the age of six or a child under eighteen years old with a terminal health condition, as provided in RCW 49.78.030.)

(6) "Employment benefits" means all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions except benefits that are provided by a practice or written policy of an employer or through an employee benefit plan as defined in 29 U.S.C. Sec. 1002(3).

(7) "Family member" means a child, parent, or spouse of an employee.

(8) "Health care provider" means: (a) A person licensed as a physician under chapter 18.71 RCW or an osteopathic physician and surgeon under chapter 18.57 RCW; (b) a person licensed as an advanced registered nurse practitioner under chapter 18.79 RCW; or (c) any other person determined by the director to be capable of providing health care services.

~~((7))~~ (9) "Intermittent leave" is leave taken in separate blocks of time due to a single qualifying reason.

(10) "Leave for a family member's serious health condition" means leave as described in section 3(1)(c) of this act.

(11) "Leave for the birth or placement of a child" means leave as described in section 3(1) (a) or (b) of this act.

(12) "Leave for the employee's serious health condition" means leave as described in section 3(1)(d) of this act.

(13) "Parent" means ((a biological or adoptive parent, or a stepparent)) the biological or adoptive parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child.

~~((8))~~ (14) "Period of incapacity" means an inability to work, attend school, or perform other regular daily activities because of the serious health condition, treatment of that condition or recovery from it, or subsequent treatment in connection with such inpatient care.

(15) "Reduced leave schedule" means ((leave scheduled for fewer than an employee's usual number of hours or days per workweek)) a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

~~((9))~~ "Terminal health condition" means a condition caused by injury, disease, or illness, that, within reasonable medical judgment, is incurable and will produce death within the period of leave to which the employee is entitled.)

(16)(a) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

(i) Inpatient care in a hospital, hospice, or residential medical care facility, including any period of incapacity; or

(ii) Continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

(A) A period of incapacity of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(I) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services under orders of, or on referral by, a health care provider; or

(II) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider;

(B) Any period of incapacity due to pregnancy, or for prenatal care;

(C) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(I) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

(II) Continues over an extended period of time, including recurring episodes of a single underlying condition; and

(III) May cause episodic rather than a continuing period of incapacity;

(D) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider; or

(E) Any period of absence to receive multiple treatments, including any period of recovery from the treatments, by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer, severe arthritis, or kidney disease.

(b) Treatment for purposes of (a) of this subsection includes, but is not limited to, examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. Under (a)(ii)(A)(II) of this subsection, a regimen of continuing treatment includes, but is not limited to, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of continuing treatment that includes taking over-the-counter medications, such as aspirin, antihistamines, or salves, or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of this chapter.

(c) Conditions for which cosmetic treatments are administered are not "serious health conditions" unless inpatient hospital care is required or unless complications develop. Unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, and periodontal disease are examples of conditions that do not meet the definition of a "serious health condition" and do not qualify for leave under this chapter. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions

provided all the other conditions of this section are met. Mental illness resulting from stress or allergies may be serious health conditions provided all the other conditions of this section are met.

(d) Substance abuse may be a serious health condition if the conditions of this section are met. However, leave may only be taken for treatment for substance abuse by a health care provider or by a provider of health care services upon referral by a health care provider. Absence from work because of the employee's use of the substance, rather than for treatment, does not qualify for leave under this chapter.

(e) Absences attributable to incapacity under (a)(ii)(B) or (C) of this subsection qualify for leave under this chapter even though the employee or the immediate family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three days.

(17) "Spouse" means a husband or wife, as the case may be.

NEW SECTION. Sec. 3. A new section is added to chapter 49.78 RCW to read as follows:

ENTITLEMENT TO LEAVE. (1) Subject to section 7 of this act, an employee is entitled to a total of twelve workweeks of leave during any twelve-month period for one or more of the following:

(a) Because of the birth of a child of the employee and in order to care for the child;

(b) Because of the placement of a child with the employee for adoption or foster care;

(c) In order to care for a family member of the employee, if the family member has a serious health condition; or

(d) Because of a serious health condition that makes the employee unable to perform the functions of the position of the employee.

(2) The entitlement to leave for the birth or placement of a child expires at the end of the twelve-month period beginning on the date of such birth or placement.

NEW SECTION. Sec. 4. A new section is added to chapter 49.78 RCW to read as follows:

LEAVE TAKEN INTERMITTENTLY OR ON REDUCED LEAVE SCHEDULE. (1)(a) When leave is taken after the birth or placement of a child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule with the employer's agreement. The employer's agreement is not required, however, for leave during which the employee has a serious health condition in connection with the birth of a child or if the newborn child has a serious health condition.

(b) Leave may be taken intermittently or on a reduced leave schedule when medically necessary for medical treatment of a serious health condition by or under the supervision of a health care provider, or for recovery from treatment or recovery from a serious health condition. It may also be taken to provide care or psychological comfort to an immediate family member with a serious health condition.

(i) Intermittent leave may be taken for a serious health condition that requires treatment by a health care provider periodically, rather than for one

continuous period of time, and may include leave of periods from an hour or more to several weeks.

(ii) Intermittent or reduced schedule leave may be taken for absences where the employee or family member is incapacitated or unable to perform the essential functions of the position because of a chronic serious health condition even if he or she does not receive treatment by a health care provider.

(c) There is no limit on the size of an increment of leave when an employee takes intermittent leave or leave on a reduced leave schedule. However, an employer may limit leave increments to the shortest period of time that the employer's payroll system uses to account for absences or use of leave, provided it is one hour or less.

(d) The taking of leave intermittently or on a reduced leave schedule under this section may not result in a reduction in the total amount of leave to which the employee is entitled under section 3 of this act beyond the amount of leave actually taken.

(2) If an employee requests intermittent leave, or leave on a reduced leave schedule, for a family member's serious health condition or the employee's serious health condition when the condition is foreseeable based on planned medical treatment, the employer may require such employee to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified and that:

(a) Has equivalent pay and benefits; and

(b) Better accommodates recurring periods of leave than the regular employment position of the employee.

NEW SECTION. Sec. 5. A new section is added to chapter 49.78 RCW to read as follows:

UNPAID LEAVE PERMITTED—RELATIONSHIP TO PAID LEAVE. (1) Except as provided in subsection (2) of this section, leave granted under section 3 of this act may consist of unpaid leave.

(2) If an employer provides paid leave for fewer than twelve workweeks, the additional weeks of leave necessary to attain the twelve workweeks of leave required under this chapter may be provided without compensation.

NEW SECTION. Sec. 6. A new section is added to chapter 49.78 RCW to read as follows:

FORESEEABLE LEAVE. (1) If the necessity for leave for the birth or placement of a child is foreseeable based on an expected birth or placement, the employee shall provide the employer with not less than thirty days' notice, before the date the leave is to begin, of the employee's intention to take leave for the birth or placement of a child, except that if the date of the birth or placement requires leave to begin in less than thirty days, the employee shall provide such notice as is practicable.

(2) If the necessity for leave for a family member's serious health condition or the employee's serious health condition is foreseeable based on planned medical treatment, the employee:

(a) Must make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider of the employee or the health care provider of the family member, as appropriate; and

(b) Must provide the employer with not less than thirty days' notice, before the date the leave is to begin, of the employee's intention to take leave for a family member's serious health condition or the employee's serious health condition, except that if the date of the treatment requires leave to begin in less than thirty days, the employee must provide such notice as is practicable.

NEW SECTION. Sec. 7. A new section is added to chapter 49.78 RCW to read as follows:

SPOUSES EMPLOYED BY SAME EMPLOYER. If spouses entitled to leave under this chapter are employed by the same employer, the aggregate number of workweeks of leave to which both may be entitled may be limited to twelve workweeks during any twelve-month period, if such leave is taken: (1) For the birth or placement of a child; or (2) for a parent's serious health condition.

NEW SECTION. Sec. 8. A new section is added to chapter 49.78 RCW to read as follows:

CERTIFICATION. (1) An employer may require that a request for leave for a family member's serious health condition or the employee's serious health condition be supported by a certification issued by the health care provider of the employee or of the family member, as appropriate. The employee must provide, in a timely manner, a copy of the certification to the employer.

(2) Certification provided under subsection (1) of this section is sufficient if it states:

- (a) The date on which the serious health condition commenced;
- (b) The probable duration of the condition;
- (c) The appropriate medical facts within the knowledge of the health care provider regarding the condition;
- (d)(i) For purposes of leave for a family member's serious health condition, a statement that the employee is needed to care for the family member and an estimate of the amount of time that such employee is needed to care for the family member; and
- (ii) For purposes of leave for the employee's serious health condition, a statement that the employee is unable to perform the functions of the position of the employee;
- (e) In the case of certification for intermittent leave, or leave on a reduced leave schedule, for planned medical treatment, the dates on which the treatment is expected to be given and the duration of the treatment;
- (f) In the case of certification for intermittent leave, or leave on a reduced leave schedule, for the employee's serious health condition, a statement of the medical necessity for the intermittent leave or leave on a reduced leave schedule, and the expected duration of the intermittent leave or reduced leave schedule; and
- (g) In the case of certification for intermittent leave, or leave on a reduced leave schedule, for a family member's serious health condition, a statement that the employee's intermittent leave or leave on a reduced leave schedule is necessary for the care of the family member who has a serious health condition, or will assist in their recovery, and the expected duration and schedule of the intermittent leave or reduced leave schedule.

(3) If the employer has reason to doubt the validity of the certification provided under subsection (1) of this section for leave for a family member's serious health condition or the employee's serious health condition, the employer may require, at the expense of the employer, that the employee obtain the opinion of a second health care provider designated or approved by the employer concerning any information certified under subsection (2) of this section for the leave. The second health care provider may not be employed on a regular basis by the employer.

(4) If the second opinion described in subsection (3) of this section differs from the opinion in the original certification provided under subsection (1) of this section, the employer may require, at the expense of the employer, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employer and the employee concerning the information certified under subsection (2) of this section. The opinion of the third health care provider concerning the information certified under subsection (2) of this section is considered to be final and is binding on the employer and the employee.

(5) The employer may require that the employee obtain subsequent recertifications on a reasonable basis.

NEW SECTION. Sec. 9. A new section is added to chapter 49.78 RCW to read as follows:

EMPLOYMENT PROTECTION. (1)(a) Except as provided in (b) of this subsection, any employee who takes leave under section 3 of this act for the intended purpose of the leave is entitled, on return from the leave:

(i) To be restored by the employer to the position of employment held by the employee when the leave commenced; or

(ii) To be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment at a workplace within twenty miles of the employee's workplace when leave commenced.

(b) The taking of leave under section 3 of this act may not result in the loss of any employment benefits accrued before the date on which the leave commenced.

(c) Nothing in this section entitles any restored employee to:

(i) The accrual of any seniority or employment benefits during any period of leave; or

(ii) Any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

(d) As a condition of restoration under (a) of this subsection for an employee who has taken leave for the employee's serious health condition, the employer may have a uniformly applied practice or policy that requires each such employee to receive certification from the health care provider of the employee that the employee is able to resume work, except that nothing in this subsection (1)(d) supersedes a valid local law or a collective bargaining agreement that governs the return to work of such employees.

(e) Nothing in this subsection (1) prohibits an employer from requiring an employee on leave to report periodically to the employer on the status and intention of the employee to return to work.

(2) An employer may deny restoration under subsection (1) of this section to any salaried employee who is among the highest paid ten percent of the

employees employed by the employer within seventy-five miles of the facility at which the employee is employed if:

(a) Denial is necessary to prevent substantial and grievous economic injury to the operations of the employer;

(b) The employer notifies the employee of the intent of the employer to deny restoration on such basis at the time the employer determines that the injury would occur; and

(c) The leave has commenced and the employee elects not to return to employment after receiving the notice.

NEW SECTION. Sec. 10. A new section is added to chapter 49.78 RCW to read as follows:

EMPLOYMENT BENEFITS. During any period of leave taken under section 3 of this act, if the employee is not eligible for any employer contribution to medical or dental benefits under an applicable collective bargaining agreement or employer policy during any period of leave, an employer shall allow the employee to continue, at the employee's expense, medical or dental insurance coverage, including any spouse and dependent coverage, in accordance with state or federal law. The premium to be paid by the employee shall not exceed one hundred two percent of the applicable premium for the leave period.

NEW SECTION. Sec. 11. A new section is added to chapter 49.78 RCW to read as follows:

PROHIBITED ACTS. (1) It is unlawful for any employer to:

(a) Interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this chapter; or

(b) Discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this chapter.

(2) It is unlawful for any person to discharge or in any other manner discriminate against any individual because the individual has:

(a) Filed any charge, or has instituted or caused to be instituted any proceeding, under or related to this chapter;

(b) Given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under this chapter; or

(c) Testified, or is about to testify, in any inquiry or proceeding relating to any right provided under this chapter.

NEW SECTION. Sec. 12. A new section is added to chapter 49.78 RCW to read as follows:

Upon complaint by an employee, the director shall investigate to determine if there has been compliance with this chapter and the rules adopted under this chapter. If the investigation indicates that a violation may have occurred, a hearing must be held in accordance with chapter 34.05 RCW. The director must issue a written determination including his or her findings after the hearing. A judicial appeal from the director's determination may be taken in accordance with chapter 34.05 RCW, with the prevailing party entitled to recover reasonable costs and attorneys' fees.

NEW SECTION. Sec. 13. A new section is added to chapter 49.78 RCW to read as follows:

An employer who is found, in accordance with section 12 of this act, to have violated a requirement of this chapter and the rules adopted under this chapter, is subject to a civil penalty of not less than one thousand dollars for each violation. Civil penalties must be collected by the department and deposited into the family and medical leave enforcement account.

NEW SECTION. Sec. 14. A new section is added to chapter 49.78 RCW to read as follows:

CIVIL ACTION BY EMPLOYEES. (1) Any employer who violates section 11 of this act is liable:

(a) For damages equal to:

(i) The amount of:

(A) Any wages, salary, employment benefits, or other compensation denied or lost to such employee by reason of the violation; or

(B) In a case in which wages, salary, employment benefits, or other compensation have not been denied or lost to the employee, any actual monetary losses sustained by the employee as a direct result of the violation, such as the cost of providing care, up to a sum equal to twelve weeks of wages or salary for the employee;

(ii) The interest on the amount described in (a)(i) of this subsection calculated at the prevailing rate; and

(iii) An additional amount as liquidated damages equal to the sum of the amount described in (a)(i) of this subsection and the interest described in (a)(ii) of this subsection, except that if an employer who has violated section 11 of this act proves to the satisfaction of the court that the act or omission which violated section 11 of this act was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of section 11 of this act, the court may, in the discretion of the court, reduce the amount of the liability to the amount and interest determined under (a)(i) and (ii) of this subsection, respectively; and

(b) For such equitable relief as may be appropriate, including employment, reinstatement, and promotion.

(2) An action to recover the damages or equitable relief prescribed in subsection (1) of this section may be maintained against any employer in any court of competent jurisdiction by any one or more employees for and on behalf of:

(a) The employees; or

(b) The employees and other employees similarly situated.

(3) The court in such an action shall, in addition to any judgment awarded to the plaintiff, allow reasonable attorneys' fees, reasonable expert witness fees, and other costs of the action to be paid by the defendant.

NEW SECTION. Sec. 15. A new section is added to chapter 49.78 RCW to read as follows:

NOTICE. Each employer shall post and keep posted, in conspicuous places on the premises of the employer where notices to employees and applicants for employment are customarily posted, a notice, to be prepared or approved by the director, setting forth excerpts from, or summaries of, the pertinent provisions of this chapter and information pertaining to the filing of a charge. Any employer that willfully violates this section may be subject to a civil penalty of not more

than one hundred dollars for each separate offense. Any penalties collected by the department under the section shall be deposited into the family and medical leave enforcement account.

NEW SECTION. Sec. 16. A new section is added to chapter 49.78 RCW to read as follows:

FAMILY AND MEDICAL LEAVE ENFORCEMENT ACCOUNT. The family and medical leave enforcement account is created in the custody of the state treasurer. Any penalties collected under section 13 or 15 of this act shall be deposited into the account and shall be used only for the purposes of administering and enforcing this chapter. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. Sec. 17. A new section is added to chapter 49.78 RCW to read as follows:

EFFECT ON OTHER LAWS. Nothing in this chapter shall be construed: (1) To modify or affect any state or local law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or disability; or (2) to supersede any provision of any local law that provides greater family or medical leave rights than the rights established under this chapter.

NEW SECTION. Sec. 18. A new section is added to chapter 49.78 RCW to read as follows:

EFFECT ON EXISTING EMPLOYMENT BENEFITS. Nothing in this chapter diminishes the obligation of an employer to comply with any collective bargaining agreement or any employment benefit program or plan that provides greater family or medical leave rights to employees than the rights established under this chapter. The rights established for employees under this chapter may not be diminished by any collective bargaining agreement or any employment benefit program or plan.

NEW SECTION. Sec. 19. A new section is added to chapter 49.78 RCW to read as follows:

ENCOURAGEMENT OF MORE GENEROUS LEAVE POLICIES. Nothing in this chapter shall be construed to discourage employers from adopting or retaining leave policies more generous than any policies that comply with the requirements under this chapter.

NEW SECTION. Sec. 20. A new section is added to chapter 49.78 RCW to read as follows:

(1) Leave under this chapter and leave under the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6) is in addition to any leave for sickness or temporary disability because of pregnancy or childbirth.

(2) Leave taken under this chapter must be taken concurrently with any leave taken under the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6).

NEW SECTION. Sec. 21. A new section is added to chapter 49.78 RCW to read as follows:

RULE-MAKING AUTHORITY. The director shall adopt rules as necessary to implement this chapter.

NEW SECTION. Sec. 22. A new section is added to chapter 49.78 RCW to read as follows:

CONSTRUCTION. This chapter must be construed to the extent possible in a manner that is consistent with similar provisions, if any, of the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6), and that gives consideration to the rules, precedents, and practices of the federal department of labor relevant to the federal act.

NEW SECTION. Sec. 23. The following acts or parts of acts are each repealed:

(1) RCW 49.78.005 (Administration and enforcement of this chapter to cease while federal family and medical leave act provides the same or more family leave—Rights under RCW 49.78.070(1)(b) preserved—Enforcement) and 1997 c 16 s 1;

(2) RCW 49.78.030 (Requirements—Limitation) and 1989 1st ex.s. c 11 s 3;

(3) RCW 49.78.040 (Notice to employer) and 1989 1st ex.s. c 11 s 4;

(4) RCW 49.78.050 (Requirements for confirmation—Second opinion) and 1989 1st ex.s. c 11 s 5;

(5) RCW 49.78.060 (Both parents with same employer) and 1989 1st ex.s. c 11 s 6;

(6) RCW 49.78.070 (Employee employment rights—Limitations) and 1989 1st ex.s. c 11 s 7;

(7) RCW 49.78.080 (Employee benefits) and 1989 1st ex.s. c 11 s 8;

(8) RCW 49.78.100 (Additional rights—Remedies) and 1989 1st ex.s. c 11 s 10;

(9) RCW 49.78.110 (Collective bargaining agreements—Obligations and rights not diminished) and 1989 1st ex.s. c 11 s 11;

(10) RCW 49.78.120 (Collective bargaining agreements—Application of chapter—Grievance procedures) and 1989 1st ex.s. c 11 s 12;

(11) RCW 49.78.130 (Discrimination prohibited) and 1989 1st ex.s. c 11 s 13;

(12) RCW 49.78.140 (Complaint—Contents—Notice—Investigation) and 1989 1st ex.s. c 11 s 14;

(13) RCW 49.78.150 (Notice of infraction—Contents) and 1989 1st ex.s. c 11 s 15;

(14) RCW 49.78.160 (Notice of infraction—Service) and 1989 1st ex.s. c 11 s 16;

(15) RCW 49.78.170 (Notice of infraction—State agencies) and 1989 1st ex.s. c 11 s 17;

(16) RCW 49.78.180 (Appeal—Hearings—Decisions—Review—Appeal of final decision) and 1989 1st ex.s. c 11 s 18;

(17) RCW 49.78.190 (Penalties) and 1989 1st ex.s. c 11 s 19; and

(18) RCW 49.78.200 (Poster required) and 1989 1st ex.s. c 11 s 20.

NEW SECTION. Sec. 24. 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. 25. Captions used in this act are not any part of the law.

Passed by the Senate February 8, 2006.
Passed by the House March 1, 2006.
Approved by the Governor March 15, 2006.
Filed in Office of Secretary of State March 15, 2006.

CHAPTER 60

[Engrossed Substitute Senate Bill 6189]

HOSPITAL BILLS—CONSUMER EDUCATION

AN ACT Relating to requiring hospitals to provide information to help patients better understand their hospital bills; adding a new section to chapter 70.41 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that the implementation of health information technologies in hospitals, including electronic medical records, has the potential to significantly reduce cost, improve patient outcomes, and simplify the administration of health care. Further, the legislature finds that the number of and complexity of the bills that result from a hospital stay can be confusing to patients. Therefore, it is the intent of the legislature to encourage hospitals to design the implementation of health information technologies so as to allow the hospital to provide the patient, prior to or upon discharge, clearly understandable information about the services provided during the hospital stay, and the bills the patient is likely to receive related to each of those services. Recognizing that complete implementation of the technologies required to achieve this goal will take a number of years, the legislature intends to require that hospitals immediately begin working toward the goal by compiling and communicating information to assist patients in understanding their bills.

NEW SECTION. Sec. 2. A new section is added to chapter 70.41 RCW to read as follows:

(1) Prior to or upon discharge, a hospital must furnish each patient receiving inpatient services a written statement providing a list of physician groups and other professional partners that commonly provide care for patients at the hospital and from whom the patient may receive a bill, along with contact phone numbers for those groups. The statement must prominently display a phone number that a patient can call for assistance if the patient has any questions about any of the bills they receive after discharge that relate to their hospital stay.

(2) This section does not apply to any hospital owned or operated by a health maintenance organization under chapter 48.46 RCW when providing prepaid health care services to enrollees of the health maintenance organization or any of its wholly owned subsidiary carriers.

Passed by the Senate February 13, 2006.
Passed by the House February 28, 2006.
Approved by the Governor March 15, 2006.
Filed in Office of Secretary of State March 15, 2006.

CHAPTER 61

[Senate Bill 6231]

PRIVATE AIR AMBULANCE SERVICES

AN ACT Relating to exempting certain private air ambulance services from licensing under the insurance code; and adding a new section to chapter 48.01 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 48.01 RCW to read as follows:

A private air ambulance service that solicits membership subscriptions, accepts membership applications, charges membership fees, and provides air ambulance services, to subscription members and designated members of their household is not an insurer under RCW 48.01.050, a health carrier under chapter 48.43 RCW, a health care services contractor under chapter 48.44 RCW, or a health maintenance organization under chapter 48.46 RCW if the private air ambulance service:

- (1) Is licensed in accordance with RCW 18.73.130;
- (2) Attains and maintains accreditation by the commission on accreditation of medical transport services or another accrediting organization approved by the department of health as having equivalent requirements as the commission for aeromedical transport;
- (3) Has been in operation in Washington for at least two years; and
- (4) Has submitted evidence of its compliance with this section, the licensing requirements of RCW 18.73.130, and accreditation from the commission or another accrediting organization approved by the department of health as having equivalent requirements as the commission for aeromedical transport to the commissioner.

Passed by the Senate February 3, 2006.

Passed by the House February 28, 2006.

Approved by the Governor March 15, 2006.

Filed in Office of Secretary of State March 15, 2006.

CHAPTER 62

[Senate Bill 6338]

PROPERTY TAX EXEMPTIONS—SENIOR CITIZENS

AN ACT Relating to property tax exemptions and deferrals for senior citizens and persons retired for reasons of disability; amending RCW 84.36.383, 84.38.020, and 84.38.030; and creating a new section.

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

Sec. 1. RCW 84.36.383 and 2004 c 270 s 2 are each amended to read as follows:

As used in RCW 84.36.381 through 84.36.389, except where the context clearly indicates a different meaning:

- (1) The term "residence" means a single family dwelling unit whether such unit be separate or part of a multiunit dwelling, including the land on which such dwelling stands not to exceed one acre, except that a residence includes any additional property up to a total of five acres that comprises the residential parcel if this larger parcel size is required under land use regulations. The term shall

also include a share ownership in a cooperative housing association, corporation, or partnership if the person claiming exemption can establish that his or her share represents the specific unit or portion of such structure in which he or she resides. The term shall also include a single family dwelling situated upon lands the fee of which is vested in the United States or any instrumentality thereof including an Indian tribe or in the state of Washington, and notwithstanding the provisions of RCW 84.04.080 and 84.04.090, such a residence shall be deemed real property.

(2) The term "real property" shall also include a mobile home which has substantially lost its identity as a mobile unit by virtue of its being fixed in location upon land owned or leased by the owner of the mobile home and placed on a foundation (posts or blocks) with fixed pipe, connections with sewer, water, or other utilities. A mobile home located on land leased by the owner of the mobile home is subject, for tax billing, payment, and collection purposes, only to the personal property provisions of chapter 84.56 RCW and RCW 84.60.040.

(3) "Department" means the state department of revenue.

(4) "Combined disposable income" means the disposable income of the person claiming the exemption, plus the disposable income of his or her spouse, and the disposable income of each cotenant occupying the residence for the assessment year, less amounts paid by the person claiming the exemption or his or her spouse during the assessment year for:

(a) Drugs supplied by prescription of a medical practitioner authorized by the laws of this state or another jurisdiction to issue prescriptions;

(b) The treatment or care of either person received in the home or in a nursing home, boarding home, or adult family home; and

(c) Health care insurance premiums for medicare under Title XVIII of the social security act.

(5) "Disposable income" means adjusted gross income as defined in the federal internal revenue code, as amended prior to January 1, 1989, or such subsequent date as the director may provide by rule consistent with the purpose of this section, plus all of the following items to the extent they are not included in or have been deducted from adjusted gross income:

(a) Capital gains, other than gain excluded from income under section 121 of the federal internal revenue code to the extent it is reinvested in a new principal residence;

(b) Amounts deducted for loss;

(c) Amounts deducted for depreciation;

(d) Pension and annuity receipts;

(e) Military pay and benefits other than attendant-care and medical-aid payments;

(f) Veterans benefits other than attendant-care and medical-aid payments;

(g) Federal social security act and railroad retirement benefits;

(h) Dividend receipts; and

(i) Interest received on state and municipal bonds.

(6) "Cotenant" means a person who resides with the person claiming the exemption and who has an ownership interest in the residence.

(7) "Disability" has the same meaning as provided in 42 U.S.C. Sec. 423(d)(1)(A) as amended prior to January 1, 2004, or such subsequent date as the director may provide by rule consistent with the purpose of this section.

Sec. 2. RCW 84.38.020 and 1997 c 93 s 1 are each amended to read as follows:

Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

(1) "Claimant" means a person who either elects or is required under RCW 84.64.050 to defer payment of the special assessments and/or real property taxes accrued on the claimant's residence by filing a declaration to defer as provided by this chapter.

When two or more individuals of a household file or seek to file a declaration to defer, they may determine between them as to who the claimant shall be.

(2) "Department" means the state department of revenue.

(3) "Equity value" means the amount by which the fair market value of a residence as determined from the records of the county assessor exceeds the total amount of any liens or other obligations against the property.

(4) "Local government" means any city, town, county, water-sewer district, public utility district, port district, irrigation district, flood control district, or any other municipal corporation, quasi-municipal corporation, or other political subdivision authorized to levy special assessments.

(5) "Real property taxes" means ad valorem property taxes levied on a residence in this state in the preceding calendar year.

(6) "Residence" has the meaning given in RCW 84.36.383(~~(, except that a residence includes any additional property up to a total of five acres that comprises the residential parcel if this larger parcel size is required under land use regulations)~~).

(7) "Special assessment" means the charge or obligation imposed by a local government upon property specially benefited.

Sec. 3. RCW 84.38.030 and 2004 c 270 s 3 are each amended to read as follows:

A claimant may defer payment of special assessments and/or real property taxes on up to eighty percent of the amount of the claimant's equity value in the claimant's residence if the following conditions are met:

(1) The claimant must meet all requirements for an exemption for the residence under RCW 84.36.381, other than the age and income limits under RCW 84.36.381 (~~(and the parcel size limit under RCW 84.36.383)~~).

(2) The claimant must be sixty years of age or older on December 31st of the year in which the deferral claim is filed, or must have been, at the time of filing, retired from regular gainful employment by reason of physical disability: PROVIDED, That any surviving spouse of a person who was receiving a deferral at the time of the person's death shall qualify if the surviving spouse is fifty-seven years of age or older and otherwise meets the requirements of this section.

(3) The claimant must have a combined disposable income, as defined in RCW 84.36.383, of forty thousand dollars or less.

(4) The claimant must have owned, at the time of filing, the residence on which the special assessment and/or real property taxes have been imposed. For purposes of this subsection, a residence owned by a marital community or owned by cotenants shall be deemed to be owned by each spouse or cotenant. A

claimant who has only a share ownership in cooperative housing, a life estate, a lease for life, or a revocable trust does not satisfy the ownership requirement.

(5) The claimant must have and keep in force fire and casualty insurance in sufficient amount to protect the interest of the state in the claimant's equity value: **PROVIDED**, That if the claimant fails to keep fire and casualty insurance in force to the extent of the state's interest in the claimant's equity value, the amount deferred shall not exceed one hundred percent of the claimant's equity value in the land or lot only.

(6) In the case of special assessment deferral, the claimant must have opted for payment of such special assessments on the installment method if such method was available.

NEW SECTION. Sec. 4. This act applies to taxes levied for collection in 2007 and thereafter.

Passed by the Senate February 9, 2006.

Passed by the House March 1, 2006.

Approved by the Governor March 15, 2006.

Filed in Office of Secretary of State March 15, 2006.

CHAPTER 63

[Engrossed Substitute Senate Bill 6366]

PANDEMIC INFLUENZA—PREPAREDNESS

AN ACT Relating to preparation and response to pandemic influenza; and adding a new chapter to Title 70 RCW.

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

NEW SECTION. Sec. 1. The legislature finds that:

(1) Pandemic influenza is a global outbreak of disease that occurs when a new virus appears in the human population, causes serious illness, and then spreads easily from person to person.

(2) Historically, pandemic influenza has occurred on average every thirty years. Most recently, the Asian flu in 1957-58 and the Hong Kong flu in 1968-69 killed seventy thousand and thirty-four thousand, respectively, in the United States.

(3) Another influenza pandemic could emerge with little warning, affecting a large number of people. Estimates are that another pandemic influenza would cause more than two hundred thousand deaths in our country, with as many as five thousand in Washington. Our state could also expect ten thousand to twenty-four thousand people needing hospital stays, and as many as a million people requiring outpatient visits. During a severe pandemic these numbers could be much higher. The economic losses could also be substantial.

(4) The current Avian or bird flu that is spreading around the world has the potential to start a pandemic. There is yet no proven vaccine, and antiviral medication supplies are limited and of unknown effectiveness against a human version of the virus, leaving traditional public health measures as the only means to slow the spread of the disease. Given the global nature of a pandemic, as much as possible, the state must be able to respond assuming only limited outside resources and assistance will be available.

(5) An effective response to pandemic influenza in Washington must focus at the local level and will depend on preestablished partnerships and collaborative planning on a range of best-case and worst-case scenarios. It will require flexibility and real-time decision making, guided by accurate information. It will also depend on a well-informed public that understands the dangers of pandemic influenza and the steps necessary to prevent the spread of the disease.

(6) Avian flu is but one example of an infectious disease that, were an outbreak to occur, could pose a significant statewide health hazard. As such, preparation for pandemic flu will also enhance the capacity of local public health jurisdictions to respond to other emergencies.

It is therefore the intent of the legislature that adequate pandemic flu preparedness and response plans be developed and implemented by local public health jurisdictions statewide in order to limit the number of illnesses and deaths, preserve the continuity of essential government and other community services, and minimize social disruption and economic loss in the event of an influenza pandemic.

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

(1) "Department" means the department of health.

(2) "Local health jurisdiction" means a local health department as established under chapter 70.05 RCW, a combined city-county health department as established under chapter 70.08 RCW, or a health district established under chapter 70.05 or 70.46 RCW.

(3) "Secretary" means the secretary of the department of health.

NEW SECTION. Sec. 3. (1) The secretary shall establish requirements and performance standards, consistent with any requirements or standards established by the United States department of health and human services, regarding the development and implementation of local pandemic flu preparedness and response plans.

(2) To the extent state or federal funds are provided for this purpose, by November 1, 2006, each local health jurisdiction shall develop a pandemic flu preparedness and response plan, consistent with requirements and performance standards established in subsection (1) of this section, for the purpose of:

(a) Defining preparedness activities that should be undertaken before a pandemic occurs that will enhance the effectiveness of response measures;

(b) Describing the response, coordination, and decision-making structure that will incorporate the local health jurisdiction, the local health care system, other local response agencies, and state and federal agencies during the pandemic;

(c) Defining the roles and responsibilities for the local health jurisdiction, local health care partners, and local response agencies during all phases of a pandemic;

(d) Describing public health interventions in a pandemic response and the timing of such interventions;

(e) Serving as a guide for local health care system partners, response agencies, and businesses in the development of pandemic influenza response plans; and

(f) Providing technical support and information on which preparedness and response actions are based.

Each plan shall be developed based on an assessment by the local health jurisdiction of its current capacity to respond to pandemic flu and otherwise meet department outcome measures related to infectious disease outbreaks of statewide significance.

NEW SECTION. Sec. 4. (1) Each local health jurisdiction shall develop its pandemic flu preparedness and response plan based on the requirements and performance standards established under section 3(1) of this act and an assessment of the jurisdiction's current capacity to respond to pandemic flu. The plan shall be developed in consultation with appropriate public and private sector partners, including departments of emergency management, law enforcement, school districts, hospitals and medical professionals, tribal governments, and business organizations. At a minimum, each plan shall address:

(a) Strategies to educate the public about the consequences of influenza pandemic and what each person can do to prepare, including the adoption of universal infectious disease prevention practices and maintaining appropriate emergency supplies;

(b) Jurisdiction-wide disease surveillance programs, coordinated with state and federal efforts, to detect pandemic influenza strains in humans and animals, including health care provider compliance with reportable conditions requirements, and investigation and analysis of reported illness or outbreaks;

(c) Communication systems, including the availability of and access to specialized communications equipment by health officials and community leaders, and the use of mass media outlets;

(d) Mass vaccination plans and protocols to rapidly administer vaccine and monitor vaccine effectiveness and safety;

(e) Guidelines for the utilization of antiviral medications for the treatment and prevention of influenza;

(f) Implementation of nonmedical measures to decrease the spread of the disease as guided by the epidemiology of the pandemic, including increasing adherence to public health advisories, voluntary social isolation during outbreaks, and health officer orders related to quarantines;

(g) Medical system mobilization, including improving the linkages and coordination of emergency responses across health care organizations, and assuring the availability of adequate facilities and trained personnel;

(h) Strategies for maintaining social order and essential community services while limiting the spread of disease throughout the duration of the pandemic; and

(i) The jurisdiction's relative priorities related to implementation of the above activities, based on available funding.

(2) To the extent state or federal funds are provided for this purpose, the department, in consultation with the state director of emergency management, shall provide technical assistance and disburse funds as needed, based on the formula developed under section 6 of this act, to support local health jurisdictions in developing their pandemic flu preparedness and response plans.

NEW SECTION. Sec. 5. Local health jurisdictions shall submit their pandemic flu preparedness and response plans to the secretary by November 1, 2006. Upon receipt of a plan, the secretary shall approve or reject the plan. When the plan is determined by the department to comply with the requirements and integrate the performance standards established under section 3(1) of this act, any additional state or federal funding appropriated in the budget shall be provided to the local health jurisdiction to support the preparedness response activities identified in the plan, based upon a formula developed by the secretary under section 6 of this act. Preparedness and response activities include but are not limited to:

- (1) Education, information, and outreach, in multiple languages, to increase community preparedness and reduce the spread of the disease should it occur;
- (2) Development of materials and systems to be used in the event of a pandemic to keep the public informed about the influenza, the course of the pandemic, and response activities;
- (3) Development of the legal documents necessary to facilitate and support the necessary government response;
- (4) Training and response drills for local health jurisdiction staff, law enforcement, health care providers, and others with responsibilities identified in the plan;
- (5) Enhancement of the communicable disease surveillance system; and
- (6) Development of coordination and communication systems among responding agencies.

Where appropriate, these activities shall be coordinated and funded on a regional or statewide basis. The secretary, in consultation with the state director of emergency management, shall provide implementation support and assistance to a local health jurisdiction when the secretary or the local health jurisdiction has concerns regarding a jurisdiction's progress toward implementing its plan.

NEW SECTION. Sec. 6. The secretary shall develop a formula for distribution of any federal and state funds appropriated in the omnibus appropriations act on or before July 1, 2006, to local health jurisdictions for development and implementation of their pandemic flu preparedness and response plans. The formula developed by the secretary shall ensure that each local health jurisdiction receives a minimum amount of funds for plan development and that any additional funds for plan development be distributed equitably, including consideration of population and factors that increase susceptibility to an outbreak, upon soliciting the advice of the local health jurisdictions.

NEW SECTION. Sec. 7. The secretary shall:

- (1) Develop a process for assessing the compliance of each local health jurisdiction with the requirements and performance standards developed under section 3(1) of this act at least biannually;
- (2) By November 15, 2008, report to the legislature on the level of compliance with the performance standards established under section 3(1) of this act. The report shall consider the extent to which local health jurisdictions comply with each performance standard and any impediments to meeting the expected level of performance.

NEW SECTION. Sec. 8. Sections 1 through 7 of this act constitute a new chapter in Title 70 RCW.

Passed by the Senate March 8, 2006.

Passed by the House March 8, 2006.

Approved by the Governor March 15, 2006.

Filed in Office of Secretary of State March 15, 2006.

CHAPTER 64

[Senate Bill 6373]

BOARDING HOMES—BED HOLDING—REPORTING

AN ACT Relating to reporting to the legislature of holding a boarding home medicaid eligible resident's room or unit; and amending RCW 18.20.290.

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

Sec. 1. RCW 18.20.290 and 2004 c 142 s 13 are each amended to read as follows:

(1) When a boarding home contracts with the department to provide adult residential care services, enhanced adult residential care services, or assisted living services under chapter 74.39A RCW, the boarding home must hold a medicaid eligible resident's room or unit when short-term care is needed in a nursing home or hospital, the resident is likely to return to the boarding home, and payment is made under subsection (2) of this section.

(2) The medicaid resident's bed or unit shall be held for up to twenty days. The per day bed or unit hold compensation amount shall be seventy percent of the daily rate paid for the first seven days the bed or unit is held for the resident who needs short-term nursing home care or hospitalization. The rate for the eighth through the twentieth day a bed is held shall be established in rule, but shall be no lower than ten dollars per day the bed or unit is held.

(3) The boarding home may seek third-party payment to hold a bed or unit for twenty-one days or longer. The third-party payment shall not exceed the medicaid daily rate paid to the facility for the resident. If third-party payment is not available, the medicaid resident may return to the first available and appropriate bed or unit, if the resident continues to meet the admission criteria under this chapter.

~~((4) The department shall monitor the use and impact of the policy established under this section and shall report its findings to the appropriate committees of the senate and house of representatives by December 31, 2005.~~

~~(5) This section expires June 30, 2006.)~~

Passed by the Senate March 4, 2006.

Passed by the House February 28, 2006.

Approved by the Governor March 15, 2006.

Filed in Office of Secretary of State March 15, 2006.

CHAPTER 65

[Senate Bill 6416]

ANTIPYRAMID PROMOTIONAL SCHEME ACT

AN ACT Relating to prohibiting pyramid promotional schemes; adding a new chapter to Title 19 RCW; and repealing RCW 19.102.010 and 19.102.020.

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

NEW SECTION. Sec. 1. The legislature finds that pyramid schemes, chain letters, and related illegal schemes are enterprises:

(1) That finance returns to participants through sums taken from newly attracted participants;

(2) In which new participants are promised large returns for their investment or contribution; and

(3) That involve unfair and deceptive sales tactics, including: Misrepresentations of sustainability, profitability and legality of the scheme, and false statements that the scheme is legal or approved by governmental agencies.

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

(1) "Compensation" means payment, regardless of how it is characterized, of money, financial benefit, or thing of value. "Compensation" does not include payment based on the sale of goods or services to anyone who is purchasing the goods or services for actual use or consumption.

(2) "Consideration" means the payment, regardless of how it is characterized, of cash or the purchase of goods, services, or intangible property. "Consideration" does not include:

(a) The purchase of goods or services furnished at cost to be used in making sales and not for resale;

(b) The purchase of goods or services subject to a bona fide repurchase agreement as defined in subsection (5) of this section; or

(c) Time and effort spent in pursuit of sales or recruiting activities.

(3) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, or any other legal entity.

(4) "Pyramid schemes" means any plan or operation in which a person gives consideration for the right or opportunity to receive compensation that is derived primarily from the recruitment of other persons as participants in the plan or operation, rather than from the bona fide sale of goods, services, or intangible property to a person or by persons to others.

(5)(a) "Repurchase agreement" means an enforceable agreement by the seller to repurchase, at the buyer's written request, all currently marketable inventory within one year from its date of purchase; and the refund must not be less than ninety percent of the original net cost, less any consideration received by the buyer when he or she bought the products being returned.

(b) Products shall not be considered currently marketable if returned for repurchase after the products' commercially reasonable usable or shelf life has passed, or if it has been clearly disclosed to the buyer that the products are seasonal, discontinued, or special promotion products that are not subject to the repurchase obligation.

NEW SECTION. Sec. 3. (1) No person may establish, promote, operate, or participate in any pyramid scheme.

(2) A limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility for the opportunity to receive compensation under the scheme, does not change the identity of the scheme as a pyramid scheme.

(3) It is not a defense under this act that a person, on giving consideration, obtains goods, services, or intangible property in addition to the right to receive compensation, nor is it a defense to designate the consideration a gift, donation offering, or other word of similar meaning.

NEW SECTION. Sec. 4. The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

NEW SECTION. Sec. 5. This act may be cited as the "antipyramid promotional scheme act."

NEW SECTION. Sec. 6. The following acts or parts of acts are each repealed:

- (1) RCW 19.102.010 (Definitions) and 1973 1st ex.s. c 33 s 1; and
- (2) RCW 19.102.020 (Chain distributor schemes prohibited—Unfair practice) and 1973 1st ex.s. c 33 s 2.

NEW SECTION. Sec. 7. Sections 1 through 5 of this act constitute a new chapter in Title 19 RCW.

Passed by the Senate February 10, 2006.

Passed by the House February 28, 2006.

Approved by the Governor March 15, 2006.

Filed in Office of Secretary of State March 15, 2006.

CHAPTER 66

[Senate Bill 6418]

DENTAL HYGIENISTS—LICENSING

AN ACT Relating to initial limited licenses for dental hygienists; amending RCW 18.29.190; and repealing RCW 18.29.200.

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

Sec. 1. RCW 18.29.190 and 2004 c 262 s 3 are each amended to read as follows:

(1) The department shall issue an initial limited license without the examination required by this chapter to any applicant who, as determined by the secretary:

(a) Holds a valid license in another state that allows ~~((the))~~ a substantively equivalent scope of practice in subsection (3)(a) through (j) of this section;

(b) Is currently engaged in active practice in another state. For the purposes of this section, "active practice" means five hundred sixty hours of practice in the preceding twenty-four months;

(c) Files with the secretary documentation certifying that the applicant:

- (i) Has graduated from an accredited dental hygiene school approved by the secretary;
- (ii) Has successfully completed the dental hygiene national board examination; and
- (iii) Is licensed to practice in another state;
- (d) Provides information as the secretary deems necessary pertaining to the conditions and criteria of the uniform disciplinary act, chapter 18.130 RCW;
- (e) Demonstrates to the secretary a knowledge of Washington state law pertaining to the practice of dental hygiene, including the administration of legend drugs;
- (f) Pays any required fees; and
- (g) Meets requirements for AIDS education.

(2) The term of the initial limited license issued under this section is eighteen months and it is renewable upon ~~((demonstration of successful passage of the examination for administering local anesthetic and nitrous oxide/oxygen analgesia))~~;

(a) Demonstration of successful passage of a substantively equivalent dental hygiene patient evaluation/prophylaxis examination;

(b) Demonstration of successful passage of a substantively equivalent local anesthesia examination; and

(c) Demonstration of didactic and clinical competency in the administration of nitrous oxide analgesia.

(3) A person practicing with an initial limited license granted under this section has the authority to perform hygiene procedures that are limited to:

- (a) Oral inspection and measuring of periodontal pockets;
- (b) Patient education in oral hygiene;
- (c) Taking intra-oral and extra-oral radiographs;
- (d) Applying topical preventive or prophylactic agents;
- (e) Polishing and smoothing restorations;
- (f) Oral prophylaxis and removal of deposits and stains from the surface of the teeth;
- (g) Recording health histories;
- (h) Taking and recording blood pressure and vital signs;
- (i) Performing subgingival and supragingival scaling; and
- (j) Performing root planing.

(4)(a) A person practicing with an initial limited license granted under this section may not perform the following dental hygiene procedures unless authorized in (b) or (c) of this subsection:

- (i) Give injections of local anesthetic;
- (ii) Place restorations into the cavity prepared by a licensed dentist and afterwards carve, contour, and adjust contacts and occlusion of the restoration;
- (iii) Soft tissue curettage; or
- (iv) Administer nitrous oxide/oxygen analgesia.

(b) A person licensed in another state who can demonstrate substantively equivalent licensing standards in the administration of local anesthetic may receive a temporary endorsement to administer local anesthesia. For purposes of the renewed limited license, this endorsement demonstrates the successful passage of the local anesthesia examination.

(c) A person licensed in another state who can demonstrate substantively equivalent licensing standards in restorative procedures may receive a temporary endorsement for restorative procedures.

(5)(a) A person practicing with a renewed limited license granted under this section may:

(i) Perform hygiene procedures as provided under subsection (3) of this section;

(ii) Give injections of local anesthetic;

(iii) Perform soft tissue curettage; and

(iv) Administer nitrous oxide/oxygen analgesia.

(b) A person practicing with a renewed limited license granted under this section may not place restorations into the cavity prepared by a licensed dentist and afterwards carve, contour, and adjust contacts and occlusion of the restoration.

NEW SECTION. Sec. 2. RCW 18.29.200 (Temporary licensees—Requirements for regular examination) and 1993 c 323 s 3 are each repealed.

Passed by the Senate February 14, 2006.

Passed by the House March 3, 2006.

Approved by the Governor March 15, 2006.

Filed in Office of Secretary of State March 15, 2006.

CHAPTER 67

[Engrossed Second Substitute Senate Bill 6459]

COMMUNITY HEALTH CARE COLLABORATIVE GRANT PROGRAM

AN ACT Relating to community-based health care solutions; creating new sections; and providing an expiration date.

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

NEW SECTION. Sec. 1. The legislature finds that:

(1) Despite sustained efforts at the federal and state level, too many people in Washington remain without access to appropriate health care. Particularly alarming is the increase in the number of small business employees who are uninsured. Without a health home, many low-income and other vulnerable populations are left to inefficiently navigate a fragmented treatment system that fails to support their long-term well-being.

(2) In recent years, numerous community-based organizations have emerged around the state to address health care concerns at a local level. Through innovation and public/private collaboration, they have demonstrated great success and show even greater promise in improving health care access for local residents. Less remote than state and federal agencies, these organizations have built on local relationships to increase the availability and affordability of services, and coordinate care, making efficient use of a wide variety of community resources to meet community needs.

(3) Many of these organizations have relied on grants from the healthy communities access program, an initiative of the United States department of health and human services that provided funding and technical assistance to support collaborative efforts at the local level to coordinate and strengthen health

services for the uninsured and underinsured. The program, however, was recently discontinued, placing these local efforts at risk.

It is therefore the intent of the legislature to enhance and support the development of collaborative community-based organizations working at the local level to increase access to health care for Washington residents.

NEW SECTION. Sec. 2. (1) The community health care collaborative grant program is established to further the efforts of community-based organizations to increase access to appropriate, affordable health care for Washington residents, particularly employed low-income persons who are uninsured and underinsured, through local programs addressing one or more of the following: (a) Access to medical treatment; (b) the efficient use of health care resources; or (c) quality of care.

(2) Grants of up to five hundred thousand dollars per organization shall be awarded pursuant to sections 3 and 4 of this act by the administrator of the health care authority in consultation with the secretary of the department of health, the assistant secretary of the health and recovery services administration within the department of social and health services, and the insurance commissioner.

(3) The health care authority shall provide administrative support for the program.

NEW SECTION. Sec. 3. Eligibility for grants shall be limited to nonprofit organizations established to serve a defined substate geographic region and having a formal collaborative governance structure and decision-making process for improving access. The nature and format of the application, and the application procedure, shall be determined by the administrator of the health care authority. At a minimum, each application shall: (1) Identify the geographic region served by the organization; (2) show how the structure and operation of the organization reflects the interests of, and is accountable to, this region; (3) indicate the size of the grant being requested, and how the money will be spent; and (4) include sufficient information for an evaluation of the application based on the criteria established in section 4 of this act.

NEW SECTION. Sec. 4. (1) Grants shall be awarded on a competitive basis based on a determination of which applicant organization will best serve the purposes of the grant program. In making this determination, consideration shall be given to the extent to which:

(a) The programs to be supported by the grant are likely to address, in a measurable fashion, documented health care access needs within the region to be served;

(b) An applicant organization can be expected to successfully implement these programs, including the extent to which the application reflects formal, active collaboration among key community members such as local governments, school districts, large and small businesses, nonprofit organizations, carriers, private health care providers, and public health agencies;

(c) The applicant organization will match the grant with funds from other sources. Grants may be awarded only to organizations providing at least two dollars in matching funds for each grant dollar awarded;

(d) The grant will enhance the long-term capacity of the applicant organization and its partners to serve the region's documented health care access needs, including the sustainability of the programs to be supported by the grant;

(e) The programs to be supported by the grant reflect creative, innovative approaches which complement and enhance existing efforts to address the needs of the uninsured and underinsured and, if successful, could be replicated in other areas of the state; and

(f) The programs to be supported by the grant make efficient and cost-effective use of available funds through administrative simplification and improvements in the structure and operation of the health care delivery system.

(2) The administrator shall endeavor to disburse grant funds throughout the state, supporting organizations and programs of differing sizes and scales, and serving differing populations.

NEW SECTION. Sec. 5. One-half the total amount of any award shall be disbursed to an organization upon its selection as a grant recipient. The remaining half shall be disbursed one year later only upon receipt by the administrator of the health care authority of a progress report from the organization, and a determination by the administrator, in consultation with the secretary of the department of health, the assistant secretary of the health and recovery services administration within the department of social and health services, and the insurance commissioner, that the organization is satisfactorily serving the purposes of the grant program and meeting the objectives identified in its application regarding: (1) Access to medical treatment; (2) the efficient use of health care resources; or (3) quality of care.

NEW SECTION. Sec. 6. By July 1, 2008, the administrator of the health care authority shall provide the governor and the legislature with an evaluation of the community health care collaborative grant program, describing the organizations and programs funded and the results achieved. Particularly successful programs shall be highlighted with recommendations on whether, and how, the programs could be replicated statewide. The evaluation shall also summarize any recommendations from the participating organizations regarding ways to improve the grant program and for the state to otherwise support community-based organizations working to improve access to health care for Washington residents, including any changes in state statutes or regulations.

NEW SECTION. Sec. 7. The health care authority may adopt rules to implement this act.

NEW SECTION. Sec. 8. The community health care collaborative account is created in the custody of the state treasurer. Expenditures from the account may be used only for the purposes set forth in this act. Only the administrator of the health care authority or the administrator's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. Sec. 9. This act expires June 30, 2009.

Passed by the Senate February 13, 2006.

Passed by the House March 2, 2006.

Approved by the Governor March 15, 2006.

Filed in Office of Secretary of State March 15, 2006.

CHAPTER 68

[Engrossed Senate Bill 6606]

EDUCATIONAL INTERPRETERS

AN ACT Relating to standards for educational interpreters for students who are deaf or hard of hearing; adding a new section to chapter 28A.155 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that there are no current standards for educational interpreters for students who are deaf or hard of hearing. Establishing standards will improve the quality of educational interpreters in our schools.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.155 RCW to read as follows:

(1) To the extent funds are appropriated, by January 15, 2007, the superintendent of public instruction must develop standards for educational interpreters of students who are deaf or hard of hearing. The standards must be focused on the specific skills and knowledge necessary to serve the communication needs of these students. By January 15, 2007, the superintendent must report to the education committees of the legislature and also recommend an implementation schedule for the standards. The superintendent of public instruction must obtain formal legislative approval through legislation before the implementation of any standards for educational interpreters.

(2) When developing the standards, the superintendent of public instruction must convene and consult with an advisory committee including, but not limited to, representatives of: (a) Nationally certificated educational interpreters; (b) tactile interpreters; (c) interpreter educators; (d) district program coordinators of deaf programs; (e) leaders in the deaf community; and (f) parents of deaf children and of deaf-blind children.

Passed by the Senate February 14, 2006.

Passed by the House March 1, 2006.

Approved by the Governor March 15, 2006.

Filed in Office of Secretary of State March 15, 2006.

CHAPTER 69

[Senate Bill 6658]

MENTAL HEALTH COUNSELORS—EXPERIENCE REQUIREMENTS

AN ACT Relating to experience requirements for licensed mental health counselors; and amending RCW 18.225.090.

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

Sec. 1. RCW 18.225.090 and 2003 c 108 s 1 are each amended to read as follows:

(1) The secretary shall issue a license to any applicant who demonstrates to the satisfaction of the secretary that the applicant meets the following education and experience requirements for the applicant's practice area.

(a) Licensed social work classifications:

(i) Licensed advanced social worker:

(A) Graduation from a master's or doctorate social work educational program accredited by the council on social work education and approved by the secretary based upon nationally recognized standards;

(B) Successful completion of an approved examination;

(C) Successful completion of a supervised experience requirement. The experience requirement consists of a minimum of three thousand two hundred hours with ninety hours of supervision by a licensed independent clinical social worker or a licensed advanced social worker who has been licensed or certified for at least two years. Of those hours, fifty hours must include direct supervision by a licensed advanced social worker or licensed independent clinical social worker; the other forty hours may be with an equally qualified licensed mental health practitioner. Forty hours must be in one-to-one supervision and fifty hours may be in one-to-one supervision or group supervision. Distance supervision is limited to forty supervision hours. Eight hundred hours must be in direct client contact; and

(D) Successful completion of continuing education requirements of thirty-six hours, with six in professional ethics.

(ii) Licensed independent clinical social worker:

(A) Graduation from a master's or doctorate level social work educational program accredited by the council on social work education and approved by the secretary based upon nationally recognized standards;

(B) Successful completion of an approved examination;

(C) Successful completion of a supervised experience requirement. The experience requirement consists of a minimum of four thousand hours of experience, of which one thousand hours must be direct client contact, over a three-year period supervised by a licensed independent clinical social worker who has been licensed or certified for at least five years and who has had at least one year of experience in supervising the clinical social work practice of others, with supervision of at least one hundred thirty hours by a licensed mental health practitioner. Of the total supervision, seventy hours must be with an independent clinical social worker meeting the qualifications under this subsection (1)(a)(ii)(C); the other sixty hours may be with an equally qualified licensed mental health practitioner. Sixty hours must be in one-to-one supervision and seventy hours may be in one-to-one supervision or group supervision. Distance supervision is limited to sixty supervision hours; and

(D) Successful completion of continuing education requirements of thirty-six hours, with six in professional ethics.

(b) Licensed mental health counselor:

(i) Graduation from a master's or doctoral level educational program in mental health counseling or a related discipline from a college or university approved by the secretary based upon nationally recognized standards;

(ii) Successful completion of an approved examination;

(iii) Successful completion of a supervised experience requirement. The experience requirement consists of a minimum of thirty-six months full-time counseling or three thousand hours of postgraduate mental health counseling under the supervision of a qualified licensed mental health counselor or equally qualified licensed mental health practitioner, in an approved setting. The three thousand hours of required experience includes a minimum of one hundred hours spent in immediate supervision with the qualified licensed mental health

counselor, and includes a minimum of one thousand two hundred hours of direct counseling with individuals, couples, families, or groups; and

(iv) Successful completion of continuing education requirements of thirty-six hours, with six in professional ethics.

(c) Licensed marriage and family therapist:

(i) Graduation from a master's degree or doctoral degree educational program in marriage and family therapy or graduation from an educational program in an allied field equivalent to a master's degree or doctoral degree in marriage and family therapy approved by the secretary based upon nationally recognized standards;

(ii) Successful passage of an approved examination;

(iii) Successful completion of a supervised experience requirement. The experience requirement consists of a minimum of two calendar years of full-time marriage and family therapy. Of the total supervision, one hundred hours must be with a licensed marriage and family therapist with at least five years' clinical experience; the other one hundred hours may be with an equally qualified licensed mental health practitioner. Total experience requirements include:

(A) A minimum of three thousand hours of experience, one thousand hours of which must be direct client contact; at least five hundred hours must be gained in diagnosing and treating couples and families; plus

(B) At least two hundred hours of qualified supervision with a supervisor. At least one hundred of the two hundred hours must be one-on-one supervision, and the remaining hours may be in one-on-one or group supervision.

Applicants who have completed a master's program accredited by the commission on accreditation for marriage and family therapy education of the American association for marriage and family therapy may be credited with five hundred hours of direct client contact and one hundred hours of formal meetings with an approved supervisor; and

(iv) Successful completion of continuing education requirements of thirty-six hours, with six in professional ethics.

(2) The department shall establish by rule what constitutes adequate proof of meeting the criteria.

(3) In addition, applicants shall be subject to the grounds for denial of a license or issuance of a conditional license under chapter 18.130 RCW.

Passed by the Senate February 10, 2006.

Passed by the House March 1, 2006.

Approved by the Governor March 15, 2006.

Filed in Office of Secretary of State March 15, 2006.

CHAPTER 70

[Engrossed Substitute Senate Bill 6679]

TRAIN SPEEDS

AN ACT Relating to the jurisdiction of regulating train speeds; and amending RCW 81.48.030 and 81.48.040.

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

Sec. 1. RCW 81.48.030 and 1994 c 81 s 83 are each amended to read as follows:

Except to the extent preempted by federal law, the right to fix and regulate the speed of railway trains within the limits of any city or town other than a first class city, and at grade crossings as defined in RCW 81.53.010 where such grade crossings are outside the limits of cities and towns, is vested exclusively in the commission: PROVIDED, That RCW 81.48.030 and 81.48.040 shall not apply to street railways which may be operating or hereafter operated within the limits of said cities and towns.

Sec. 2. RCW 81.48.040 and 1994 c 81 s 84 are each amended to read as follows:

(1) After due investigation, the commission shall make and issue an order fixing and regulating the speed of railway trains within the limits of cities and towns other than first class cities. Except to the extent preempted by federal law, the speed limit to be fixed by the commission shall be discretionary, and it may fix different rates of speed for different cities and towns, which rates of speed shall be commensurate with the hazard presented and the practical operation of the trains. Except to the extent preempted by federal law, the commission shall also fix and regulate the speed of railway trains at grade crossings as defined in RCW 81.53.010 where such grade crossings are outside the limits of cities and towns when in the judgment of the commission the public safety so requires; such speed limit to be fixed shall be discretionary with the commission and may be different for different grade crossings and shall be commensurate with the hazard presented and the practical operation of trains. The commission shall have the right from time to time, as conditions change, to either increase or decrease speed limits established under RCW 81.48.030 and 81.48.040.

(2) Any speed limit that the commission fixed by order prior to the effective date of this act, but without making a finding permitted under P.L. 91-458, Sec. 205 (49 U.S.C. Sec. 20106), has no force or effect.

(3) Before increasing operating speeds, the railroad company, government agency, or jurisdiction that owns or operates the railroad must provide a sixty-day written notice to the commission and to either the governing body of the city or town within which the limit applies or the road authority that has control over the grade crossing at which the limit applies. In the notice, the railroad company, government agency, or jurisdiction must provide the existing timetable speed limits and new passenger and freight speed limits, the milepost limits where the speed increase is to occur, and the federal track class standard to which the track will be maintained. At the end of sixty days, the railroad company, government agency, or jurisdiction may raise the speed limit unless the commission staff, after investigation, finds that a lower limit is necessary to address local conditions consistent with P.L. 91-458, Sec. 205 (49 U.S.C. Sec. 20106). In the event of such a finding by the staff that is not agreed to by the railroad company, government agency, or jurisdiction, the matter shall be scheduled for a hearing before the commission. A railroad company, government agency, or jurisdiction may provide no more than five notices in any sixty-day period without the consent of the commission. The railroad company, government agency, or jurisdiction and the commission may extend the sixty-day period by mutual consent.

Passed by the Senate February 14, 2006.

Passed by the House March 1, 2006.

Approved by the Governor March 15, 2006.

Filed in Office of Secretary of State March 15, 2006.

CHAPTER 71

[Senate Bill 6766]

NATIONAL GUARD CONDITIONAL SCHOLARSHIP

AN ACT Relating to the national guard conditional scholarship; and amending RCW 28B.103.010 and 28B.103.020.

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

Sec. 1. RCW 28B.103.010 and 2000 c 159 s 1 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this section and RCW 28B.103.020 and 28B.103.030.

(1) "Eligible student" means an enlisted member or an officer of the rank of captain or below in the Washington national guard who attends an institution of higher education that is located in this state and accredited by the Northwest Association of Schools and Colleges, or beginning September 1, 2006, an institution that is located in this state that provides approved training under the Montgomery GI Bill, and who meets any additional selection criteria adopted by the office.

(2) "Conditional scholarship" means a loan that is forgiven in whole or in part if the recipient renders service as a member of the Washington national guard under rules adopted by the office.

(3) "Forgiven" or "to forgive" or "forgiveness" means either to render service in the Washington national guard in lieu of monetary repayment, or to be relieved of the service obligation under rules adopted by the office.

(4) "Office" means the office of the adjutant general of the state military department.

(5) "Participant" means an eligible student who has received a conditional scholarship under this chapter.

(6) "Service obligation" means serving in the Washington national guard for one additional year for each year of conditional scholarship received under this program.

Sec. 2. RCW 28B.103.020 and 1994 c 234 s 6 are each amended to read as follows:

The Washington state national guard conditional scholarship program is established. The program shall be administered by the office. In administering the program, the powers and duties of the office shall include, but need not be limited to:

(1) The selection of eligible students to receive conditional scholarships;

(2) The award of conditional scholarships funded by federal and state funds, private donations, or repayments from any participant who does not complete the participant's service obligation. Use of state funds is subject to available funds. The annual amount of each conditional scholarship may vary, but shall not exceed the annual cost of undergraduate tuition fees and services and activities fees at the University of Washington, plus an allowance for books and supplies;

(3) The adoption of necessary rules and guidelines, including establishing a priority for eligible students attending an institution of higher education located in this state that is accredited by the Northwest Association of Schools and Colleges;

(4) The adoption of participant selection criteria. The criteria may include but need not be limited to requirements for: Satisfactory progress, minimum grade point averages, enrollment in courses or programs that lead to a baccalaureate degree or an associate degree or a certificate, and satisfactory participation as a member of the Washington national guard;

(5) The notification of participants of their additional service obligation or required repayment of the conditional scholarship; and

(6) The collection of repayments from participants who do not meet the eligibility criteria or service obligations.

Passed by the Senate February 14, 2006.

Passed by the House March 1, 2006.

Approved by the Governor March 15, 2006.

Filed in Office of Secretary of State March 15, 2006.

CHAPTER 72

[Engrossed Substitute House Bill 1850]

RETIRED VOLUNTEER MEDICAL WORKERS

AN ACT Relating to retired volunteer medical workers; amending RCW 43.70.110 and 43.70.250; adding a new section to chapter 18.130 RCW; and adding a new section to chapter 38.52 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 18.130 RCW to read as follows:

(1) As used in this section, "emergency or disaster" has the same meaning as in RCW 38.52.010.

(2) The secretary shall issue a retired volunteer medical worker license to any applicant who:

(a) Has held an active license issued by a disciplining authority under RCW 18.130.040 no more than ten years prior to applying for an initial license under this section;

(b) Does not have any current restrictions on the ability to obtain a license for violations of this chapter; and

(c) Submits proof of registration as a volunteer with a local organization for emergency services or management as defined by chapter 38.52 RCW.

(3) License holders under this section must be supervised and may practice only those duties that correspond to the scope of their emergency worker assignment not to exceed their scope of practice prior to retirement.

(4) The department shall adopt rules and policies to implement this section.

(5) The department shall establish standards for the renewal of licenses issued under this section, including continuing competency requirements.

(6) License holders under this section are subject to the provisions of this chapter as they may apply to the issuance and denial of credentials, unauthorized practice, and discipline for acts of unprofessional conduct.

(7) Nothing in this section precludes a health care professional who holds an active license from providing medical services during an emergency or disaster.

(8) The cost of regulatory activities for license holders under this section must be borne in equal proportion by all health care providers holding a license issued by a disciplining authority under RCW 18.130.040.

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

(1) No act or omission by a covered volunteer while engaged in a covered activity shall impose any liability for civil damages resulting from such an act or omission upon:

- (a) The covered volunteer;
- (b) The supervisor or supervisors of the covered volunteer;
- (c) Any health care facility or their officers or employees;
- (d) The owner of the property or vehicle where the act or omission may have occurred during the covered activity;
- (e) Any local organization that registered the covered volunteer; or
- (f) The state or any state or local governmental entity.

(2) The immunity in subsection (1) of this section applies only when the covered volunteer was engaged in a covered activity:

- (a) Without compensation or expectation of compensation;
- (b) Within the scope of their assigned duties;
- (c) Under the direction of the local organization with which he or she had been registered; and
- (d) The act or omission does not constitute gross negligence or willful or wanton misconduct.

(3) For purposes of this section:

(a) "Covered volunteer" means a person who is registered as an emergency worker as defined in RCW 38.52.010 and who is also licensed as a retired volunteer medical worker under section 1 of this act.

(b) "Covered activity" means:

(i) Providing assistance or transportation during an emergency or disaster as defined in RCW 38.52.010, whether such assistance or transportation is provided at the scene of the emergency or disaster, an alternative care site, a hospital, or while in route to or from such sites or between sites; or

(ii) Participating in an approved training or exercise in preparation for an emergency or disaster.

Sec. 3. RCW 43.70.110 and 2005 c 268 s 2 are each amended to read as follows:

(1) The secretary shall charge fees to the licensee for obtaining a license. After June 30, 1995, municipal corporations providing emergency medical care and transportation services pursuant to chapter 18.73 RCW shall be exempt from such fees, provided that such other emergency services shall only be charged for their pro rata share of the cost of licensure and inspection, if appropriate. The secretary may waive the fees when, in the discretion of the secretary, the fees would not be in the best interest of public health and safety, or when the fees would be to the financial disadvantage of the state.

(2) Except as provided in RCW 18.79.202, until June 30, 2013, and except for the cost of regulating retired volunteer medical workers in accordance with

section 1 of this act, fees charged shall be based on, but shall not exceed, the cost to the department for the licensure of the activity or class of activities and may include costs of necessary inspection.

(3) Department of health advisory committees may review fees established by the secretary for licenses and comment upon the appropriateness of the level of such fees.

Sec. 4. RCW 43.70.250 and 2005 c 268 s 3 are each amended to read as follows:

It shall be the policy of the state of Washington that the cost of each professional, occupational, or business licensing program be fully borne by the members of that profession, occupation, or business. The secretary shall from time to time establish the amount of all application fees, license fees, registration fees, examination fees, permit fees, renewal fees, and any other fee associated with licensing or regulation of professions, occupations, or businesses administered by the department. In fixing said fees, the secretary shall set the fees for each program at a sufficient level to defray the costs of administering that program and the cost of regulating licensed volunteer medical workers in accordance with section 1 of this act, except as provided in RCW 18.79.202 until June 30, 2013. All such fees shall be fixed by rule adopted by the secretary in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

Passed by the House March 4, 2006.

Passed by the Senate February 27, 2006.

Approved by the Governor March 15, 2006.

Filed in Office of Secretary of State March 15, 2006.

CHAPTER 73

[House Bill 3317]

DRIVING UNDER THE INFLUENCE—PENALTIES

AN ACT Relating to making it a felony to drive or be in physical control of a vehicle while under the influence of intoxicating liquor or any drug; amending RCW 46.61.502, 46.61.504, 46.61.5055, 9.94A.030, 9.94A.640, 9.94A.650, 9.94A.660, 9.94A.690, 13.40.0357, 46.20.311, 46.61.524, 46.61.5152, and 46.61.5151; reenacting and amending RCW 9.94A.505, 9.94A.525, 9.94A.515, and 9.94A.411; adding a new section to chapter 9.94A RCW; prescribing penalties; and providing an effective date.

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

Sec. 1. RCW 46.61.502 and 1998 c 213 s 3 are each amended to read as follows:

(1) A person is guilty of driving while under the influence of intoxicating liquor or any drug if the person drives a vehicle within this state:

(a) And the person has, within two hours after driving, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or

(b) While the person is under the influence of or affected by intoxicating liquor or any drug; or

(c) While the person is under the combined influence of or affected by intoxicating liquor and any drug.

(2) The fact that a person charged with a violation of this section is or has been entitled to use a drug under the laws of this state shall not constitute a defense against a charge of violating this section.

(3) It is an affirmative defense to a violation of subsection (1)(a) of this section which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of driving and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.08 or more within two hours after driving. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(4) Analyses of blood or breath samples obtained more than two hours after the alleged driving may be used as evidence that within two hours of the alleged driving, a person had an alcohol concentration of 0.08 or more in violation of subsection (1)(a) of this section, and in any case in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of subsection (1)(b) or (c) of this section.

(5) Except as provided in subsection (6) of this section, a violation of this section is a gross misdemeanor.

(6) It is a class C felony punishable under chapter 9.94A RCW, or chapter 13.40 RCW if the person is a juvenile, if: (a) The person has four or more prior offenses within ten years as defined in RCW 46.61.5055; or (b) the person has ever previously been convicted of vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), or vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b).

Sec. 2. RCW 46.61.504 and 1998 c 213 s 5 are each amended to read as follows:

(1) A person is guilty of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug if the person has actual physical control of a vehicle within this state:

(a) And the person has, within two hours after being in actual physical control of the vehicle, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or

(b) While the person is under the influence of or affected by intoxicating liquor or any drug; or

(c) While the person is under the combined influence of or affected by intoxicating liquor and any drug.

(2) The fact that a person charged with a violation of this section is or has been entitled to use a drug under the laws of this state does not constitute a defense against any charge of violating this section. No person may be convicted under this section if, prior to being pursued by a law enforcement officer, the person has moved the vehicle safely off the roadway.

(3) It is an affirmative defense to a violation of subsection (1)(a) of this section which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of being in actual physical control of the vehicle and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol

concentration to be 0.08 or more within two hours after being in such control. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(4) Analyses of blood or breath samples obtained more than two hours after the alleged being in actual physical control of a vehicle may be used as evidence that within two hours of the alleged being in such control, a person had an alcohol concentration of 0.08 or more in violation of subsection (1)(a) of this section, and in any case in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of subsection (1)(b) or (c) of this section.

(5) Except as provided in subsection (6) of this section, a violation of this section is a gross misdemeanor.

(6) It is a class C felony punishable under chapter 9.94A RCW, or chapter 13.40 RCW if the person is a juvenile, if: (a) The person has four or more prior offenses within ten years as defined in RCW 46.61.5055; or (b) the person has ever previously been convicted of vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), or vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b).

Sec. 3. RCW 46.61.5055 and 2004 c 95 s 13 are each amended to read as follows:

(1) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has no prior offense within seven years shall be punished as follows:

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

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

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

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

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

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

(2) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has one prior offense within seven years shall be punished as follows:

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

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

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

(b) In the case of a person whose alcohol concentration was at least 0.15, or for whom by reason of the person's refusal to take a test offered pursuant to

RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

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

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

(3) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has two or ~~((more))~~ three prior offenses within seven years shall be punished as follows:

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

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

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

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

(i) By imprisonment for not less than one hundred twenty days nor more than one year and one hundred fifty days of electronic home monitoring. The

offender shall pay for the cost of the electronic monitoring. The county or municipality where the penalty is being imposed shall determine the cost. The court may also require the offender's electronic home monitoring device include an alcohol detection breathalyzer, and may restrict the amount of alcohol the offender may consume during the time the offender is on electronic home monitoring. One hundred twenty days of imprisonment and one hundred fifty days of electronic home monitoring may not be suspended or deferred unless the court finds that the imposition of this mandatory minimum sentence would impose a substantial risk to the offender's physical or mental well-being. Whenever the mandatory minimum sentence is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based; and

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

(4) A person who is convicted of a violation of RCW 46.61.502 or 46.61.504 and who has four or more prior offenses within ten years, or who has ever previously been convicted of a violation of RCW 46.61.520 committed while under the influence of intoxicating liquor or any drug or RCW 46.61.522 committed while under the influence of intoxicating liquor or any drug, shall be punished in accordance with chapter 9.94A RCW.

(5) If a person who is convicted of a violation of RCW 46.61.502 or 46.61.504 committed the offense while a passenger under the age of sixteen was in the vehicle, the court shall:

(a) In any case in which the installation and use of an interlock or other device is not mandatory under RCW 46.20.720 or other law, order the use of such a device for not less than sixty days following the restoration of the person's license, permit, or nonresident driving privileges; and

(b) In any case in which the installation and use of such a device is otherwise mandatory, order the use of such a device for an additional sixty days.

~~((5))~~ (6) In exercising its discretion in setting penalties within the limits allowed by this section, the court shall particularly consider the following:

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

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

~~((6))~~ (7) An offender punishable under this section is subject to the alcohol assessment and treatment provisions of RCW 46.61.5056.

~~((7))~~ (8) The license, permit, or nonresident privilege of a person convicted of driving or being in physical control of a motor vehicle while under the influence of intoxicating liquor or drugs must:

(a) If the person's alcohol concentration was less than 0.15, or if for reasons other than the person's refusal to take a test offered under RCW 46.20.308 there is no test result indicating the person's alcohol concentration:

(i) Where there has been no prior offense within seven years, be suspended or denied by the department for ninety days;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for two years; or

(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for three years;

(b) If the person's alcohol concentration was at least 0.15:

(i) Where there has been no prior offense within seven years, be revoked or denied by the department for one year;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for nine hundred days; or

(iii) Where there have been two or more prior offenses within seven years, be revoked or denied by the department for four years; or

(c) If by reason of the person's refusal to take a test offered under RCW 46.20.308, there is no test result indicating the person's alcohol concentration:

(i) Where there have been no prior offenses within seven years, be revoked or denied by the department for two years;

(ii) Where there has been one prior offense within seven years, be revoked or denied by the department for three years; or

(iii) Where there have been two or more previous offenses within seven years, be revoked or denied by the department for four years.

The department shall grant credit on a day-for-day basis for any portion of a suspension, revocation, or denial already served under this subsection for a suspension, revocation, or denial imposed under RCW 46.20.3101 arising out of the same incident.

For purposes of this subsection (~~((7))~~ (8), the department shall refer to the driver's record maintained under RCW 46.52.120 when determining the existence of prior offenses.

~~((8))~~ (9) After expiration of any period of suspension, revocation, or denial of the offender's license, permit, or privilege to drive required by this section, the department shall place the offender's driving privilege in probationary status pursuant to RCW 46.20.355.

~~((9))~~ (10)(a) In addition to any nonsuspendable and nondeferrable jail sentence required by this section, whenever the court imposes less than one year in jail, the court shall also suspend but shall not defer a period of confinement for a period not exceeding five years. The court shall impose conditions of probation that include: (i) Not driving a motor vehicle within this state without a valid license to drive and proof of financial responsibility for the future; (ii) not driving a motor vehicle within this state while having an alcohol concentration of 0.08 or more within two hours after driving; and (iii) not refusing to submit to a test of his or her breath or blood to determine alcohol concentration upon request of a law enforcement officer who has reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor. The court may impose conditions of probation that include nonrepetition, installation of an ignition interlock device on the probationer's motor vehicle, alcohol or drug treatment, supervised probation, or other conditions that may be appropriate. The sentence may be imposed in whole or in part upon violation of a condition of probation during the suspension period.

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

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

~~((40))~~ (11) A court may waive the electronic home monitoring requirements of this chapter when:

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

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

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

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

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

~~((41))~~ (12) An offender serving a sentence under this section, whether or not a mandatory minimum term has expired, may be granted an extraordinary medical placement by the jail administrator subject to the standards and limitations set forth in RCW 9.94A.728(4).

~~((42))~~ (13) For purposes of this section and RCW 46.61.502 and 46.61.504:

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

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

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

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

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

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

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

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

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

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

NEW SECTION. Sec. 4. A new section is added to chapter 9.94A RCW to read as follows:

(1) When sentencing an offender convicted of a violation of RCW 46.61.502(6) or 46.61.504(6), the court, in addition to imposing the provisions of this chapter, shall order the offender to undergo alcohol or chemical dependency treatment services during incarceration. The offender shall be liable for the cost of treatment unless the court finds the offender indigent and no third-party insurance coverage is available.

(2) The provisions under RCW 46.61.5055 (8) and (9) regarding the suspension, revocation, or denial of the offender's license, permit, or nonresident privilege to drive shall apply to an offender convicted of a violation of RCW 46.61.502(6) or 46.61.504(6).

(3) The provisions under RCW 46.20.720 and 46.61.5055(5) regarding ignition interlock devices shall apply to an offender convicted of a violation of RCW 46.61.502(6) or 46.61.504(6).

Sec. 5. RCW 9.94A.030 and 2003 c 53 s 55 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 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670, 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the community subject to controls placed on the offender's movement and activities by the department. For offenders placed on community custody for crimes committed on or after July 1, 2000, the

department shall assess the offender's risk of reoffense and may establish and modify conditions of community custody, in addition to those imposed by the court, based upon the risk to community safety.

(6) "Community custody range" means the minimum and maximum period of community custody included as part of a sentence under RCW 9.94A.715, as established by the commission or the legislature under RCW 9.94A.850, for crimes committed on or after July 1, 2000.

(7) "Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

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

(9) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed by a court pursuant to this chapter or RCW 16.52.200(6) or 46.61.524. Where the court finds that any offender has a chemical dependency that has contributed to his or her offense, the conditions of supervision may, subject to available resources, include treatment. For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

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

(11) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(12) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

(13) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere.

(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.

(14) "Day fine" means a fine imposed by the sentencing court that equals the difference between the offender's net daily income and the reasonable obligations that the offender has for the support of the offender and any dependents.

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

(16) "Department" means the department of corrections.

(17) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community restitution work, or dollars or terms of a legal financial obligation. The fact that an offender through earned release can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

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

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

(20) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.4013) 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.

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

(22) "Escape" means:

(a) Sexually violent predator escape (RCW 9A.76.115), escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

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

(23) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), ~~((~~o~~))~~ 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.

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

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

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

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

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

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

(b) Assault in the second degree;

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

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

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

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

- (n) Rape in the third degree;
 - (o) Robbery in the second degree;
 - (p) Sexual exploitation;
 - (q) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;
 - (r) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;
 - (s) Any other class B felony offense with a finding of sexual motivation;
 - (t) Any other felony with a deadly weapon verdict under RCW 9.94A.602;
 - (u) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;
 - (v)(i) A prior conviction for indecent liberties under RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
 - (ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997.
- (29) "Nonviolent offense" means an offense which is not a violent offense.
- (30) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.
- (31) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, and a combination of work crew and home detention.
- (32) "Persistent offender" is an offender who:
- (a)(i) Has been convicted in this state of any felony considered a most serious offense; and
 - (ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score

under RCW 9.94A.525; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree; or (C) an attempt to commit any crime listed in this subsection (32)(b)(i); and

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

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

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

(35) "Risk assessment" means the application of an objective instrument supported by research and adopted by the department for the purpose of assessing an offender's risk of reoffense, taking into consideration the nature of the harm done by the offender, place and circumstances of the offender related to risk, the offender's relationship to any victim, and any information provided to the department by victims. The results of a risk assessment shall not be based on unconfirmed or unconfirmable allegations.

(36) "Serious traffic offense" means:

(a) 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.

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

- (a)(i) Murder in the first degree;
- (ii) Homicide by abuse;
- (iii) Murder in the second degree;
- (iv) Manslaughter in the first degree;

(v) Assault in the first degree;
(vi) Kidnapping in the first degree;
(vii) Rape in the first degree;
(viii) Assault of a child in the first degree; or
(ix) An attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

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

(38) "Sex offense" means:

(a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.130(11);

(ii) A violation of RCW 9A.64.020;

(iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.070 or 9.68A.080; or

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

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

(c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or

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

(39) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

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

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

(42) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

(43) "Transition training" means written and verbal instructions and assistance provided by the department to the offender during the two weeks prior to the offender's successful completion of the work ethic camp program. The transition training shall include instructions in the offender's requirements and obligations during the offender's period of community custody.

(44) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

(45) "Violent offense" means:

(a) Any of the following felonies:

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

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

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;

(v) Indecent liberties if committed by forcible compulsion;

(vi) Kidnapping in the second degree;

(vii) Arson in the second degree;

(viii) Assault in the second degree;

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

(x) Extortion in the first degree;

(xi) Robbery in the second degree;

(xii) Drive-by shooting;

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

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

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

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

(46) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.725.

(47) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.690 designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

(48) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school.

Sec. 6. RCW 9.94A.505 and 2002 c 290 s 17, 2002 c 289 s 6, and 2002 c 175 s 6 are each reenacted and amended to read as follows:

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

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

(i) Unless another term of confinement applies, the court shall impose a sentence within the standard sentence range established in RCW 9.94A.510 or 9.94A.517;

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

- (iii) RCW 9.94A.710 and 9.94A.715, relating to community custody;
- (iv) RCW 9.94A.545, relating to community custody for offenders whose term of confinement is one year or less;
- (v) RCW 9.94A.570, relating to persistent offenders;
- (vi) RCW 9.94A.540, relating to mandatory minimum terms;
- (vii) RCW 9.94A.650, relating to the first-time offender waiver;
- (viii) RCW 9.94A.660, relating to the drug offender sentencing alternative;
- (ix) RCW 9.94A.670, relating to the special sex offender sentencing alternative;
- (x) RCW 9.94A.712, relating to certain sex offenses;
- (xi) RCW 9.94A.535, relating to exceptional sentences;
- (xii) RCW 9.94A.589, relating to consecutive and concurrent sentences;
- (xiii) Section 4 of this act, relating to felony driving while under the influence of intoxicating liquor or any drug and felony physical control of a vehicle while under the influence of intoxicating liquor or any drug.

(b) If a standard sentence range has not been established for the offender's crime, the court shall impose a determinate sentence which may include not more than one year of confinement; community restitution work; until July 1, 2000, a term of community supervision not to exceed one year and on and after July 1, 2000, a term of community custody not to exceed one year, subject to conditions and sanctions as authorized in RCW 9.94A.710 (2) and (3); and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement if the court finds reasons justifying an exceptional sentence as provided in RCW 9.94A.535.

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

(4) If a sentence imposed includes payment of a legal financial obligation, it shall be imposed as provided in RCW 9.94A.750, 9.94A.753, 9.94A.760, and 43.43.7541.

(5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a court may not impose a sentence providing for a term of confinement or community supervision, community placement, or community custody which exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

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

(7) The court shall order restitution as provided in RCW 9.94A.750 and 9.94A.753.

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

(9) The court may order an offender whose sentence includes community placement or community supervision to undergo a mental status evaluation and to participate in available outpatient mental health treatment, if the court finds that reasonable grounds exist to believe that the offender is a mentally ill person as defined in RCW 71.24.025, and that this condition is likely to have influenced the offense. An order requiring mental status evaluation or treatment must be

based on a presentence report and, if applicable, mental status evaluations that have been filed with the court to determine the offender's competency or eligibility for a defense of insanity. The court may order additional evaluations at a later date if deemed appropriate.

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

(11) In sentencing an offender convicted of a crime of domestic violence, as defined in RCW 10.99.020, if the offender has a minor child, or if the victim of the offense for which the offender was convicted has a minor child, the court may, as part of any term of community supervision, community placement, or community custody, order the offender to participate in a domestic violence perpetrator program approved under RCW 26.50.150.

Sec. 7. RCW 9.94A.525 and 2002 c 290 s 3 and 2002 c 107 s 3 are each reenacted and 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) or (12) of this section, count one point for each adult prior felony

conviction and one point for each juvenile prior violent felony conviction and 1/2 point for each juvenile prior nonviolent felony conviction.

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

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

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

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

(12) If the present conviction is for 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.

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

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

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

(16) If the present conviction is for a sex offense, count priors as in subsections (7) through (15) of this section; however count three points for each adult and juvenile prior sex offense conviction.

(17) If the present conviction is for an offense committed while the offender was under community placement, add one point.

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

Sec. 8. RCW 9.94A.640 and 1987 c 486 s 7 are each amended to read as follows:

(1) Every offender who has been discharged under RCW 9.94A.637 may apply to the sentencing court for a vacation of the offender's record of conviction. If the court finds the offender meets the tests prescribed in subsection (2) of this section, the court may clear the record of conviction by: (a) Permitting the offender to withdraw the offender's plea of guilty and to enter a plea of not guilty; or (b) if the offender has been convicted after a plea of not guilty, by the court setting aside the verdict of guilty; and (c) by the court dismissing the information or indictment against the offender.

(2) An offender may not have the record of conviction cleared if: (a) There are any criminal charges against the offender pending in any court of this state or another state, or in any federal court; (b) the offense was a violent offense as defined in RCW 9.94A.030; (c) the offense was a crime against persons as defined in RCW 43.43.830; (d) the offender has been convicted of a new crime in this state, another state, or federal court since the date of the offender's discharge under RCW 9.94A.637; (e) the offense is a class B felony and less than ten years have passed since the date the applicant was discharged under RCW 9.94A.637; ~~((and))~~ (f) the offense was a class C felony, other than a class C felony described in RCW 46.61.502(6) or 46.61.504(6), and less than five years have passed since the date the applicant was discharged under RCW 9.94A.637; or (g) the offense was a class C felony described in RCW 46.61.502(6) or 46.61.504(6) and less than ten years have passed since the applicant was discharged under RCW 9.94A.637.

(3) Once the court vacates a record of conviction under subsection (1) of this section, the fact that the offender has been convicted of the offense shall not be included in the offender's criminal history for purposes of determining a sentence in any subsequent conviction, and the offender shall be released from all penalties and disabilities resulting from the offense. For all purposes, including responding to questions on employment applications, an offender whose conviction has been vacated may state that the offender has never been convicted of that crime. Nothing in this section affects or prevents the use of an offender's prior conviction in a later criminal prosecution.

Sec. 9. RCW 9.94A.650 and 2002 c 175 s 9 are each amended to read as follows:

(1) This section applies to offenders who have never been previously convicted of a felony in this state, federal court, or another state, and who have never participated in a program of deferred prosecution for a felony, and who are convicted of a felony that is not:

(a) Classified as a violent offense or a sex offense under this chapter;

(b) Manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in Schedule I or II that is a narcotic drug or flunitrazepam classified in Schedule IV;

(c) Manufacture, delivery, or possession with intent to deliver a methamphetamine, its salts, isomers, and salts of its isomers as defined in RCW 69.50.206(d)(2); (~~(e)~~)

(d) The selling for profit of any controlled substance or counterfeit substance classified in Schedule I, RCW 69.50.204, except leaves and flowering tops of marihuana; or

(e) Felony driving while under the influence of intoxicating liquor or any drug or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug.

(2) In sentencing a first-time offender the court may waive the imposition of a sentence within the standard sentence range and impose a sentence which may include up to ninety days of confinement in a facility operated or utilized under contract by the county and a requirement that the offender refrain from committing new offenses. The sentence may also include a term of community supervision or community custody as specified in subsection (3) of this section, which, in addition to crime-related prohibitions, may include requirements that the offender perform any one or more of the following:

(a) Devote time to a specific employment or occupation;

(b) Undergo available outpatient treatment for up to the period specified in subsection (3) of this section, or inpatient treatment not to exceed the standard range of confinement for that offense;

(c) Pursue a prescribed, secular course of study or vocational training;

(d) Remain within prescribed geographical boundaries and notify the community corrections officer prior to any change in the offender's address or employment;

(e) Report as directed to a community corrections officer; or

(f) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030 and/or perform community restitution work.

(3) The terms and statuses applicable to sentences under subsection (2) of this section are:

(a) For sentences imposed on or after July 25, 1999, for crimes committed before July 1, 2000, up to one year of community supervision. If treatment is ordered, the period of community supervision may include up to the period of treatment, but shall not exceed two years; and

(b) For crimes committed on or after July 1, 2000, up to one year of community custody unless treatment is ordered, in which case the period of community custody may include up to the period of treatment, but shall not exceed two years. Any term of community custody imposed under this section is subject to conditions and sanctions as authorized in this section and in RCW 9.94A.715 (2) and (3).

(4) The department shall discharge from community supervision any offender sentenced under this section before July 25, 1999, who has served at least one year of community supervision and has completed any treatment ordered by the court.

Sec. 10. RCW 9.94A.660 and 2005 c 460 s 1 are each amended to read as follows:

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

(a) The offender is convicted of a felony that is not a violent offense or sex offense and the violation does not involve a sentence enhancement under RCW 9.94A.533 (3) or (4);

(b) The offender is convicted of a felony that is not a felony driving while under the influence of intoxicating liquor or any drug under RCW 46.61.502(6) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug under RCW 46.61.504(6);

(c) The offender has no current or prior convictions for a sex offense at any time or violent offense within ten years before conviction of the current offense, in this state, another state, or the United States;

~~((d))~~ (d) For a violation of the Uniform Controlled Substances Act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW, the offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance;

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

~~((f))~~ (f) The standard sentence range for the current offense is greater than one year; and

~~((g))~~ (g) The offender has not received a drug offender sentencing alternative more than once in the prior ten years before the current offense.

(2) A motion for a sentence under this section may be made by the court, the offender, or the state. If the sentencing court determines that the offender is eligible for this alternative, the court may order an examination of the offender. The examination shall, at a minimum, address the following issues:

(a) Whether the offender suffers from drug addiction;

(b) Whether the addiction is such that there is a probability that criminal behavior will occur in the future;

(c) Whether effective treatment for the offender's addiction is available from a provider that has been licensed or certified by the division of alcohol and substance abuse of the department of social and health services; and

(d) Whether the offender and the community will benefit from the use of the alternative.

(3) The examination report must contain:

(a) Information on the issues required to be addressed in subsection (2) of this section; and

(b) A proposed treatment plan that must, at a minimum, contain:

(i) A proposed treatment provider that has been licensed or certified by the division of alcohol and substance abuse of the department of social and health services;

(ii) The recommended frequency and length of treatment, including both residential chemical dependency treatment and treatment in the community;

(iii) A proposed monitoring plan, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others; and

(iv) Recommended crime-related prohibitions and affirmative conditions.

(4) After receipt of the examination report, if the court determines that a sentence under this section is appropriate, the court shall waive imposition of a sentence within the standard sentence range and impose a sentence consisting of either a prison-based alternative under subsection (5) of this section or a residential chemical dependency treatment-based alternative under subsection (6) of this section. The residential chemical dependency treatment-based alternative is only available if the midpoint of the standard range is twenty-four months or less.

(5) The prison-based alternative shall include:

(a) A period of total confinement in a state facility for one-half of the midpoint of the standard sentence range. During incarceration in the state facility, offenders sentenced under this subsection shall undergo a comprehensive substance abuse assessment and receive, within available resources, treatment services appropriate for the offender. The treatment services shall be designed by the division of alcohol and substance abuse of the department of social and health services, in cooperation with the department of corrections;

(b) The remainder of the midpoint of the standard range as a term of community custody which must include appropriate substance abuse treatment in a program that has been approved by the division of alcohol and substance abuse of the department of social and health services. If the department finds that conditions have been willfully violated, the offender may be reclassified to serve the remaining balance of the original sentence. An offender who fails to complete the program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court;

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

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

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

(6) The residential chemical dependency treatment-based alternative shall include:

(a) A term of community custody equal to one-half of the midpoint of the standard sentence range or two years, whichever is greater, conditioned on the offender entering and remaining in residential chemical dependency treatment certified under chapter 70.96A RCW for a period set by the court between three and six months. If the court imposes a term of community custody, the department shall, within available resources, make chemical dependency assessment and treatment services available to the offender during the term of community custody. The court shall impose, as conditions of community custody, treatment and other conditions as proposed in the plan under subsection (3)(b) of this section. The department may impose conditions and sanctions as authorized in RCW 9.94A.715 (2), (3), (6), and (7), 9.94A.737, and 9.94A.740. The court shall schedule a progress hearing during the period of residential

chemical dependency treatment, and schedule a treatment termination hearing for three months before the expiration of the term of community custody;

(b) Before the progress hearing and treatment termination hearing, the treatment provider and the department shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment. At the hearing, the court may:

(i) Authorize the department to terminate the offender's community custody status on the expiration date determined under (a) of this subsection; or

(ii) Continue the hearing to a date before the expiration date of community custody, with or without modifying the conditions of community custody; or

(iii) Impose a term of total confinement equal to one-half the midpoint of the standard sentence range, followed by a term of community custody under RCW 9.94A.715;

(c) If the court imposes a term of total confinement under (b)(iii) of this subsection, the department shall, within available resources, make chemical dependency assessment and treatment services available to the offender during the term of total confinement and community custody.

(7) If the court imposes a sentence under this section, the court may prohibit the offender from using alcohol or controlled substances and may require that the monitoring for controlled substances be conducted by the department or by a treatment alternatives to street crime program or a comparable court or agency-referred program. The offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring. In addition, the court may impose any of the following conditions:

(a) Devote time to a specific employment or training;

(b) Remain within prescribed geographical boundaries and notify the court or the community corrections officer before any change in the offender's address or employment;

(c) Report as directed to a community corrections officer;

(d) Pay all court-ordered legal financial obligations;

(e) Perform community restitution work;

(f) Stay out of areas designated by the sentencing court;

(g) Such other conditions as the court may require such as affirmative conditions.

(8)(a) The court may bring any offender sentenced under this section back into court at any time on its own initiative to evaluate the offender's progress in treatment or to determine if any violations of the conditions of the sentence have occurred.

(b) If the offender is brought back to court, the court may modify the terms of the community custody or impose sanctions under (c) of this subsection.

(c) The court may order the offender to serve a term of total confinement within the standard range of the offender's current offense at any time during the period of community custody if the offender violates the conditions of the sentence or if the offender is failing to make satisfactory progress in treatment.

(d) An offender ordered to serve a term of total confinement under (c) of this subsection shall receive credit for any time previously served under this section.

(9) If an offender sentenced to the prison-based alternative under subsection (5) of this section is found by the United States attorney general to be subject to a deportation order, a hearing shall be held by the department unless waived by the offender, and, if the department finds that the offender is subject to a valid deportation order, the department may administratively terminate the offender from the program and reclassify the offender to serve the remaining balance of the original sentence.

(10) An offender sentenced under this section shall be subject to all rules relating to earned release time with respect to any period served in total confinement.

(11) Costs of examinations and preparing treatment plans under subsections (2) and (3) of this section may be paid, at the option of the county, from funds provided to the county from the criminal justice treatment account under RCW 70.96A.350.

Sec. 11. RCW 9.94A.690 and 2000 c 28 s 21 are each amended to read as follows:

(1)(a) An offender is eligible to be sentenced to a work ethic camp if the offender:

(i) Is sentenced to a term of total confinement of not less than twelve months and one day or more than thirty-six months;

(ii) Has no current or prior convictions for any sex offenses or for violent offenses; and

(iii) Is not currently subject to a sentence for, or being prosecuted for, a violation of felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)), a violation of physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)), a violation of the uniform controlled substances act, or a criminal solicitation to commit such a violation under chapter 9A.28 or 69.50 RCW.

(b) The length of the work ethic camp shall be at least one hundred twenty days and not more than one hundred eighty days.

(2) If the sentencing court determines that the offender is eligible for the work ethic camp and is likely to qualify under subsection (3) of this section, the judge shall impose a sentence within the standard sentence range and may recommend that the offender serve the sentence at a work ethic camp. In sentencing an offender to the work ethic camp, the court shall specify: (a) That upon completion of the work ethic camp the offender shall be released on community custody for any remaining time of total confinement; (b) the applicable conditions of supervision on community custody status as required by RCW 9.94A.700(4) and authorized by RCW 9.94A.700(5); and (c) that violation of the conditions may result in a return to total confinement for the balance of the offender's remaining time of confinement.

(3) The department shall place the offender in the work ethic camp program, subject to capacity, unless: (a) The department determines that the offender has physical or mental impairments that would prevent participation and completion of the program; (b) the department determines that the offender's custody level prevents placement in the program; (c) the offender refuses to agree to the terms and conditions of the program; (d) the offender has been found by the United States attorney general to be subject to a deportation detainer or order; or (e) the offender has participated in the work ethic camp program in the past.

(4) An offender who fails to complete the work ethic camp program, who is administratively terminated from the program, or who otherwise violates any conditions of supervision, as defined by the department, shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court and shall be subject to all rules relating to earned release time.

(5) During the last two weeks prior to release from the work ethic camp program the department shall provide the offender with comprehensive transition training.

Sec. 12. RCW 9.94A.515 and 2005 c 458 s 2 and 2005 c 183 s 9 are each reenacted and amended to read as follows:

TABLE 2	
CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL	
XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055) Malicious explosion 1 (RCW 70.74.280(1)) Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050) Trafficking 1 (RCW 9A.40.100(1))
XIII	Malicious explosion 2 (RCW 70.74.280(2)) Malicious placement of an explosive 1 (RCW 70.74.270(1))
XII	Assault 1 (RCW 9A.36.011) Assault of a Child 1 (RCW 9A.36.120) Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a)) Rape 1 (RCW 9A.44.040) Rape of a Child 1 (RCW 9A.44.073) Trafficking 2 (RCW 9A.40.100(2))
XI	Manslaughter 1 (RCW 9A.32.060) Rape 2 (RCW 9A.44.050) Rape of a Child 2 (RCW 9A.44.076)
X	Child Molestation 1 (RCW 9A.44.083) Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a)) Kidnapping 1 (RCW 9A.40.020)

- Leading Organized Crime (RCW 9A.82.060(1)(a))
- Malicious explosion 3 (RCW 70.74.280(3))
- Sexually Violent Predator Escape (RCW 9A.76.115)
- IX Assault of a Child 2 (RCW 9A.36.130)
 - Explosive devices prohibited (RCW 70.74.180)
 - Hit and Run—Death (RCW 46.52.020(4)(a))
 - Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)
 - Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
 - Malicious placement of an explosive 2 (RCW 70.74.270(2))
 - Robbery 1 (RCW 9A.56.200)
 - Sexual Exploitation (RCW 9.68A.040)
 - Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
- VIII Arson 1 (RCW 9A.48.020)
 - Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)
 - Manslaughter 2 (RCW 9A.32.070)
 - Promoting Prostitution 1 (RCW 9A.88.070)
 - Theft of Ammonia (RCW 69.55.010)
 - Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- VII Burglary 1 (RCW 9A.52.020)
 - Child Molestation 2 (RCW 9A.44.086)
 - Civil Disorder Training (RCW 9A.48.120)

- Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)
- Drive-by Shooting (RCW 9A.36.045)
- Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050)
- Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1)(b) and (c))
- Introducing Contraband 1 (RCW 9A.76.140)
- Malicious placement of an explosive 3 (RCW 70.74.270(3))
- Negligently Causing Death By Use of a Signal Preemption Device (RCW 46.37.675)
- Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)
- Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1))
- Use of a Machine Gun in Commission of a Felony (RCW 9.41.225)
- Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- VI Bail Jumping with Murder 1 (RCW 9A.76.170(3)(a))
- Bribery (RCW 9A.68.010)
- Incest 1 (RCW 9A.64.020(1))
- Intimidating a Judge (RCW 9A.72.160)
- Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
- Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
- Rape of a Child 3 (RCW 9A.44.079)
- Theft of a Firearm (RCW 9A.56.300)
- Unlawful Storage of Ammonia (RCW 69.55.020)

- V Abandonment of dependent person 1
(RCW 9A.42.060)
- Advancing money or property for
extortionate extension of credit
(RCW 9A.82.030)
- Bail Jumping with class A Felony
(RCW 9A.76.170(3)(b))
- Child Molestation 3 (RCW 9A.44.089)
- Criminal Mistreatment 1 (RCW
9A.42.020)
- Custodial Sexual Misconduct 1 (RCW
9A.44.160)
- Domestic Violence Court Order
Violation (RCW 10.99.040,
10.99.050, 26.09.300, 26.10.220,
26.26.138, 26.50.110, 26.52.070,
or 74.34.145)
- Driving While Under the Influence
(RCW 46.61.502(6))
- Extortion 1 (RCW 9A.56.120)
- Extortionate Extension of Credit (RCW
9A.82.020)
- Extortionate Means to Collect
Extensions of Credit (RCW
9A.82.040)
- Incest 2 (RCW 9A.64.020(2))
- Kidnapping 2 (RCW 9A.40.030)
- Perjury 1 (RCW 9A.72.020)
- Persistent prison misbehavior (RCW
9.94.070)
- Physical Control of a Vehicle While
Under the Influence (RCW
46.61.504(6))
- Possession of a Stolen Firearm (RCW
9A.56.310)
- Rape 3 (RCW 9A.44.060)
- Rendering Criminal Assistance 1
(RCW 9A.76.070)
- Sexual Misconduct with a Minor 1
(RCW 9A.44.093)

- Sexually Violating Human Remains
(RCW 9A.44.105)
- Stalking (RCW 9A.46.110)
- Taking Motor Vehicle Without
Permission 1 (RCW 9A.56.070)
- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.021)
- Assault 3 (of a Peace Officer with a
Projectile Stun Gun) (RCW
9A.36.031(1)(h))
- Assault by Watercraft (RCW
79A.60.060)
- Bribing a Witness/Bribe Received by
Witness (RCW 9A.72.090,
9A.72.100)
- Cheating 1 (RCW 9A.46.1961)
- Commercial Bribery (RCW
9A.68.060)
- Counterfeiting (RCW 9A.16.035(4))
- Endangerment with a Controlled
Substance (RCW 9A.42.100)
- Escape 1 (RCW 9A.76.110)
- Hit and Run—Injury (RCW
46.52.020(4)(b))
- Hit and Run with Vessel—Injury
Accident (RCW 79A.60.200(3))
- Identity Theft 1 (RCW 9A.35.020(2))
- Indecent Exposure to Person Under
Age Fourteen (subsequent sex
offense) (RCW 9A.88.010)
- Influencing Outcome of Sporting Event
(RCW 9A.82.070)
- Malicious Harassment (RCW
9A.36.080)
- Residential Burglary (RCW
9A.52.025)
- Robbery 2 (RCW 9A.56.210)
- Theft of Livestock 1 (RCW 9A.56.080)
- Threats to Bomb (RCW 9A.61.160)

- Trafficking in Stolen Property 1 (RCW 9A.82.050)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(b))
- Unlawful transaction of health coverage as a health care service contractor (RCW 48.44.016(3))
- Unlawful transaction of health coverage as a health maintenance organization (RCW 48.46.033(3))
- Unlawful transaction of insurance business (RCW 48.15.023(3))
- Unlicensed practice as an insurance professional (RCW 48.17.063(3))
- Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
- Vehicular Assault, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (RCW 46.61.522)
- Willful Failure to Return from Furlough (RCW 72.66.060)
- III Abandonment of dependent person 2 (RCW 9A.42.070)
- Assault 3 (Except Assault 3 of a Peace Officer With a Projectile Stun Gun) (RCW 9A.36.031 except subsection (1)(h))
- Assault of a Child 3 (RCW 9A.36.140)
- Bail Jumping with class B or C Felony (RCW 9A.76.170(3)(c))
- Burglary 2 (RCW 9A.52.030)
- Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
- Criminal Gang Intimidation (RCW 9A.46.120)

Criminal Mistreatment 2 (RCW
9A.42.030)
Custodial Assault (RCW 9A.36.100)
Cyberstalking (subsequent conviction
or threat of death) (RCW
9.61.260(3))
Escape 2 (RCW 9A.76.120)
Extortion 2 (RCW 9A.56.130)
Harassment (RCW 9A.46.020)
Intimidating a Public Servant (RCW
9A.76.180)
Introducing Contraband 2 (RCW
9A.76.150)
Malicious Injury to Railroad Property
(RCW 81.60.070)
Negligently Causing Substantial Bodily
Harm By Use of a Signal
Preemption Device (RCW
46.37.674)
Patronizing a Juvenile Prostitute (RCW
9.68A.100)
Perjury 2 (RCW 9A.72.030)
Possession of Incendiary Device (RCW
9.40.120)
Possession of Machine Gun or Short-
Barreled Shotgun or Rifle (RCW
9.41.190)
Promoting Prostitution 2 (RCW
9A.88.080)
Securities Act violation (RCW
21.20.400)
Tampering with a Witness (RCW
9A.72.120)
Telephone Harassment (subsequent
conviction or threat of death)
(RCW 9.61.230(2))
Theft of Livestock 2 (RCW 9A.56.083)
Trafficking in Stolen Property 2 (RCW
9A.82.055)

- Unlawful Imprisonment (RCW 9A.40.040)
- Unlawful possession of firearm in the second degree (RCW 9A.41.040(2))
- Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)
- Willful Failure to Return from Work Release (RCW 72.65.070)
- II Computer Trespass 1 (RCW 9A.52.110)
 - Counterfeiting (RCW 9.16.035(3))
 - Escape from Community Custody (RCW 72.09.310)
 - Health Care False Claims (RCW 48.80.030)
 - Identity Theft 2 (RCW 9.35.020(3))
 - Improperly Obtaining Financial Information (RCW 9.35.010)
 - Malicious Mischief 1 (RCW 9A.48.070)
 - Possession of Stolen Property 1 (RCW 9A.56.150)
 - Theft 1 (RCW 9A.56.030)
 - Theft of Rental, Leased, or Lease-purchased Property (valued at one thousand five hundred dollars or more) (RCW 9A.56.096(5)(a))
 - Trafficking in Insurance Claims (RCW 48.30A.015)
 - Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(a))
 - Unlawful Practice of Law (RCW 2.48.180)
 - Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))
- I Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)

False Verification for Welfare (RCW 74.08.055)

Forgery (RCW 9A.60.020)

Fraudulent Creation or Revocation of a Mental Health Advance Directive (RCW 9A.60.060)

Malicious Mischief 2 (RCW 9A.48.080)

Mineral Trespass (RCW 78.44.330)

Possession of Stolen Property 2 (RCW 9A.56.160)

Reckless Burning 1 (RCW 9A.48.040)

Taking Motor Vehicle Without Permission 2 (RCW 9A.56.075)

Theft 2 (RCW 9A.56.040)

Theft of Rental, Leased, or Lease-purchased Property (valued at two hundred fifty dollars or more but less than one thousand five hundred dollars) (RCW 9A.56.096(5)(b))

Transaction of insurance business beyond the scope of licensure (RCW 48.17.063(4))

Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)

Unlawful Possession of Fictitious Identification (RCW 9A.56.320)

Unlawful Possession of Instruments of Financial Fraud (RCW 9A.56.320)

Unlawful Possession of Payment Instruments (RCW 9A.56.320)

Unlawful Possession of a Personal Identification Device (RCW 9A.56.320)

Unlawful Production of Payment Instruments (RCW 9A.56.320)

Unlawful Trafficking in Food Stamps (RCW 9.91.142)

Unlawful Use of Food Stamps (RCW 9.91.144)

Vehicle Prowl 1 (RCW 9A.52.095)

Sec. 13. RCW 9.94A.411 and 2000 c 119 s 28 and 2000 c 28 s 17 are each reenacted and amended to read as follows:

(1) Decision not to prosecute.

STANDARD: A prosecuting attorney may decline to prosecute, even though technically sufficient evidence to prosecute exists, in situations where prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law.

GUIDELINE/COMMENTARY:

Examples

The following are examples of reasons not to prosecute which could satisfy the standard.

(a) Contrary to Legislative Intent - It may be proper to decline to charge where the application of criminal sanctions would be clearly contrary to the intent of the legislature in enacting the particular statute.

(b) Antiquated Statute - It may be proper to decline to charge where the statute in question is antiquated in that:

- (i) It has not been enforced for many years; and
- (ii) Most members of society act as if it were no longer in existence; and
- (iii) It serves no deterrent or protective purpose in today's society; and
- (iv) The statute has not been recently reconsidered by the legislature.

This reason is not to be construed as the basis for declining cases because the law in question is unpopular or because it is difficult to enforce.

(c) De Minimis Violation - It may be proper to decline to charge where the violation of law is only technical or insubstantial and where no public interest or deterrent purpose would be served by prosecution.

(d) Confinement on Other Charges - It may be proper to decline to charge because the accused has been sentenced on another charge to a lengthy period of confinement; and

(i) Conviction of the new offense would not merit any additional direct or collateral punishment;

(ii) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and

(iii) Conviction of the new offense would not serve any significant deterrent purpose.

(e) Pending Conviction on Another Charge - It may be proper to decline to charge because the accused is facing a pending prosecution in the same or another county; and

(i) Conviction of the new offense would not merit any additional direct or collateral punishment;

(ii) Conviction in the pending prosecution is imminent;

(iii) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and

(iv) Conviction of the new offense would not serve any significant deterrent purpose.

(f) High Disproportionate Cost of Prosecution - It may be proper to decline to charge where the cost of locating or transporting, or the burden on,

prosecution witnesses is highly disproportionate to the importance of prosecuting the offense in question. This reason should be limited to minor cases and should not be relied upon in serious cases.

(g) Improper Motives of Complainant - It may be proper to decline charges because the motives of the complainant are improper and prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law.

(h) Immunity - It may be proper to decline to charge where immunity is to be given to an accused in order to prosecute another where the accused's information or testimony will reasonably lead to the conviction of others who are responsible for more serious criminal conduct or who represent a greater danger to the public interest.

(i) Victim Request - It may be proper to decline to charge because the victim requests that no criminal charges be filed and the case involves the following crimes or situations:

(i) Assault cases where the victim has suffered little or no injury;

(ii) Crimes against property, not involving violence, where no major loss was suffered;

(iii) Where doing so would not jeopardize the safety of society.

Care should be taken to insure that the victim's request is freely made and is not the product of threats or pressure by the accused.

The presence of these factors may also justify the decision to dismiss a prosecution which has been commenced.

Notification

The prosecutor is encouraged to notify the victim, when practical, and the law enforcement personnel, of the decision not to prosecute.

(2) Decision to prosecute.

(a) STANDARD:

Crimes against persons will be filed if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact-finder. With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050, 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and 9A.64.020 the prosecutor should avoid pre-filing agreements or diversions intended to place the accused in a program of treatment or counseling, so that treatment, if determined to be beneficial, can be provided pursuant to RCW 9.94A.670.

Crimes against property/other crimes will be filed if the admissible evidence is of such convincing force as to make it probable that a reasonable and objective fact-finder would convict after hearing all the admissible evidence and the most plausible defense that could be raised.

See table below for the crimes within these categories.

CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

CRIMES AGAINST PERSONS

Aggravated Murder

1st Degree Murder

2nd Degree Murder

1st Degree Manslaughter

2nd Degree Manslaughter
1st Degree Kidnapping
2nd Degree Kidnapping
1st Degree Assault
2nd Degree Assault
3rd Degree Assault
1st Degree Assault of a Child
2nd Degree Assault of a Child
3rd Degree Assault of a Child
1st Degree Rape
2nd Degree Rape
3rd Degree Rape
1st Degree Rape of a Child
2nd Degree Rape of a Child
3rd Degree Rape of a Child
1st Degree Robbery
2nd Degree Robbery
1st Degree Arson
1st Degree Burglary
1st Degree Extortion
2nd Degree Extortion
Indecent Liberties
Incest
Vehicular Homicide
Vehicular Assault
1st Degree Child Molestation
2nd Degree Child Molestation
3rd Degree Child Molestation
1st Degree Promoting Prostitution
Intimidating a Juror
Communication with a Minor
Intimidating a Witness
Intimidating a Public Servant
Bomb Threat (if against person)
Unlawful Imprisonment
Promoting a Suicide Attempt
Riot (if against person)
Stalking
Custodial Assault
Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050,
26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
Counterfeiting (if a violation of RCW 9.16.035(4))
Felony Driving a Motor Vehicle While Under the Influence of Intoxicating
Liquor or Any Drug (RCW 46.61.502(6))
Felony Physical Control of a Motor Vehicle While Under the Influence of
Intoxicating Liquor or Any Drug (RCW 46.61.504(6))

CRIMES AGAINST PROPERTY/OTHER CRIMES

2nd Degree Arson

1st Degree Escape
 2nd Degree Escape
 2nd Degree Burglary
 1st Degree Theft
 2nd Degree Theft
 1st Degree Perjury
 2nd Degree Perjury
 1st Degree Introducing Contraband
 2nd Degree Introducing Contraband
 1st Degree Possession of Stolen Property
 2nd Degree Possession of Stolen Property
 Bribery
 Bribing a Witness
 Bribe received by a Witness
 Bomb Threat (if against property)
 1st Degree Malicious Mischief
 2nd Degree Malicious Mischief
 1st Degree Reckless Burning
 Taking a Motor Vehicle without Authorization
 Forgery
 2nd Degree Promoting Prostitution
 Tampering with a Witness
 Trading in Public Office
 Trading in Special Influence
 Receiving/Granting Unlawful Compensation
 Bigamy
 Eluding a Pursuing Police Vehicle
 Willful Failure to Return from Furlough
 Escape from Community Custody
 Riot (if against property)
 1st Degree Theft of Livestock
 2nd Degree Theft of Livestock

ALL OTHER UNCLASSIFIED FELONIES

Selection of Charges/Degree of Charge

(i) The prosecutor should file charges which adequately describe the nature of defendant's conduct. Other offenses may be charged only if they are necessary to ensure that the charges:

- (A) Will significantly enhance the strength of the state's case at trial; or
- (B) Will result in restitution to all victims.

(ii) The prosecutor should not overcharge to obtain a guilty plea. Overcharging includes:

- (A) Charging a higher degree;
- (B) Charging additional counts.

This standard is intended to direct prosecutors to charge those crimes which demonstrate the nature and seriousness of a defendant's criminal conduct, but to decline to charge crimes which are not necessary to such an indication. Crimes which do not merge as a matter of law, but which arise from the same course of conduct, do not all have to be charged.

(b) GUIDELINES/COMMENTARY:

(i) Police Investigation

A prosecuting attorney is dependent upon law enforcement agencies to conduct the necessary factual investigation which must precede the decision to prosecute. The prosecuting attorney shall ensure that a thorough factual investigation has been conducted before a decision to prosecute is made. In ordinary circumstances the investigation should include the following:

(A) The interviewing of all material witnesses, together with the obtaining of written statements whenever possible;

(B) The completion of necessary laboratory tests; and

(C) The obtaining, in accordance with constitutional requirements, of the suspect's version of the events.

If the initial investigation is incomplete, a prosecuting attorney should insist upon further investigation before a decision to prosecute is made, and specify what the investigation needs to include.

(ii) Exceptions

In certain situations, a prosecuting attorney may authorize filing of a criminal complaint before the investigation is complete if:

(A) Probable cause exists to believe the suspect is guilty; and

(B) The suspect presents a danger to the community or is likely to flee if not apprehended; or

(C) The arrest of the suspect is necessary to complete the investigation of the crime.

In the event that the exception to the standard is applied, the prosecuting attorney shall obtain a commitment from the law enforcement agency involved to complete the investigation in a timely manner. If the subsequent investigation does not produce sufficient evidence to meet the normal charging standard, the complaint should be dismissed.

(iii) Investigation Techniques

The prosecutor should be fully advised of the investigatory techniques that were used in the case investigation including:

(A) Polygraph testing;

(B) Hypnosis;

(C) Electronic surveillance;

(D) Use of informants.

(iv) Pre-Filing Discussions with Defendant

Discussions with the defendant or his/her representative regarding the selection or disposition of charges may occur prior to the filing of charges, and potential agreements can be reached.

(v) Pre-Filing Discussions with Victim(s)

Discussions with the victim(s) or victims' representatives regarding the selection or disposition of charges may occur before the filing of charges. The discussions may be considered by the prosecutor in charging and disposition decisions, and should be considered before reaching any agreement with the defendant regarding these decisions.

Sec. 14. RCW 13.40.0357 and 2004 c 117 s 1 are each amended to read as follows:

DESCRIPTION AND OFFENSE CATEGORY

JUVENILE DISPOSITION OFFENSE CATEGORY	DESCRIPTION (RCW CITATION)	JUVENILE DISPOSITION CATEGORY FOR ATTEMPT, BAILJUMP, CONSPIRACY, OR SOLICITATION
Arson and Malicious Mischief		
A	Arson 1 (9A.48.020)	B+
B	Arson 2 (9A.48.030)	C
C	Reckless Burning 1 (9A.48.040)	D
D	Reckless Burning 2 (9A.48.050)	E
B	Malicious Mischief 1 (9A.48.070)	C
C	Malicious Mischief 2 (9A.48.080)	D
D	Malicious Mischief 3 (9A.48.090(2) (a) and (c))	E
E	Malicious Mischief 3 (9A.48.090(2)(b))	E
E	Tampering with Fire Alarm Apparatus (9.40.100)	E
E	Tampering with Fire Alarm Apparatus with Intent to Commit Arson (9.40.105)	E
A	Possession of Incendiary Device (9.40.120)	B+
Assault and Other Crimes Involving Physical Harm		
A	Assault 1 (9A.36.011)	B+
B+	Assault 2 (9A.36.021)	C+
C+	Assault 3 (9A.36.031)	D+
D+	Assault 4 (9A.36.041)	E
B+	Drive-By Shooting (9A.36.045)	C+
D+	Reckless Endangerment (9A.36.050)	E
C+	Promoting Suicide Attempt (9A.36.060)	D+
D+	Coercion (9A.36.070)	E
C+	Custodial Assault (9A.36.100)	D+
Burglary and Trespass		
B+	Burglary 1 (9A.52.020)	C+
B	Residential Burglary (9A.52.025)	C
B	Burglary 2 (9A.52.030)	C
D	Burglary Tools (Possession of) (9A.52.060)	E
D	Criminal Trespass 1 (9A.52.070)	E
E	Criminal Trespass 2 (9A.52.080)	E
C	Mineral Trespass (78.44.330)	C
C	Vehicle Prowling 1 (9A.52.095)	D
D	Vehicle Prowling 2 (9A.52.100)	E
Drugs		
E	Possession/Consumption of Alcohol (66.44.270)	E

C	Illegally Obtaining Legend Drug (69.41.020)	D
C+	Sale, Delivery, Possession of Legend Drug with Intent to Sell (69.41.030(2)(a))	D+
E	Possession of Legend Drug (69.41.030(2)(b))	E
B+	Violation of Uniform Controlled Substances Act - Narcotic, Methamphetamine, or Flunitrazepam Sale (69.50.401(2) (a) or (b))	B+
C	Violation of Uniform Controlled Substances Act - Nonnarcotic Sale (69.50.401(2)(c))	C
E	Possession of Marihuana <40 grams (69.50.4014)	E
C	Fraudulently Obtaining Controlled Substance (69.50.403)	C
C+	Sale of Controlled Substance for Profit (69.50.410)	C+
E	Unlawful Inhalation (9.47A.020)	E
B	Violation of Uniform Controlled Substances Act - Narcotic, Methamphetamine, or Flunitrazepam Counterfeit Substances (69.50.4011(2) (a) or (b))	B
C	Violation of Uniform Controlled Substances Act - Nonnarcotic Counterfeit Substances (69.50.4011(2) (c), (d), or (e))	C
C	Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance (69.50.4013)	C
C	Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance (69.50.4012)	C
Firearms and Weapons		
B	Theft of Firearm (9A.56.300)	C
B	Possession of Stolen Firearm (9A.56.310)	C
E	Carrying Loaded Pistol Without Permit (9.41.050)	E
C	Possession of Firearms by Minor (<18) (9.41.040(2)(a)(iii))	C
D+	Possession of Dangerous Weapon (9.41.250)	E
D	Intimidating Another Person by use of Weapon (9.41.270)	E
Homicide		
A+	Murder 1 (9A.32.030)	A
A+	Murder 2 (9A.32.050)	B+

B+	Manslaughter 1 (9A.32.060)	C+
C+	Manslaughter 2 (9A.32.070)	D+
B+	Vehicular Homicide (46.61.520)	C+
	Kidnapping	
A	Kidnap 1 (9A.40.020)	B+
B+	Kidnap 2 (9A.40.030)	C+
C+	Unlawful Imprisonment (9A.40.040)	D+
	Obstructing Governmental Operation	
D	Obstructing a Law Enforcement Officer (9A.76.020)	E
E	Resisting Arrest (9A.76.040)	E
B	Introducing Contraband 1 (9A.76.140)	C
C	Introducing Contraband 2 (9A.76.150)	D
E	Introducing Contraband 3 (9A.76.160)	E
B+	Intimidating a Public Servant (9A.76.180)	C+
B+	Intimidating a Witness (9A.72.110)	C+
	Public Disturbance	
C+	Riot with Weapon (9A.84.010(2)(b))	D+
D+	Riot Without Weapon (9A.84.010(2)(a))	E
E	Failure to Disperse (9A.84.020)	E
E	Disorderly Conduct (9A.84.030)	E
	Sex Crimes	
A	Rape 1 (9A.44.040)	B+
A-	Rape 2 (9A.44.050)	B+
C+	Rape 3 (9A.44.060)	D+
A-	Rape of a Child 1 (9A.44.073)	B+
B+	Rape of a Child 2 (9A.44.076)	C+
B	Incest 1 (9A.64.020(1))	C
C	Incest 2 (9A.64.020(2))	D
D+	Indecent Exposure (Victim <14) (9A.88.010)	E
E	Indecent Exposure (Victim 14 or over) (9A.88.010)	E
B+	Promoting Prostitution 1 (9A.88.070)	C+
C+	Promoting Prostitution 2 (9A.88.080)	D+
E	O & A (Prostitution) (9A.88.030)	E
B+	Indecent Liberties (9A.44.100)	C+
A-	Child Molestation 1 (9A.44.083)	B+
B	Child Molestation 2 (9A.44.086)	C+
	Theft, Robbery, Extortion, and Forgery	
B	Theft 1 (9A.56.030)	C
C	Theft 2 (9A.56.040)	D
D	Theft 3 (9A.56.050)	E

B	Theft of Livestock 1 and 2 (9A.56.080 and 9A.56.083)	C
C	Forgery (9A.60.020)	D
A	Robbery 1 (9A.56.200)	B+
B+	Robbery 2 (9A.56.210)	C+
B+	Extortion 1 (9A.56.120)	C+
C+	Extortion 2 (9A.56.130)	D+
C	Identity Theft 1 (9.35.020(2))	D
D	Identity Theft 2 (9.35.020(3))	E
D	Improperly Obtaining Financial Information (9.35.010)	E
B	Possession of Stolen Property 1 (9A.56.150)	C
C	Possession of Stolen Property 2 (9A.56.160)	D
D	Possession of Stolen Property 3 (9A.56.170)	E
C	Taking Motor Vehicle Without Permission 1 and 2 (9A.56.070 and 9A.56.075)	D
	Motor Vehicle Related Crimes	
E	Driving Without a License (46.20.005)	E
B+	Hit and Run - Death (46.52.020(4)(a))	C+
C	Hit and Run - Injury (46.52.020(4)(b))	D
D	Hit and Run-Attended (46.52.020(5))	E
E	Hit and Run-Unattended (46.52.010)	E
C	Vehicular Assault (46.61.522)	D
C	Attempting to Elude Pursuing Police Vehicle (46.61.024)	D
E	Reckless Driving (46.61.500)	E
D	Driving While Under the Influence (46.61.502 and 46.61.504)	E
<u>B+</u>	<u>Felony Driving While Under the Influence (46.61.502(6))</u>	<u>B</u>
<u>B+</u>	<u>Felony Physical Control of a Vehicle While Under the Influence (46.61.504(6))</u>	<u>B</u>
	Other	
B	Animal Cruelty 1 (16.52.205)	C
B	Bomb Threat (9.61.160)	C
C	Escape 1 ¹ (9A.76.110)	C
C	Escape 2 ¹ (9A.76.120)	C
D	Escape 3 (9A.76.130)	E
E	Obscene, Harassing, Etc., Phone Calls (9.61.230)	E
A	Other Offense Equivalent to an Adult Class A Felony	B+
B	Other Offense Equivalent to an Adult Class B Felony	C

C	Other Offense Equivalent to an Adult Class C Felony	D
D	Other Offense Equivalent to an Adult Gross Misdemeanor	E
E	Other Offense Equivalent to an Adult Misdemeanor	E
V	Violation of Order of Restitution, Community Supervision, or Confinement (13.40.200) ²	V

¹Escape 1 and 2 and Attempted Escape 1 and 2 are classed as C offenses and the standard range is established as follows:

1st escape or attempted escape during 12-month period - 4 weeks confinement

2nd escape or attempted escape during 12-month period - 8 weeks confinement

3rd and subsequent escape or attempted escape during 12-month period - 12 weeks confinement

²If the court finds that a respondent has violated terms of an order, it may impose a penalty of up to 30 days of confinement.

JUVENILE SENTENCING STANDARDS

This schedule must be used for juvenile offenders. The court may select sentencing option A, B, C, D, or RCW 13.40.167.

**OPTION A
JUVENILE OFFENDER SENTENCING GRID
STANDARD RANGE**

A+		180 WEEKS TO AGE 21 YEARS			
A		103 WEEKS TO 129 WEEKS			
A-		15-36 WEEKS EXCEPT 30-40 WEEKS FOR 15-17 YEAR OLDS	52-65 WEEKS	80-100 WEEKS	103-129 WEEKS
Current Offense	B+	15-36 WEEKS	52-65 WEEKS	80-100 WEEKS	103-129 WEEKS
Category	B	LOCAL SANCTIONS (LS)	15-36 WEEKS		52-65 WEEKS
	C+	LS		15-36 WEEKS	

C	LS	Local Sanctions:	15-36 WEEKS	
		0 to 30 Days		
D+	LS	0 to 12 Months Community Supervision		
		0 to 150 Hours Community Restitution		
D	LS	\$0 to \$500 Fine		
E	LS			
		0	1	
		2	3	
			4	
			or more	
		PRIOR ADJUDICATIONS		

- NOTE: References in the grid to days or weeks mean periods of confinement.
- (1) The vertical axis of the grid is the current offense category. The current offense category is determined by the offense of adjudication.
 - (2) The horizontal axis of the grid is the number of prior adjudications included in the juvenile's criminal history. Each prior felony adjudication shall count as one point. Each prior violation, misdemeanor, and gross misdemeanor adjudication shall count as 1/4 point. Fractional points shall be rounded down.
 - (3) The standard range disposition for each offense is determined by the intersection of the column defined by the prior adjudications and the row defined by the current offense category.
 - (4) RCW 13.40.180 applies if the offender is being sentenced for more than one offense.
 - (5) A current offense that is a violation is equivalent to an offense category of E. However, a disposition for a violation shall not include confinement.

OR

**OPTION B
SUSPENDED DISPOSITION ALTERNATIVE**

- (1) If the offender is subject to a standard range disposition involving confinement by the department, the court may impose the standard range and suspend the disposition on condition that the offender comply with one or more local sanctions and any educational or treatment requirement. The treatment programs provided to the offender must be research-based best practice programs as identified by the Washington state institute for public policy or the joint legislative audit and review committee.
- (2) If the offender fails to comply with the suspended disposition, the court may impose sanctions pursuant to RCW 13.40.200 or may revoke the suspended disposition and order the disposition's execution.
- (3) An offender is ineligible for the suspended disposition option under this section if the offender is:
 - (a) Adjudicated of an A+ offense;
 - (b) Fourteen years of age or older and is adjudicated of one or more of the following offenses:
 - (i) A class A offense, or an attempt, conspiracy, or solicitation to commit a class A offense;
 - (ii) Manslaughter in the first degree (RCW 9A.32.060); or
 - (iii) Assault in the second degree (RCW 9A.36.021), extortion in the first degree (RCW 9A.56.120), kidnapping in the second degree (RCW 9A.40.030), robbery in the second degree (RCW 9A.56.210), residential burglary (RCW

9A.52.025), burglary in the second degree (RCW 9A.52.030), drive-by shooting (RCW 9A.36.045), vehicular homicide (RCW 46.61.520), hit and run death (RCW 46.52.020(4)(a)), intimidating a witness (RCW 9A.72.110), violation of the uniform controlled substances act (RCW 69.50.401 (2)(a) and (b)), or manslaughter 2 (RCW 9A.32.070), when the offense includes infliction of bodily harm upon another or when during the commission or immediate withdrawal from the offense the respondent was armed with a deadly weapon;

(c) Ordered to serve a disposition for a firearm violation under RCW 13.40.193; or

(d) Adjudicated of a sex offense as defined in RCW 9.94A.030.

OR

OPTION C

CHEMICAL DEPENDENCY DISPOSITION ALTERNATIVE

If the juvenile offender is subject to a standard range disposition of local sanctions or 15 to 36 weeks of confinement and has not committed an A- or B+ offense, the court may impose a disposition under RCW 13.40.160(4) and 13.40.165.

OR

OPTION D

MANIFEST INJUSTICE

If the court determines that a disposition under option A, B, or C would effectuate a manifest injustice, the court shall impose a disposition outside the standard range under RCW 13.40.160(2).

Sec. 15. RCW 46.20.311 and 2005 c 314 s 308 are each amended to read as follows:

(1)(a) The department shall not suspend a driver's license or privilege to drive a motor vehicle on the public highways for a fixed period of more than one year, except as specifically permitted under RCW 46.20.267, 46.20.342, or other provision of law.

(b) Except for a suspension under RCW 46.20.267, 46.20.289, 46.20.291(5), 46.61.740, or 74.20A.320, whenever the license or driving privilege of any person is suspended by reason of a conviction, a finding that a traffic infraction has been committed, pursuant to chapter 46.29 RCW, or pursuant to RCW 46.20.291 or 46.20.308, the suspension shall remain in effect until the person gives and thereafter maintains proof of financial responsibility for the future as provided in chapter 46.29 RCW.

(c) If the suspension is the result of a nonfelony violation of RCW 46.61.502 or 46.61.504, the department shall determine the person's eligibility for licensing based upon the reports provided by the alcoholism agency or probation department designated under RCW 46.61.5056 and shall deny reinstatement until enrollment and participation in an approved program has been established and the person is otherwise qualified. If the suspension is the result of a violation of RCW 46.61.502(6) or 46.61.504(6), the department shall determine the person's eligibility for licensing based upon the reports provided by the alcohol or drug dependency agency required under RCW 46.61.524 and

shall deny reinstatement until satisfactory progress in an approved program has been established and the person is otherwise qualified. If the suspension is the result of a violation of RCW 46.61.502 or 46.61.504, and the person is required pursuant to RCW 46.20.720 to drive only a motor vehicle equipped with a functioning ignition interlock, the department shall determine the person's eligibility for licensing based upon written verification by a company doing business in the state that it has installed the required device on a vehicle owned or operated by the person seeking reinstatement. If, based upon notification from the interlock provider or otherwise, the department determines that an interlock required under RCW 46.20.720 is no longer installed or functioning as required, the department shall suspend the person's license or privilege to drive. Whenever the license or driving privilege of any person is suspended or revoked as a result of noncompliance with an ignition interlock requirement, the suspension shall remain in effect until the person provides notice issued by a company doing business in the state that a vehicle owned or operated by the person is equipped with a functioning ignition interlock device.

(d) Whenever the license or driving privilege of any person is suspended as a result of certification of noncompliance with a child support order under chapter 74.20A RCW or a residential or visitation order, the suspension shall remain in effect until the person provides a release issued by the department of social and health services stating that the person is in compliance with the order.

(e)(i) The department shall not issue to the person a new, duplicate, or renewal license until the person pays a reissue fee of seventy-five dollars.

(ii) If the suspension is the result of a violation of RCW 46.61.502 or 46.61.504, or is the result of administrative action under RCW 46.20.308, the reissue fee shall be one hundred fifty dollars.

(2)(a) Any person whose license or privilege to drive a motor vehicle on the public highways has been revoked, unless the revocation was for a cause which has been removed, is not entitled to have the license or privilege renewed or restored until: (i) After the expiration of one year from the date the license or privilege to drive was revoked; (ii) after the expiration of the applicable revocation period provided by RCW 46.20.3101 or 46.61.5055; (iii) after the expiration of two years for persons convicted of vehicular homicide; or (iv) after the expiration of the applicable revocation period provided by RCW 46.20.265.

(b)(i) After the expiration of the appropriate period, the person may make application for a new license as provided by law together with a reissue fee in the amount of seventy-five dollars.

(ii) If the revocation is the result of a violation of RCW 46.20.308, 46.61.502, or 46.61.504, the reissue fee shall be one hundred fifty dollars. If the revocation is the result of a nonfelony violation of RCW 46.61.502 or 46.61.504, the department shall determine the person's eligibility for licensing based upon the reports provided by the alcoholism agency or probation department designated under RCW 46.61.5056 and shall deny reissuance of a license, permit, or privilege to drive until enrollment and participation in an approved program has been established and the person is otherwise qualified. If the suspension is the result of a violation of RCW 46.61.502(6) or 46.61.504(6), the department shall determine the person's eligibility for licensing based upon the reports provided by the alcohol or drug dependency agency required under RCW 46.61.524 and shall deny reinstatement until satisfactory progress in an approved

program has been established and the person is otherwise qualified. If the revocation is the result of a violation of RCW 46.61.502 or 46.61.504, and the person is required pursuant to RCW 46.20.720 to drive only a motor vehicle equipped with a functioning ignition interlock or other biological or technical device, the department shall determine the person's eligibility for licensing based upon written verification by a company doing business in the state that it has installed the required device on a vehicle owned or operated by the person applying for a new license. If, following issuance of a new license, the department determines, based upon notification from the interlock provider or otherwise, that an interlock required under RCW 46.20.720 is no longer functioning, the department shall suspend the person's license or privilege to drive until the department has received written verification from an interlock provider that a functioning interlock is installed.

(c) Except for a revocation under RCW 46.20.265, the department shall not then issue a new license unless it is satisfied after investigation of the driving ability of the person that it will be safe to grant the privilege of driving a motor vehicle on the public highways, and until the person gives and thereafter maintains proof of financial responsibility for the future as provided in chapter 46.29 RCW. For a revocation under RCW 46.20.265, the department shall not issue a new license unless it is satisfied after investigation of the driving ability of the person that it will be safe to grant that person the privilege of driving a motor vehicle on the public highways.

(3)(a) Whenever the driver's license of any person is suspended pursuant to Article IV of the nonresident violators compact or RCW 46.23.020 or 46.20.289 or 46.20.291(5), the department shall not issue to the person any new or renewal license until the person pays a reissue fee of seventy-five dollars.

(b) If the suspension is the result of a violation of the laws of this or any other state, province, or other jurisdiction involving (i) the operation or physical control of a motor vehicle upon the public highways while under the influence of intoxicating liquor or drugs, or (ii) the refusal to submit to a chemical test of the driver's blood alcohol content, the reissue fee shall be one hundred fifty dollars.

Sec. 16. RCW 46.61.524 and 2001 c 64 s 7 are each amended to read as follows:

(1) A person convicted under RCW 46.61.502(6), 46.61.504(6), 46.61.520(1)(a), or 46.61.522(1)(b) shall, as a condition of community custody imposed under RCW 9.94A.545 or community placement imposed under RCW 9.94A.660, complete a diagnostic evaluation by an alcohol or drug dependency agency approved by the department of social and health services or a qualified probation department, as defined under RCW 46.61.516 that has been approved by the department of social and health services. This report shall be forwarded to the department of licensing. If the person is found to have an alcohol or drug problem that requires treatment, the person shall complete treatment in a program approved by the department of social and health services under chapter 70.96A RCW. If the person is found not to have an alcohol or drug problem that requires treatment, he or she shall complete a course in an information school approved by the department of social and health services under chapter 70.96A RCW. The convicted person shall pay all costs for any evaluation, education, or treatment required by this section, unless the person is eligible for an existing program offered or approved by the department of social and health services.

Nothing in chapter 348, Laws of 1991 requires the addition of new treatment or assessment facilities nor affects the department of social and health services use of existing programs and facilities authorized by law.

(2) As provided for under RCW 46.20.285, the department shall revoke the license, permit to drive, or a nonresident privilege of a person convicted of vehicular homicide under RCW 46.61.520 or vehicular assault under RCW 46.61.522. The department shall determine the eligibility of a person convicted of vehicular homicide under RCW 46.61.520(1)(a) or vehicular assault under RCW 46.61.522(1)(b) to receive a license based upon the report provided by the designated alcoholism treatment facility or probation department, and shall deny reinstatement until satisfactory progress in an approved program has been established and the person is otherwise qualified.

Sec. 17. RCW 46.61.5152 and 1998 c 41 s 9 are each amended to read as follows:

In addition to penalties that may be imposed under RCW 46.61.5055, the court may require a person who is convicted of a nonfelony violation of RCW 46.61.502 or 46.61.504 or who enters a deferred prosecution program under RCW 10.05.020 based on a nonfelony violation of RCW 46.61.502 or 46.61.504, to attend an educational program focusing on the emotional, physical, and financial suffering of victims who were injured by persons convicted of driving while under the influence of intoxicants.

Sec. 18. RCW 46.61.5151 and 1995 c 332 s 15 are each amended to read as follows:

A sentencing court may allow ~~((persons))~~ a person convicted of ~~((violating))~~ a nonfelony violation of RCW 46.61.502 or 46.61.504 to fulfill the terms of the sentence provided in RCW 46.61.5055 in nonconsecutive or intermittent time periods. However, any mandatory minimum sentence under RCW 46.61.5055 shall be served consecutively unless suspended or deferred as otherwise provided by law.

NEW SECTION. Sec. 19. This act takes effect July 1, 2007.

Passed by the House March 8, 2006.

Passed by the Senate March 7, 2006.

Approved by the Governor March 15, 2006.

Filed in Office of Secretary of State March 15, 2006.

CHAPTER 74

[House Bill 2501]

MENTAL HEALTH SERVICES—GROUP COVERAGE

AN ACT Relating to clarifying that coverage for mental health services as defined in RCW 48.21.241, 48.44.341, and 48.46.291 applies to all group health plans for groups other than small groups as defined in RCW 48.43.005; amending RCW 48.21.241, 48.44.341, and 48.46.291; and declaring an emergency.

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

Sec. 1. RCW 48.21.241 and 2005 c 6 s 3 are each amended to read as follows:

(1) For the purposes of this section, "mental health services" means medically necessary outpatient and inpatient services provided to treat mental

disorders covered by the diagnostic categories listed in the most current version of the diagnostic and statistical manual of mental disorders, published by the American psychiatric association, on July 24, 2005, or such subsequent date as may be provided by the insurance commissioner by rule, consistent with the purposes of chapter 6, Laws of 2005, with the exception of the following categories, codes, and services: (a) Substance related disorders; (b) life transition problems, currently referred to as "V" codes, and diagnostic codes 302 through 302.9 as found in the diagnostic and statistical manual of mental disorders, 4th edition, published by the American psychiatric association; (c) skilled nursing facility services, home health care, residential treatment, and custodial care; and (d) court ordered treatment unless the insurer's medical director or designee determines the treatment to be medically necessary.

(2) All group disability insurance contracts and blanket disability insurance contracts providing health benefit plans that provide coverage for medical and surgical services shall provide:

(a) For all group health benefit plans (~~((established or renewed on or after))~~ for groups other than small groups, as defined in RCW 48.43.005 delivered, issued for delivery, or renewed on or after January 1, 2006, (~~((for groups of more than fifty employees))~~) coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(b) For all group health benefit plans (~~((established or renewed on or after))~~ for groups other than small groups, as defined in RCW 48.43.005 delivered, issued for delivery, or renewed on or after January 1, 2008, (~~((for groups of more than fifty employees))~~) coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(c) For all group health benefit plans (~~((established or renewed on or after))~~ for groups other than small groups, as defined in RCW 48.43.005 delivered, issued for delivery, or renewed on or after July 1, 2010, (~~((for groups of more than fifty employees))~~) coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and

surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services. If the health benefit plan imposes any deductible, mental health services shall be included with medical and surgical services for the purpose of meeting the deductible requirement. Treatment limitations or any other financial requirements on coverage for mental health services are only allowed if the same limitations or requirements are imposed on coverage for medical and surgical services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(3) In meeting the requirements of subsection (2)(a) and (b) of this section, health benefit plans may not reduce the number of mental health outpatient visits or mental health inpatient days below the level in effect on July 1, 2002.

(4) This section does not prohibit a requirement that mental health services be medically necessary as determined by the medical director or designee, if a comparable requirement is applicable to medical and surgical services.

(5) Nothing in this section shall be construed to prevent the management of mental health services.

Sec. 2. RCW 48.44.341 and 2005 c 6 s 4 are each amended to read as follows:

(1) For the purposes of this section, "mental health services" means medically necessary outpatient and inpatient services provided to treat mental disorders covered by the diagnostic categories listed in the most current version of the diagnostic and statistical manual of mental disorders, published by the American psychiatric association, on July 24, 2005, or such subsequent date as may be provided by the insurance commissioner by rule, consistent with the purposes of chapter 6, Laws of 2005, with the exception of the following categories, codes, and services: (a) Substance related disorders; (b) life transition problems, currently referred to as "V" codes, and diagnostic codes 302 through 302.9 as found in the diagnostic and statistical manual of mental disorders, 4th edition, published by the American psychiatric association; (c) skilled nursing facility services, home health care, residential treatment, and custodial care; and (d) court ordered treatment unless the health care service contractor's medical director or designee determines the treatment to be medically necessary.

(2) All health service contracts providing health benefit plans that provide coverage for medical and surgical services shall provide:

(a) For all group health benefit plans (~~established or renewed on or after~~) for groups other than small groups, as defined in RCW 48.43.005 delivered, issued for delivery, or renewed on or after January 1, 2006, (~~for groups of more than fifty employees~~) coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment,

coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(b) For all group health benefit plans ~~((established or renewed on or after))~~ for groups other than small groups, as defined in RCW 48.43.005 delivered, issued for delivery, or renewed on or after January 1, 2008, ((for groups of more than fifty employees)) coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(c) For all group health benefit plans ~~((established or renewed on or after))~~ for groups other than small groups, as defined in RCW 48.43.005 delivered, issued for delivery, or renewed on or after July 1, 2010, ((for groups of more than fifty employees)) coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services. If the health benefit plan imposes any deductible, mental health services shall be included with medical and surgical services for the purpose of meeting the deductible requirement. Treatment limitations or any other financial requirements on coverage for mental health services are only allowed if the same limitations or requirements are imposed on coverage for medical and surgical services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(3) In meeting the requirements of subsection (2)(a) and (b) of this section, health benefit plans may not reduce the number of mental health outpatient visits or mental health inpatient days below the level in effect on July 1, 2002.

(4) This section does not prohibit a requirement that mental health services be medically necessary as determined by the medical director or designee, if a comparable requirement is applicable to medical and surgical services.

(5) Nothing in this section shall be construed to prevent the management of mental health services.

Sec. 3. RCW 48.46.291 and 2005 c 6 s 5 are each amended to read as follows:

(1) For the purposes of this section, "mental health services" means medically necessary outpatient and inpatient services provided to treat mental disorders covered by the diagnostic categories listed in the most current version of the diagnostic and statistical manual of mental disorders, published by the American psychiatric association, on July 24, 2005, or such subsequent date as may be provided by the insurance commissioner by rule, consistent with the purposes of chapter 6, Laws of 2005, with the exception of the following categories, codes, and services: (a) Substance related disorders; (b) life transition problems, currently referred to as "V" codes, and diagnostic codes 302 through 302.9 as found in the diagnostic and statistical manual of mental disorders, 4th edition, published by the American psychiatric association; (c) skilled nursing facility services, home health care, residential treatment, and custodial care; and (d) court ordered treatment unless the health maintenance organization's medical director or designee determines the treatment to be medically necessary.

(2) All health benefit plans offered by health maintenance organizations that provide coverage for medical and surgical services shall provide:

(a) For all group health benefit plans (~~established or renewed on or after~~) for groups other than small groups, as defined in RCW 48.43.005 delivered, issued for delivery, or renewed on or after January 1, 2006, (~~for groups of more than fifty employees~~) coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(b) For all group health benefit plans (~~established or renewed on or after~~) for groups other than small groups, as defined in RCW 48.43.005 delivered, issued for delivery, or renewed on or after January 1, 2008, (~~for groups of more than fifty employees~~) coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(c) For all group health benefit plans (~~established or renewed on or after~~) for groups other than small groups, as defined in RCW 48.43.005 delivered,

issued for delivery, or renewed on or after July 1, 2010, ((for groups of more than fifty employees)) coverage for:

(i) Mental health services. The copayment or coinsurance for mental health services may be no more than the copayment or coinsurance for medical and surgical services otherwise provided under the health benefit plan. Wellness and preventive services that are provided or reimbursed at a lesser copayment, coinsurance, or other cost sharing than other medical and surgical services are excluded from this comparison. If the health benefit plan imposes a maximum out-of-pocket limit or stop loss, it shall be a single limit or stop loss for medical, surgical, and mental health services. If the health benefit plan imposes any deductible, mental health services shall be included with medical and surgical services for the purpose of meeting the deductible requirement. Treatment limitations or any other financial requirements on coverage for mental health services are only allowed if the same limitations or requirements are imposed on coverage for medical and surgical services; and

(ii) Prescription drugs intended to treat any of the disorders covered in subsection (1) of this section to the same extent, and under the same terms and conditions, as other prescription drugs covered by the health benefit plan.

(3) In meeting the requirements of subsection (2)(a) and (b) of this section, health benefit plans may not reduce the number of mental health outpatient visits or mental health inpatient days below the level in effect on July 1, 2002.

(4) This section does not prohibit a requirement that mental health services be medically necessary as determined by the medical director or designee, if a comparable requirement is applicable to medical and surgical services.

(5) Nothing in this section shall be construed to prevent the management of mental health services.

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

Passed by the House February 9, 2006.

Passed by the Senate March 3, 2006.

Approved by the Governor March 15, 2006.

Filed in Office of Secretary of State March 15, 2006.

CHAPTER 75

[Engrossed Substitute House Bill 2651]

PUBLIC DISCLOSURE—ANIMAL INFORMATION

AN ACT Relating to disclosure of animal information; amending RCW 42.56.380; reenacting and amending RCW 42.17.310; creating a new section; providing an effective date; and providing an expiration date.

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

NEW SECTION. Sec. 1. The legislature finds that livestock identification numbers, premise information, and animal movement data are proprietary information that all have a role in defining a livestock producer's position within the marketplace, including his or her competitive advantage over other producers. The legislature therefore finds that exempting certain voluntary livestock identification, premise, and movement information from state public

disclosure requirements will foster an environment that is more conducive to voluntary participation, and lead to a more effective livestock identification system.

Sec. 2. RCW 42.17.310 and 2005 c 424 s 16, 2005 c 349 s 1, 2005 c 312 s 6, 2005 c 284 s 1, 2005 c 172 s 13, and 2005 c 33 s 4 are each reenacted and amended to read as follows:

(1) The following are exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(e) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

(f) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.

(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(h) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(k) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

(l) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.

(m) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (i) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (ii) highway construction or improvement as required by RCW 47.28.070.

(n) Railroad company contracts filed prior to July 28, 1991, with the utilities and transportation commission under RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to export projects pursuant to RCW 43.23.035.

(p) Financial disclosures filed by private vocational schools under chapters 28B.85 and 28C.10 RCW.

(q) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095.

(r) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency.

(s) Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department.

(t) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

(u) The residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, Social Security numbers, and emergency contact information of employees or volunteers of a public agency, and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, Social Security numbers, and emergency contact information of dependents of employees or volunteers of a public agency, which are held by any public agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers

of any public agency. For purposes of this subsection, "employees" includes independent provider home care workers as defined in RCW 74.39A.240.

(v) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers, except that this information may be released to the division of child support or the agency or firm providing child support enforcement for another state under Title IV-D of the federal social security act, for the establishment, enforcement, or modification of a support order.

(w)(i) The federal social security number of individuals governed under chapter 18.130 RCW maintained in the files of the department of health, except this exemption does not apply to requests made directly to the department from federal, state, and local agencies of government, and national and state licensing, credentialing, investigatory, disciplinary, and examination organizations; (ii) the current residential address and current residential telephone number of a health care provider governed under chapter 18.130 RCW maintained in the files of the department, if the provider requests that this information be withheld from public inspection and copying, and provides to the department an accurate alternate or business address and business telephone number. On or after January 1, 1995, the current residential address and residential telephone number of a health care provider governed under RCW 18.130.040 maintained in the files of the department shall automatically be withheld from public inspection and copying unless the provider specifically requests the information be released, and except as provided for under RCW 42.17.260(9).

(x) Information obtained by the board of pharmacy as provided in RCW 69.45.090.

(y) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420.

(z) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW.

(aa) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information.

(bb) Financial and valuable trade information under RCW 51.36.120.

(cc) Client records maintained by an agency that is a domestic violence program as defined in RCW 70.123.020 or 70.123.075 or a rape crisis center as defined in RCW 70.125.030.

(dd) Information that identifies a person who, while an agency employee: (i) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and (ii) requests his or her identity or any identifying information not be disclosed.

(ee) Investigative records compiled by an employing agency conducting a current investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment.

(ff) Business related information protected from public inspection and copying under RCW 15.86.110.

(gg) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW.

(hh) Information and documents created specifically for, and collected and maintained by, a quality improvement committee pursuant to RCW 43.70.510 or 70.41.200, by a peer review committee under RCW 4.24.250, or by a quality assurance committee pursuant to RCW 74.42.640 or 18.20.390, regardless of which agency is in possession of the information and documents.

(ii) Personal information in files maintained in a data base created under RCW 43.07.360.

(jj) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010.

(kk) Names of individuals residing in emergency or transitional housing that are furnished to the department of revenue or a county assessor in order to substantiate a claim for property tax exemption under RCW 84.36.043.

(ll) The names, residential addresses, residential telephone numbers, and other individually identifiable records held by an agency in relation to a vanpool, carpool, or other ride-sharing program or service. However, these records may be disclosed to other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides.

(mm) The personally identifying information of current or former participants or applicants in a paratransit or other transit service operated for the benefit of persons with disabilities or elderly persons.

(nn) The personally identifying information of persons who acquire and use transit passes and other fare payment media including, but not limited to, stored value smart cards and magnetic strip cards, except that an agency may disclose this information to a person, employer, educational institution, or other entity that is responsible, in whole or in part, for payment of the cost of acquiring or using a transit pass or other fare payment media, or to the news media when reporting on public transportation or public safety. This information may also be disclosed at the agency's discretion to governmental agencies or groups concerned with public transportation or public safety.

(oo) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310. If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this section as exempt from disclosure. If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality.

(pp) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110.

(qq) Financial and commercial information supplied by or on behalf of a person, firm, corporation, or entity under chapter 28B.95 RCW relating to the purchase or sale of tuition units and contracts for the purchase of multiple tuition units.

(rr) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020, which have been transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval pursuant to RCW 40.14.070(2)(b).

(ss) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by other law.

(tt) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a horse racing license submitted pursuant to RCW 67.16.260(1)(b), liquor license, gambling license, or lottery retail license.

(uu) Records maintained by the employment security department and subject to chapter 50.13 RCW if provided to another individual or organization for operational, research, or evaluation purposes.

(vv) Individually identifiable information received by the work force training and education coordinating board for research or evaluation purposes.

(ww) Those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct of government or of the general civilian population of the state or the United States and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety, consisting of:

(i) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans; and

(ii) Records not subject to public disclosure under federal law that are shared by federal or international agencies, and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for acts of terrorism.

(xx) Commercial fishing catch data from logbooks required to be provided to the department of fish and wildlife under RCW 77.12.047, when the data identifies specific catch location, timing, or methodology and the release of which would result in unfair competitive disadvantage to the commercial fisher providing the catch data. However, this information may be released to government agencies concerned with the management of fish and wildlife resources.

(yy) Sensitive wildlife data obtained by the department of fish and wildlife. However, sensitive wildlife data may be released to government agencies

concerned with the management of fish and wildlife resources. Sensitive wildlife data includes:

(i) The nesting sites or specific locations of endangered species designated under RCW 77.12.020, or threatened or sensitive species classified by rule of the department of fish and wildlife;

(ii) Radio frequencies used in, or locational data generated by, telemetry studies; or

(iii) Other location data that could compromise the viability of a specific fish or wildlife population, and where at least one of the following criteria are met:

(A) The species has a known commercial or black market value;

(B) There is a history of malicious take of that species; or

(C) There is a known demand to visit, take, or disturb, and the species behavior or ecology renders it especially vulnerable or the species has an extremely limited distribution and concentration.

(zz) The personally identifying information of persons who acquire recreational licenses under RCW 77.32.010 or commercial licenses under chapter 77.65 or 77.70 RCW, except name, address of contact used by the department, and type of license, endorsement, or tag. However, the department of fish and wildlife may disclose personally identifying information to:

(i) Government agencies concerned with the management of fish and wildlife resources;

(ii) The department of social and health services, child support division, and to the department of licensing in order to implement RCW 77.32.014 and 46.20.291; and

(iii) Law enforcement agencies for the purpose of firearm possession enforcement under RCW 9.41.040.

(aaa)(i) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have not been commingled with other recorded documents. These records will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding that veteran's general power of attorney, or to anyone else designated in writing by that veteran to receive the records.

(ii) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have been commingled with other records, if the veteran has recorded a "request for exemption from public disclosure of discharge papers" with the county auditor. If such a request has been recorded, these records may be released only to the veteran filing the papers, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(iii) Discharge papers of a veteran filed at the office of the county auditor after June 30, 2002, are not public records, but will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(iv) For the purposes of this subsection (1)(aaa), next of kin of deceased veterans have the same rights to full access to the record. Next of kin are the veteran's widow or widower who has not remarried, son, daughter, father, mother, brother, and sister.

(bbb) Those portions of records containing specific and unique vulnerability assessments or specific and unique emergency and escape response plans at a city, county, or state adult or juvenile correctional facility, the public disclosure of which would have a substantial likelihood of threatening the security of a city, county, or state adult or juvenile correctional facility or any individual's safety.

(ccc) Information compiled by school districts or schools in the development of their comprehensive safe school plans pursuant to RCW 28A.320.125, to the extent that they identify specific vulnerabilities of school districts and each individual school.

(ddd) Information regarding the infrastructure and security of computer and telecommunications networks, consisting of security passwords, security access codes and programs, access codes for secure software applications, security and service recovery plans, security risk assessments, and security test results to the extent that they identify specific system vulnerabilities.

(eee) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW.

(fff) Proprietary data, trade secrets, or other information that relates to: (i) A vendor's unique methods of conducting business; (ii) data unique to the product or services of the vendor; or (iii) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011.

(ggg) The personally identifying information of persons who acquire and use transponders or other technology to facilitate payment of tolls. This information may be disclosed in aggregate form as long as the data does not contain any personally identifying information. For these purposes aggregate data may include the census tract of the account holder as long as any individual personally identifying information is not released. Personally identifying information may be released to law enforcement agencies only for toll enforcement purposes. Personally identifying information may be released to law enforcement agencies for other purposes only if the request is accompanied by a court order.

(hhh) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery of, grants under chapter 43.350 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information.

(iii) Records of mediation communications that are privileged under chapter 7.07 RCW.

(jjj) Information submitted by an individual or business for the purpose of participating in a state or national animal identification system. Disclosure to

local, state, and federal officials is not public disclosure. This exemption does not affect the disclosure of information used in reportable animal health investigations under chapter 16.36 RCW once they are complete.

(kkk) Results of testing for animal diseases not required to be reported under chapter 16.36 RCW that is done at the request of the animal owner or his or her designee that can be identified to a particular business or individual.

(2) Except for information described in subsection (1)(c)(i) of this section and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this section are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records exempt under the provisions of this section may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

Sec. 3. RCW 42.56.380 and 2005 c 274 s 418 are each amended to read as follows:

The following information relating to agriculture and livestock is exempt from disclosure under this chapter:

(1) Business-related information under RCW 15.86.110;

(2) Information provided under RCW 15.54.362;

(3) Production or sales records required to determine assessment levels and actual assessment payments to commodity boards and commissions formed under chapters 15.24, 15.26, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.100, and 16.67 RCW or required by the department of agriculture to administer these chapters or the department's programs;

(4) Consignment information contained on phytosanitary certificates issued by the department of agriculture under chapters 15.13, 15.49, and 15.17 RCW or federal phytosanitary certificates issued under 7 C.F.R. 353 through cooperative agreements with the animal and plant health inspection service, United States department of agriculture, or on applications for phytosanitary certification required by the department of agriculture;

(5) Financial and commercial information and records supplied by persons (a) to the department of agriculture for the purpose of conducting a referendum for the potential establishment of a commodity board or commission; or (b) to the department of agriculture or commodity boards or commissions formed under chapter 15.24, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.100, or 16.67 RCW with respect to domestic or export marketing activities or individual producer's production information;

(6) Except under RCW 15.19.080, information obtained regarding the purchases, sales, or production of an individual American ginseng grower or dealer;

(7) Information that can be identified to a particular business and that is collected under section 3(1), chapter 235, Laws of 2002; ~~(and)~~

(8) Financial statements provided under RCW 16.65.030(1)(d);

(9) Information submitted by an individual or business for the purpose of participating in a state or national animal identification system. Disclosure to local, state, and federal officials is not public disclosure. This exemption does not affect the disclosure of information used in reportable animal health investigations under chapter 16.36 RCW once they are complete; and

(10) Results of testing for animal diseases not required to be reported under chapter 16.36 RCW that is done at the request of the animal owner or his or her designee that can be identified to a particular business or individual.

NEW SECTION. Sec. 4. Section 2 of this act expires July 1, 2006.

NEW SECTION. Sec. 5. Section 3 of this act takes effect July 1, 2006.

Passed by the House February 11, 2006.

Passed by the Senate March 1, 2006.

Approved by the Governor March 15, 2006.

Filed in Office of Secretary of State March 15, 2006.

CHAPTER 76

[Substitute House Bill 2715]

INTEROPERABILITY EXECUTIVE COMMITTEE

AN ACT Relating to the state interoperability executive committee; amending RCW 43.105.330; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that local governments need to have interoperable communications to ensure the public safety and welfare of all citizens in the state of Washington. In light of recent catastrophic events around the world, including in the United States, it is now more important than ever that all responders be able to communicate clearly and without interference or malfunction.

The legislature has learned that numerous states, the federal government, and some international governments have adopted the project-25 standard for interoperable communications. Local governments in Washington have started to purchase the project-25 interoperable communication standard equipment. In order to ensure that local governments continue to make smart purchasing decisions, they need certainty that the purchases will be interoperable with state equipment and that the state will adopt the national project-25 standards. It is the intent of this act to provide certainty to local governments that a statewide project-25 interoperable communications system will be in place throughout Washington in the near future, and the investments they are making are advantageous to the original intent of interoperable communications, thus ensuring the safety and welfare of Washington's citizens.

Sec. 2. RCW 43.105.330 and 2003 c 18 s 4 are each amended to read as follows:

(1) The board shall appoint a state interoperability executive committee, the membership of which must include, but not be limited to, representatives of the military department, the Washington state patrol, the department of transportation, the department of information services, the department of natural resources, city and county governments, state and local fire chiefs, police chiefs, and sheriffs, and state and local emergency management directors. The chair and legislative members of the board will serve as nonvoting ex officio members of the committee. Voting membership may not exceed fifteen members.

(2) The chair of the board shall appoint the chair of the committee from among the voting members of the committee.

(3) The ~~((strategic [state]))~~ state interoperability executive committee has the following responsibilities:

(a) Develop policies and make recommendations to the board for technical standards for state wireless radio communications systems, including emergency communications systems. The standards must address, among other things, the interoperability of systems, taking into account both existing and future systems and technologies;

(b) Coordinate and manage on behalf of the board the licensing and use of state-designated and state-licensed radio frequencies, including the spectrum used for public safety and emergency communications, and serve as the point of contact with the federal communications commission on matters relating to allocation, use, and licensing of radio spectrum;

(c) Coordinate the purchasing of all state wireless radio communications system equipment to ensure that:

(i) After the transition from a radio over internet protocol network, any new trunked system shall be, at a minimum, project-25;

(ii) Any new system that requires advanced digital features shall be, at a minimum, project-25; and

(iii) Any new system or equipment purchases shall be, at a minimum, upgradeable to project-25;

~~(d)~~ Seek support, including possible federal or other funding, for state-sponsored wireless communications systems;

~~((d))~~ (e) Develop recommendations for legislation that may be required to promote interoperability of state wireless communications systems;

~~((e))~~ (f) Foster cooperation and coordination among public safety and emergency response organizations;

~~((f))~~ (g) Work with wireless communications groups and associations to ensure interoperability among all public safety and emergency response wireless communications systems; and

~~((g))~~ (h) Perform such other duties as may be assigned by the board to promote interoperability of wireless communications systems.

Passed by the House February 11, 2006.

Passed by the Senate February 28, 2006.

Approved by the Governor March 15, 2006.

Filed in Office of Secretary of State March 15, 2006.

CHAPTER 77

[Substitute House Bill 2723]

REAL ESTATE DISCLOSURES—FARMS

AN ACT Relating to a seller's real estate disclosure of proximity to farming; and amending RCW 64.06.022.

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

Sec. 1. RCW 64.06.022 and 2005 c 511 s 3 are each amended to read as follows:

A seller of real property (~~located within one mile of the property boundary of a farm or farm operation~~) shall make available to the buyer the following statement: "This notice is to inform (~~prospective residents~~) you that the real property (~~they are about to acquire lies within one mile of the property boundary of a farm. The farm may generate usual and ordinary noise, dust, odors, and other associated conditions, and these practices~~) you are considering for purchase may lie in close proximity to a farm. The operation of a farm involves usual and customary agricultural practices, which are protected (~~by~~) under RCW 7.48.305, the Washington right to farm act."

Passed by the House February 10, 2006.

Passed by the Senate March 1, 2006.

Approved by the Governor March 15, 2006.

Filed in Office of Secretary of State March 15, 2006.

CHAPTER 78

[House Bill 2857]

UNIVERSITIES—STUDENT REGENTS

AN ACT Relating to terms of appointment of student regents and trustees; and amending RCW 28B.20.100, 28B.30.100, 28B.35.100, and 28B.40.100.

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

Sec. 1. RCW 28B.20.100 and 1998 c 95 s 1 are each amended to read as follows:

(1) The governance of the University of Washington shall be vested in a board of regents to consist of ten members, one of whom shall be a student. The governor shall select the student member from a list of candidates, of at least three and not more than five, submitted by the governing body of the associated students. They shall be appointed by the governor with the consent of the senate, and, except for the student member, shall hold their offices for a term of six years from the first day of October and until their successors shall be appointed and qualified. The student member shall hold his or her office for a term of one year from the first day of (~~June~~) July until the first day of July of the following year or until his or her successor is appointed and qualified, whichever is later. The student member shall be a full-time student in good standing at the university at the time of appointment.

(2) Six members of said board shall constitute a quorum for the transaction of business. In the case of a vacancy, or when an appointment is made after the date of the expiration of a term, the governor shall fill the vacancy for the remainder of the term of the regent whose office has become vacant or expired.

(3) Except for the term of the student member, no more than the terms of two members will expire simultaneously on the last day of September in any one year.

(4) A student appointed under this section shall excuse himself or herself from participation or voting on matters relating to the hiring, discipline, or tenure of faculty members and personnel.

Sec. 2. RCW 28B.30.100 and 1998 c 95 s 2 are each amended to read as follows:

(1) The governance of Washington State University shall be vested in a board of regents to consist of ten members one of whom shall be a student. The governor shall select the student member from a list of candidates, of at least three and not more than five, submitted by the governing body of the associated students. They shall be appointed by the governor, by and with the consent of the senate and, except for the student member, shall hold their offices for a term of six years from the first day of October and until their successors are appointed and qualified. The student member shall hold his or her office for a term of one year from the first day of ~~((June))~~ July until the first day of July of the following year or until his or her successor is appointed and qualified, whichever is later. The student member shall be a full-time student in good standing at the university at the time of appointment.

(2) Six members of said board shall constitute a quorum for the transaction of business. In the case of a vacancy or when an appointment is made after the date of the expiration of a term, the governor shall fill the vacancy for the remainder of the term of the regent whose office has become vacant or expired.

(3) Except for the term of the student member, no more than the terms of two members will expire simultaneously on the last day of September in any one year.

(4) Each regent shall, before entering upon the discharge of his respective duties as such, execute a good and sufficient bond to the state of Washington, with two or more sufficient sureties, residents of the state, or with a surety company licensed to do business within the state, in the penal sum of not less than five thousand dollars, conditioned for the faithful performance of his duties as such regent: PROVIDED, That the university shall pay any fees incurred for any such bonds for their board members.

(5) A student appointed under this section shall excuse himself or herself from participation or voting on matters relating to the hiring, discipline, or tenure of faculty members and personnel.

Sec. 3. RCW 28B.35.100 and 1998 c 95 s 3 are each amended to read as follows:

(1) The governance of each of the regional universities shall be vested in a board of trustees consisting of eight members, one of whom shall be a student. The governor shall select the student member from a list of candidates, of at least three and not more than five, submitted by the governing body of the associated students. They shall be appointed by the governor with the consent of the senate and, except for the student member, shall hold their offices for a term of six years from the first day of October and until their successors are appointed and qualified. The student member shall hold his or her office for a term of one year from the first day of ~~((June))~~ July and until the first day of July of the following

year or until his or her successor is appointed and qualified, whichever is later. The student member shall be a full-time student in good standing at the respective university at the time of appointment.

(2) Five members of the board constitute a quorum for the transaction of business. In case of a vacancy, or when an appointment is made after the date of expiration of the term, the governor shall fill the vacancy for the remainder of the term of the trustee whose office has become vacant or expired.

(3) Except for the term of the student member, no more than the terms of two members will expire simultaneously on the last day of September in any one year.

(4) A student appointed under this section shall excuse himself or herself from participation or voting on matters relating to the hiring, discipline, or tenure of faculty members and personnel.

Sec. 4. RCW 28B.40.100 and 1998 c 95 s 4 are each amended to read as follows:

(1) The governance of The Evergreen State College shall be vested in a board of trustees consisting of eight members, one of whom shall be a student. The governor shall select the student member from a list of candidates, of at least three and not more than five, submitted by the student body. They shall be appointed by the governor with the consent of the senate and, except for the student member, shall hold their offices for a term of six years from the first day of October and until their successors are appointed and qualified. The student member shall hold his or her office for a term of one year from the first day of ~~((June))~~ July and until the first day of July of the following year or until his or her successor is appointed and qualified, whichever is later. The student member shall be a full-time student in good standing at the college at the time of appointment.

(2) Five members of the board constitute a quorum for the transaction of business. In case of a vacancy, or when an appointment is made after the date of expiration of the term, the governor shall fill the vacancy for the remainder of the term of the trustee whose office has become vacant or expired.

(3) Except for the term of the student member, no more than the terms of two members will expire simultaneously on the last day of September in any one year.

(4) A student appointed under this section shall excuse himself or herself from participation or voting on matters relating to the hiring, discipline, or tenure of faculty members and personnel.

Passed by the House February 9, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 15, 2006.

Filed in Office of Secretary of State March 15, 2006.

CHAPTER 79

[Engrossed House Bill 2910]

ENVIRONMENTAL EDUCATION STUDY

AN ACT Relating to studying environmental education; and creating a new section.

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

NEW SECTION. Sec. 1. (1) The office of superintendent of public instruction shall conduct an environmental education study in partnership with public and private entities invested in strategies to reach every student, family, and community with quality environmental education experiences. The study shall provide empirical evidence, exemplary models, and recommendations focused on:

- (a) Career development;
- (b) Good citizenship as proven through service learning;
- (c) Graduation requirements, specifically addressing senior culminating projects;
- (d) Underserved youth and demographic groups; and
- (e) Models of professional development for community-based service organizations including state and local agencies.

(2) The study in this section shall provide findings and recommendations useful to the Washington state comprehensive environmental education plan, a comprehensive public-private endeavor to develop local and statewide strategies to ensure quality outdoor environmental education opportunities for every student, family, and community in Washington.

(3) By studying the concepts in this section, the study shall evaluate how environmental, natural science, wildlife, forestry, and agriculture education benefits Washington's students, families, and communities. Outdoor environmental education provides relevant quality education set in real world contexts of the built, natural, cultural, social, and economic environments. It provides opportunities for direct natural experiences to help Washington's youth develop self-esteem and personal responsibility. Washington benefits from exemplary environmental education programs and public-private environmental education partnerships across the state including outdoor, agriculture, forestry, angling and hunting, cultural competency, natural resource, natural science, and wildlife education programs. The study will be useful in identifying outdoor environmental education opportunities for Washington's students, families, and communities.

(4) The office of superintendent of public instruction shall provide an interim update to the legislature by December 1, 2006, and shall complete the study no later than October 1, 2007.

Passed by the House February 13, 2006.

Passed by the Senate February 28, 2006.

Approved by the Governor March 15, 2006.

Filed in Office of Secretary of State March 15, 2006.

CHAPTER 80

[Engrossed House Bill 3074]

MILITARY—CIVIL ACTION DEFENDANT STATUS

AN ACT Relating to determining the military status of defendants; and amending RCW 38.42.050.

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

Sec. 1. RCW 38.42.050 and 2005 c 254 s 5 are each amended to read as follows:

(1) This section applies to any civil action or proceeding in which a service member or his or her dependent is a defendant and does not make an appearance under applicable court rules or by law.

(2) In any action or proceeding covered by this section, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit:

(a) Stating whether the defendant is in military service, or is a dependent of a service member in military service, and showing necessary facts to support the affidavit; or

(b) If the plaintiff is unable to determine whether the defendant is in military service or is a dependent of a service member in military service, stating that the plaintiff is unable to determine whether the defendant is in military service or is a dependent of a service member in military service.

(3)(a) To determine whether or not a defendant is a dependent of a person in the military service under this chapter, the plaintiff may serve on or mail via first-class mail to the defendant a written notice in substantially the following form:

"NOTICE: State and federal law provide protections to defendants who are on active duty in the military service, and to their dependents. Dependents of a service member are the service member's spouse, the service member's minor child, or an individual for whom the service member provided more than one-half of the individual's support for one hundred eighty days immediately preceding an application for relief.

One protection provided is the protection against the entry of a default judgment in certain circumstances. This notice only pertains to a defendant who is a dependent of a member of the national guard or a military reserve component under a call to active service for a period of more than thirty consecutive days. Other defendants in military service also have protections against default judgments not covered by this notice. If you are the dependent of a member of the national guard or a military reserve component under a call to active service for a period of more than thirty consecutive days, you should notify the plaintiff or the plaintiff's attorneys in writing of your status as such within twenty days of the receipt of this notice. If you fail to do so, then a court or an administrative tribunal may presume that you are not a dependent of an active duty member of the national guard or reserves, and proceed with the entry of an order of default and/or a default judgment without further proof of your status. Your response to the plaintiff or plaintiff's attorneys about your status does not constitute an appearance for jurisdictional purposes in any pending litigation nor a waiver of your rights."

(b) If the notice is either served on the defendant twenty or more days prior to an application for an order of default or a default judgment, or mailed to the defendant more than twenty-three days prior to such application, and the defendant fails to timely respond, then for purposes of entry of an order of default or default judgment, the court or administrative tribunal may presume that the defendant is not a dependent of a person in the military service under this chapter.

(c) Nothing prohibits the plaintiff from allowing a defendant more than twenty days to respond to the notice, or from amending the notice to so provide.

~~(4)~~ (4) If in an action covered by this section it appears that the defendant is in military service or is a dependent of a service member in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed under this section to represent a service member or his or her dependent cannot locate the service member or dependent, actions by the attorney in the case do not waive any defense of the service member or dependent or otherwise bind the service member or dependent.

~~((4))~~ (5) In an action covered by this section in which the defendant is in military service or is a dependent of a service member in military service, the court shall grant a stay of proceedings until one hundred eighty days after termination of or release from military service, upon application of defense counsel, or on the court's own motion, if the court determines that:

(a) There may be a defense to the action and a defense cannot be presented without presence of the defendant; or

(b) After due diligence, counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists. The defendant's failure to communicate or cooperate with counsel after having been contacted is not grounds to find that counsel has been unable to contact the defendant or that counsel has been unable to determine if a meritorious defense exists.

~~((5))~~ (6) No bar to entry of judgment under subsection ~~((3))~~ (4) of this section or requirement for grant of stay under subsection ~~((4))~~ (5) of this section precludes the entry of temporary orders in domestic relations cases. If a court or administrative tribunal enters a temporary order as allowed under this subsection, it shall include a finding that failure to act, despite the absence of the service member, would result in manifest injustice to the other interested parties. Temporary orders issued without the service member's participation shall not set any precedent for the final disposition of the matters addressed therein.

~~((6))~~ (7) If a service member or dependent who is a defendant in an action covered by this section receives actual notice of the action, the service member or dependent may request a stay of proceedings pursuant to RCW 38.42.060.

~~((7))~~ (8) A person who makes or uses an affidavit permitted under this section knowing it to be false, is guilty of a class C felony.

~~((8))~~ (9) If a default judgment is entered in an action covered by this section against a service member or his or her dependent during the service member's period of military service or within one hundred eighty days after termination of or release from military service, the court entering the judgment shall, upon application by or on behalf of the service member or his or her dependent, reopen the judgment for the purpose of allowing the service member or his or her dependent to defend the action if it appears that:

(a) The service member or dependent was materially affected by reason of that military service in making a defense to the action; and

(b) The service member or dependent has a meritorious or legal defense to the action or some part of it.

~~((9))~~ (10) If a court vacates, sets aside, or reverses a default judgment against a service member or his or her dependent and the vacating, setting aside, or reversing is because of a provision of this chapter, that action does not impair a right or title acquired by a bona fide purchaser for value.

Passed by the House February 7, 2006.
Passed by the Senate March 2, 2006.
Approved by the Governor March 15, 2006.
Filed in Office of Secretary of State March 15, 2006.

CHAPTER 81

[Substitute House Bill 3087]

UNIVERSITIES—COURSE MATERIALS—COSTS

AN ACT Relating to cost savings on course materials for students at state universities, regional universities, and The Evergreen State College; adding a new section to chapter 28B.10 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that:

(1) Often the bundling of texts, workbooks, CD-ROMs, and other course related materials is unnecessary since many students do not use all of the materials included and may realize cost savings if materials are also offered independently one from the other; and

(2) Many faculty and staff select materials uninformed of the retail costs and differences between versions.

It is the intent of the legislature to give students more choices for purchasing educational materials and to encourage faculty and staff to work closely with bookstores and publishers to implement the least costly option without sacrificing educational content and to provide maximum cost savings to students.

NEW SECTION. Sec. 2. A new section is added to chapter 28B.10 RCW to read as follows:

(1) The boards of regents of the state universities and the boards of trustees of the regional universities and The Evergreen State College in collaboration with affiliated bookstores and student and faculty representatives shall adopt rules requiring that:

(a) Affiliated bookstores:

(i) Provide students the option of purchasing materials that are unbundled when possible, disclose to faculty and staff the costs to students of purchasing materials, and disclose publicly how new editions vary from previous editions;

(ii) Actively promote and publicize book buy-back programs; and

(iii) Disclose retail costs for course materials on a per course basis to faculty and staff and make this information publicly available; and

(b) Faculty and staff members consider the least costly practices in assigning course materials, such as adopting the least expensive edition available when educational content is comparable as determined by the faculty and working closely with publishers and local bookstores to create bundles and packages if they deliver cost savings to students.

(2) As used in this section:

(a) "Materials" means any supplies or texts required or recommended by faculty or staff for a given course.

(b) "Bundled" means a group of objects joined together by packaging or required to be purchased as an indivisible unit.

Passed by the House February 9, 2006.
Passed by the Senate March 1, 2006.
Approved by the Governor March 15, 2006.
Filed in Office of Secretary of State March 15, 2006.

CHAPTER 82

[Substitute House Bill 3120]

TORT CLAIMS—STATE AND LOCAL GOVERNMENTS

AN ACT Relating to notice requirements for tort claims against state and local governments and their officers, employees, or volunteers; and amending RCW 4.92.100, 4.92.110, and 4.96.020.

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

Sec. 1. RCW 4.92.100 and 2002 c 332 s 12 are each amended to read as follows:

All claims against the state, or against the state's officers, employees, or volunteers, acting in such capacity, for damages arising out of tortious conduct shall be presented to and filed with the risk management division. All such claims shall be verified and shall accurately describe the conduct and circumstances which brought about the injury or damage, describe the injury or damage, state the time and place the injury or damage occurred, state the names of all persons involved, if known, and shall contain the amount of damages claimed, together with a statement of the actual residence of the claimant at the time of presenting and filing the claim and for a period of six months immediately prior to the time the claim arose. If the claimant is incapacitated from verifying, presenting, and filing the claim or if the claimant is a minor, or is a nonresident of the state, the claim may be verified, presented, and filed on behalf of the claimant by any relative, attorney, or agent representing the claimant.

With respect to the content of such claims this section shall be liberally construed so that substantial compliance will be deemed satisfactory.

Sec. 2. RCW 4.92.110 and 2002 c 332 s 13 are each amended to read as follows:

No action shall be commenced against the state, or against any state officer, employee, or volunteer, acting in such capacity, for damages arising out of tortious conduct until sixty days have elapsed after the claim is presented to and filed with the risk management division. The applicable period of limitations within which an action must be commenced shall be tolled during the sixty-day period.

Sec. 3. RCW 4.96.020 and 2001 c 119 s 2 are each amended to read as follows:

(1) The provisions of this section apply to claims for damages against all local governmental entities and their officers, employees, or volunteers, acting in such capacity.

(2) The governing body of each local (~~government~~ ~~{governmental}~~) governmental entity shall appoint an agent to receive any claim for damages made under this chapter. The identity of the agent and the address where he or she may be reached during the normal business hours of the local governmental entity are public records and shall be recorded with the auditor of the county in

which the entity is located. All claims for damages against a local governmental entity, or against any local governmental entity's officers, employees, or volunteers, acting in such capacity, shall be presented to the agent within the applicable period of limitations within which an action must be commenced. The failure of a local governmental entity to comply with the requirements of this section precludes that local governmental entity from raising a defense under this chapter.

(3) All claims for damages arising out of tortious conduct must locate and describe the conduct and circumstances which brought about the injury or damage, describe the injury or damage, state the time and place the injury or damage occurred, state the names of all persons involved, if known, and shall contain the amount of damages claimed, together with a statement of the actual residence of the claimant at the time of presenting and filing the claim and for a period of six months immediately prior to the time the claim arose. If the claimant is incapacitated from verifying, presenting, and filing the claim in the time prescribed or if the claimant is a minor, or is a nonresident of the state absent therefrom during the time within which the claim is required to be filed, the claim may be verified, presented, and filed on behalf of the claimant by any relative, attorney, or agent representing the claimant.

(4) No action shall be commenced against any local governmental entity, or against any local governmental entity's officers, employees, or volunteers, acting in such capacity, for damages arising out of tortious conduct until sixty days have elapsed after the claim has first been presented to and filed with the governing body thereof. The applicable period of limitations within which an action must be commenced shall be tolled during the sixty-day period.

Passed by the House February 14, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 15, 2006.

Filed in Office of Secretary of State March 15, 2006.

CHAPTER 83

[House Bill 3266]

STATE ROUTE NUMBER 169

AN ACT Relating to designating state route number 169 as a highway of statewide significance; and adding a new section to chapter 47.05 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 47.05 RCW to read as follows:

The legislature designates state route number 169, as defined in RCW 47.17.340, as a highway of statewide significance.

Passed by the House February 13, 2006.

Passed by the Senate February 28, 2006.

Approved by the Governor March 15, 2006.

Filed in Office of Secretary of State March 15, 2006.

CHAPTER 84

[Substitute House Bill 3190]

TAX EXEMPTIONS—SEMICONDUCTOR INDUSTRY

AN ACT Relating to providing tax incentives to support the semiconductor cluster in Washington state; amending RCW 82.04.440, 82.32.590, and 82.32.600; adding a new section to chapter 82.04 RCW; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; adding a new section to chapter 82.32 RCW; creating new sections; providing a contingent effective date; and providing expiration dates.

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

NEW SECTION. **Sec. 1.** The legislature finds that the welfare of the people of the state of Washington is positively impacted through the encouragement and expansion of family wage employment in the state's manufacturing industries. The legislature further finds that targeting tax incentives to focus on key industry clusters is an important business climate strategy. Washington state has recognized the semiconductor industry, which includes the design and manufacture of semiconductor materials, as one of the state's existing key industry clusters. Businesses in this cluster in the state of Washington are facing increasing pressure to expand elsewhere. The sales and use tax exemptions for manufacturing machinery and equipment enacted by the 1995 legislature improved Washington's ability to compete with other states for manufacturing investment. In 2003 the legislature enacted comprehensive tax incentives for the semiconductor cluster that address activities of the lead product industry and its suppliers and customers. These tax incentives are contingent on the investment of at least one billion dollars in a new semiconductor microchip fabrication facility in this state, which has not occurred. This investment criteria failed to recognize the significance of potential investment in the advanced semiconductor materials sector. Therefore, the legislature intends to complement existing comprehensive tax incentives for the semiconductor cluster to address activities of the advanced semiconductor materials product industry and its suppliers and customers. Tax incentives for the semiconductor cluster are important in both retention and expansion of existing businesses and attraction of new businesses, all of which will strengthen this cluster. The legislature also recognizes that the semiconductor industry involves major investment that results in significant construction projects, which will create jobs and bring many indirect benefits to the state during the construction phase.

NEW SECTION. **Sec. 2.** A new section is added to chapter 82.04 RCW to read as follows:

(1) Upon every person engaging within this state in the business of manufacturing or processing for hire semiconductor materials, as to such persons the amount of tax with respect to such business shall, in the case of manufacturers, be equal to the value of the product manufactured, or, in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of 0.275 percent.

(2) For the purposes of this section "semiconductor materials" means silicon crystals, silicon ingots, raw polished semiconductor wafers, and compound semiconductor wafers.

(3) This section expires twelve years after the effective date of this section.

NEW SECTION. Sec. 3. A new section is added to chapter 82.08 RCW to read as follows:

(1) The tax levied by RCW 82.08.020 shall not apply to sales of gases and chemicals used by a manufacturer or processor for hire in the production of semiconductor materials. This exemption is limited to gases and chemicals used in the production process to grow the product, deposit or grow permanent or sacrificial layers on the product, to etch or remove material from the product, to anneal the product, to immerse the product, to clean the product, and other such uses whereby the gases and chemicals come into direct contact with the product during the production process, or uses of gases and chemicals to clean the chambers and other like equipment in which such processing takes place. For the purposes of this section, "semiconductor materials" has the meaning provided in section 2 of this act.

(2) A person taking the exemption under this section must report under section 5 of this act. No application is necessary for the tax exemption. The person is subject to all of the requirements of chapter 82.32 RCW.

(3) This section expires twelve years after the effective date of this section.

NEW SECTION. Sec. 4. A new section is added to chapter 82.12 RCW to read as follows:

(1) The provisions of this chapter do not apply with respect to the use of gases and chemicals used by a manufacturer or processor for hire in the production of semiconductor materials. This exemption is limited to gases and chemicals used in the production process to grow the product, deposit or grow permanent or sacrificial layers on the product, to etch or remove material from the product, to anneal the product, to immerse the product, to clean the product, and other such uses whereby the gases and chemicals come into direct contact with the product during the production process, or uses of gases and chemicals to clean the chambers and other like equipment in which such processing takes place. For purposes of this section, "semiconductor materials" has the meaning provided in section 2 of this act.

(2) A person taking the exemption under this section must report under section 5 of this act. No application is necessary for the tax exemption. The person is subject to all of the requirements of chapter 82.32 RCW.

(3) This section expires twelve years after the effective date of this section.

NEW SECTION. Sec. 5. A new section is added to chapter 82.32 RCW to read as follows:

(1) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how a tax incentive is used.

(2)(a) A person who reports taxes under section 2 of this act or who claims an exemption or credit under sections 3 and 4 of this act shall make a complete annual report to the department detailing employment, wages, and employer-provided health and retirement benefits per job at the manufacturing site. The report shall not include names of employees. The report shall also detail employment by the total number of full-time, part-time, and temporary positions. The first report filed under this subsection shall include employment, wage, and benefit information for the twelve-month period immediately before

first use of a preferential tax rate under section 2 of this act, or tax exemption or credit under sections 3 and 4 of this act. The report is due by April 30th following any year in which a preferential tax rate under section 2 of this act is used, or tax exemption or credit under sections 3 and 4 of this act is taken. The department may extend the due date for timely filing annual reports under this section as provided in RCW 82.32.590. This information is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(b) If a person fails to submit a complete annual report under (a) of this subsection by the due date of the report or any extension under RCW 82.32.590, the department shall declare the amount of taxes exempted or credited, or reduced in the case of the preferential business and occupation tax rate, for that year to be immediately due and payable. Excise taxes payable under this subsection are subject to interest but not penalties, as provided under this chapter. This information is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(3) By November 1st of the year occurring five years after the effective date of this section, and November 1st of the year occurring eleven years after the effective date of this section, the fiscal committees of the house of representatives and the senate, in consultation with the department, shall report to the legislature on the effectiveness of this act in regard to keeping Washington competitive. The report shall measure the effect of this act on job retention, net jobs created for Washington residents, company growth, diversification of the state's economy, cluster dynamics, and other factors as the committees select. The reports shall include a discussion of principles to apply in evaluating whether the legislature should reenact any or all of the tax preferences in this act.

Sec. 6. RCW 82.04.440 and 2005 c 301 s 3 are each amended to read as follows:

(1) Every person engaged in activities (~~(which are within the purview of the provisions of two or more of sections)~~) that are subject to tax under two or more provisions of RCW 82.04.230 ~~((to))~~ through 82.04.298, inclusive, shall be taxable under each ~~((paragraph))~~ provision applicable to ~~((the))~~ those activities ~~((engaged in))~~.

(2) Persons taxable under RCW 82.04.2909(2), 82.04.250, 82.04.270, 82.04.294(2), or 82.04.260 ~~(1)(c)~~, (4), or ~~((13))~~ (11) with respect to selling products in this state shall be allowed a credit against those taxes for any (a) manufacturing taxes paid with respect to the manufacturing of products so sold in this state, and/or (b) extracting taxes paid with respect to the extracting of products so sold in this state or ingredients of products so sold in this state. Extracting taxes taken as credit under subsection (3) of this section may also be taken under this subsection, if otherwise allowable under this subsection. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the sale of those products.

(3) Persons taxable under RCW 82.04.240 or 82.04.260(1)(b) shall be allowed a credit against those taxes for any extracting taxes paid with respect to extracting the ingredients of the products so manufactured in this state. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the manufacturing of those products.

(4) Persons taxable under RCW 82.04.230, 82.04.240, 82.04.2909(1), 82.04.294(1), section 2 of this act, or 82.04.260 (1), (2), (4), ~~((6), or (13))~~ or (11) with respect to extracting or manufacturing products in this state shall be allowed a credit against those taxes for any (i) gross receipts taxes paid to another state with respect to the sales of the products so extracted or manufactured in this state, (ii) manufacturing taxes paid with respect to the manufacturing of products using ingredients so extracted in this state, or (iii) manufacturing taxes paid with respect to manufacturing activities completed in another state for products so manufactured in this state. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the extraction or manufacturing of those products.

(5) For the purpose of this section:

(a) "Gross receipts tax" means a tax:

(i) Which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which the deductions allowed would not constitute the tax an income tax or value added tax; and

(ii) Which is also not, pursuant to law or custom, separately stated from the sales price.

(b) "State" means (i) the state of Washington, (ii) a state of the United States other than Washington, or any political subdivision of such other state, (iii) the District of Columbia, and (iv) any foreign country or political subdivision thereof.

(c) "Manufacturing tax" means a gross receipts tax imposed on the act or privilege of engaging in business as a manufacturer, and includes (i) the taxes imposed in RCW 82.04.240, section 2 of this act, 82.04.2909(1), 82.04.260 (1), (2), (4), and ~~((13))~~ (11), and 82.04.294(1); and (ii) similar gross receipts taxes paid to other states.

(d) "Extracting tax" means a gross receipts tax imposed on the act or privilege of engaging in business as an extractor, and includes the tax imposed in RCW 82.04.230 and similar gross receipts taxes paid to other states.

(e) "Business", "manufacturer", "extractor", and other terms used in this section have the meanings given in RCW 82.04.020 through 82.04.212, notwithstanding the use of those terms in the context of describing taxes imposed by other states.

Sec. 7. RCW 82.32.590 and 2005 c 514 s 1001 are each amended to read as follows:

(1) If the department finds that the failure of a taxpayer to file an annual survey or annual report under RCW 82.04.4452 or section 5 of this act by the due date was the result of circumstances beyond the control of the taxpayer, the department shall extend the time for filing the survey or report. Such extension shall be for a period of thirty days from the date the department issues its written notification to the taxpayer that it qualifies for an extension under this section. The department may grant additional extensions as it deems proper.

(2) In making a determination whether the failure of a taxpayer to file an annual survey or annual report by the due date was the result of circumstances beyond the control of the taxpayer, the department shall be guided by rules adopted by the department for the waiver or cancellation of penalties when the

underpayment or untimely payment of any tax was due to circumstances beyond the control of the taxpayer.

Sec. 8. RCW 82.32.600 and 2005 c 514 s 1002 are each amended to read as follows:

(1) Persons required to file annual surveys or annual reports under RCW 82.04.4452 or section 5 of this act must electronically file with the department all surveys, reports, returns, and any other forms or information the department requires in an electronic format as provided or approved by the department (~~unless the department grants relief under subsection (2) of this section~~). As used in this section, "returns" has the same meaning as "return" in RCW 82.32.050.

~~(2) (Upon request, the department may relieve a person of the obligations in subsection (1) of this section if the person's taxes have been reduced a cumulative total of less than one thousand dollars from all of the credits, exemptions, or preferential business and occupation tax rates, for which a person is required to file an annual survey under RCW 82.04.4452, 82.32.535, 82.32.545, 82.32.570, 82.32.560, 82.60.070, or 82.63.020.~~

~~(3) Persons who no longer qualify for relief under subsection (2) of this section will be notified in writing by the department and must comply with subsection (1) of this section by the date provided in the notice.~~

~~(4)) Any survey, report, return, or any other form or information required to be filed in an electronic format under subsection (1) of this section is not filed until received by the department in an electronic format.~~

(3) The department may waive the electronic filing requirement in subsection (1) of this section for good cause shown.

NEW SECTION. Sec. 9. (1)(a) Sections 2 through 8 of this act are contingent upon the siting, expansion, or renovation, and commercial operation of a significant semiconductor materials fabrication facility or facilities in the state of Washington.

(b) For the purposes of this section:

(i) "Commercial operation" means the equipment and process qualifications in the new, expanded, or renovated building are completed and production for sale has begun.

(ii) "Semiconductor materials fabrication" means the manufacturing of silicon crystals, silicon ingots that are at least three hundred millimeters in diameter, raw polished semiconductor wafers that are at least three hundred millimeters in diameter, and compound semiconductor wafers that are at least three hundred millimeters in diameter.

(iii) "Significant" means that the combined investment or investments by a single person, occurring at any time before the effective date of this act, of new buildings, expansion or renovation of existing buildings, tenant improvements to buildings, and machinery and equipment in the buildings, at the commencement of commercial production, is at least three hundred fifty million dollars based on actual expenditures by the person.

(2) Except for section 1 of this act and this section, this act takes effect the first day of the month immediately following the department's determination that the contingency in subsection (1) of this section has occurred. The department shall make its determination regarding the contingency in subsection (1) of this

section based on information provided to the department by affected taxpayers or representatives of affected taxpayers.

(3) The department of revenue shall provide notice of the effective date of this act to affected taxpayers, the legislature, the office of the code reviser, and others as deemed appropriate by the department.

Passed by the House February 11, 2006.

Passed by the Senate February 27, 2006.

Approved by the Governor March 16, 2006.

Filed in Office of Secretary of State March 16, 2006.

CHAPTER 85

[Senate Bill 6539]

SPIRITS, BEER, AND WINE RESTAURANT LICENSES—LIMITS

AN ACT Relating to the limit on spirits, beer, and wine restaurant licenses; and amending RCW 66.24.420.

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

Sec. 1. RCW 66.24.420 and 2004 c 62 s 3 are each amended to read as follows:

(1) The spirits, beer, and wine restaurant license shall be issued in accordance with the following schedule of annual fees:

(a) The annual fee for a spirits, beer, and wine restaurant license shall be graduated according to the dedicated dining area and type of service provided as follows:

Less than 50% dedicated dining area	\$2,000
50% or more dedicated dining area	\$1,600
Service bar only	\$1,000

(b) The annual fee for the license when issued to any other spirits, beer, and wine restaurant licensee outside of incorporated cities and towns shall be prorated according to the calendar quarters, or portion thereof, during which the licensee is open for business, except in case of suspension or revocation of the license.

(c) Where the license shall be issued to any corporation, association or person operating a bona fide restaurant in an airport terminal facility providing service to transient passengers with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place: PROVIDED, That the holder of a master license for a restaurant in an airport terminal facility shall be required to maintain in a substantial manner at least one place on the premises for preparing, cooking, and serving of complete meals, and such food service shall be available on request in other licensed places on the premises: PROVIDED, FURTHER, That an additional license fee of twenty-five percent of the annual master license fee shall be required for such duplicate licenses.

(d) Where the license shall be issued to any corporation, association, or person operating dining places at a publicly or privately owned civic or

convention center with facilities for sports, entertainment, or conventions, or a combination thereof, with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place: PROVIDED, That the holder of a master license for a dining place at such a publicly or privately owned civic or convention center shall be required to maintain in a substantial manner at least one place on the premises for preparing, cooking, and serving of complete meals, and food service shall be available on request in other licensed places on the premises: PROVIDED FURTHER, That an additional license fee of ten dollars shall be required for such duplicate licenses.

(e) Where the license shall be issued to any corporation, association or person operating more than one building containing dining places at privately owned facilities which are open to the public and where there is a continuity of ownership of all adjacent property, such license shall be issued upon the payment of an annual fee which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to the additional dining places on the property or, in the case of a spirits, beer, and wine restaurant licensed hotel, property owned or controlled by leasehold interest by that hotel for use as a conference or convention center or banquet facility open to the general public for special events in the same metropolitan area, at the discretion of the board and a duplicate license may be issued for each additional place: PROVIDED, That the holder of the master license for the dining place shall not offer alcoholic beverages for sale, service, and consumption at the additional place unless food service is available at both the location of the master license and the duplicate license: PROVIDED FURTHER, That an additional license fee of twenty dollars shall be required for such duplicate licenses.

(2) The board, so far as in its judgment is reasonably possible, shall confine spirits, beer, and wine restaurant licenses to the business districts of cities and towns and other communities, and not grant such licenses in residential districts, nor within the immediate vicinity of schools, without being limited in the administration of this subsection to any specific distance requirements.

(3) The board shall have discretion to issue spirits, beer, and wine restaurant licenses outside of cities and towns in the state of Washington. The purpose of this subsection is to enable the board, in its discretion, to license in areas outside of cities and towns and other communities, establishments which are operated and maintained primarily for the benefit of tourists, vacationers and travelers, and also golf and country clubs, and common carriers operating dining, club and buffet cars, or boats.

(4) The total number of spirits, beer, and wine restaurant licenses issued in the state of Washington by the board, not including spirits, beer, and wine private club licenses, shall not in the aggregate at any time exceed one license for each (~~fifteen~~) one thousand four hundred fifty of population in the state, determined according to the yearly population determination developed by the office of financial management pursuant to RCW 43.62.030.

(5) Notwithstanding the provisions of subsection (4) of this section, the board shall refuse a spirits, beer, and wine restaurant license to any applicant if

in the opinion of the board the spirits, beer, and wine restaurant licenses already granted for the particular locality are adequate for the reasonable needs of the community.

(6)(a) The board may issue a caterer's endorsement to this license to allow the licensee to remove the liquor stocks at the licensed premises, for use as liquor for sale and service at event locations at a specified date and, except as provided in subsection (7) of this section, place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be a society or organization as defined by RCW 66.24.375 is waived. Cost of the endorsement is three hundred fifty dollars.

(b) The holder of this license with catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(7) Licensees under this section that hold a caterer's endorsement are allowed to use this endorsement on a domestic winery premises under the following conditions:

(a) Agreements between the domestic winery and the retail licensee shall be in writing, contain no exclusivity clauses regarding the alcohol beverages to be served, and be filed with the board; and

(b) The domestic winery and the retail licensee shall be separately contracted and compensated by the persons sponsoring the event for their respective services.

Passed by the Senate February 13, 2006.

Passed by the House February 28, 2006.

Approved by the Governor March 17, 2006.

Filed in Office of Secretary of State March 17, 2006.

CHAPTER 86

[Senate Bill 6429]

PUBLIC DISCLOSURE EXEMPTIONS—NATIVE AMERICAN CULTURAL INFORMATION

AN ACT Relating to disclosure of certain Native American cultural resources information; amending RCW 42.56.300; and providing an effective date.

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

Sec. 1. RCW 42.56.300 and 2005 c 274 s 410 are each amended to read as follows:

(1) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites are exempt from disclosure under this chapter.

(2) Records, maps, and other information, acquired during watershed analysis pursuant to the forests and fish report under RCW 76.09.370, that identify the location of archaeological sites, historic sites, artifacts, or the sites of

traditional religious, ceremonial, or social uses and activities of affected Indian tribes, are exempt from disclosure under this chapter in order to prevent the looting or depredation of such sites.

NEW SECTION. Sec. 2. This act takes effect July 1, 2006.

Passed by the Senate March 6, 2006.

Passed by the House March 3, 2006.

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CHAPTER 87

[Substitute Senate Bill 6168]

BUSINESS DEVELOPMENT COMPANY ACT

AN ACT Relating to business development companies and the participation of financial institutions and nondepository lenders in economic development within the state; amending RCW 31.24.010, 31.24.020, 31.24.030, 31.24.070, 31.24.080, 31.24.090, 31.24.100, 31.24.110, 31.24.120, 31.24.130, 31.24.140, 31.24.150, 31.24.170, 31.24.190, and 31.40.090; adding new sections to chapter 31.24 RCW; adding a new section to chapter 31.35 RCW; adding a new section to chapter 31.40 RCW; and repealing RCW 31.24.040, 31.24.050, 31.24.060, and 31.24.180.

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

NEW SECTION. Sec. 1. A new section is added to chapter 31.24 RCW to read as follows:

The legislature finds, declares, and intends that:

(1) There exists substantial and growing need in Washington state to enhance the availability of financial assistance for small business and to improve the economy of the localities within this state;

(2) The department, which is charged with (a) the regulation of business development corporations, under this chapter, (b) the regulation of financial institutions and other financial entities as defined in this chapter, and (c) nondepository lenders engaged in guaranteed small business and agricultural lending, under chapters 31.40 and 31.35 RCW, is among those state agencies critical to meeting the needs addressed in subsection (1) of this section; and

(3) It is necessary to assist the department in meeting the needs addressed in subsection (1) of this section and to improve its administration and regulation of this chapter and chapters 31.35 and 31.40 RCW.

Sec. 2. RCW 31.24.010 and 1963 c 162 s 1 are each amended to read as follows:

~~((As used in this chapter, the following words and phrases, unless differently defined or described, shall have the meanings and references as follows:~~

~~(1) Corporation means a Washington industrial development corporation created under this chapter.~~

~~(2) Financial institution means any banking corporation or trust company, national banking association, savings and loan association, insurance company or related corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds.~~

~~(3) Member means any financial institution authorized to do business within this state which shall undertake to lend money to a corporation created under this chapter, upon its call, and in accordance with the provisions of this chapter.~~

~~(4) Board of directors means the board of directors of the corporation created under this chapter.~~

~~(5) Loan limit means for any member, the maximum amount permitted to be outstanding at one time on loans made by such member to the corporation, as determined under the provisions of this chapter.)~~

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

(1) "Applicant" means a person who files with the director an application for organization as, or conversion to doing business as, a business development company under this chapter, or who is making application for a material change that requires approval of the director under this chapter.

(2) "Assessable stock" means any stock or class of stock, or equity interest or class of equity interest, in a business development company that:

(a) Has been authorized pursuant to the articles of incorporation of the business development company as approved by the department;

(b) Has been created pursuant to an authorized plan of assessment;

(c) Has been agreed to by a stockholder pursuant to the stockholder's subscription or similar agreement; and

(d) Has been disclosed as being subject to assessment on the face of the stock certificates or certificates of equity interest.

(3) "Board of directors" means the board of directors of a business development company created under this chapter.

(4) "Borrower" means a person, including a controlling person of such person, who obtains a qualified loan from a business development company.

(5) "Business" means a person, including a controlling person of such person, who obtains a qualified loan or qualified investment, or both, from a business development company.

(6) "Business development company" means a company created for the purpose of engaging in any activity authorized by this chapter. A "business development company" created under this chapter is either:

(a) A "general business development company," which is a business development company that may engage in any activity authorized by this chapter; or

(b) A "historic business development company," which is a business development company organized to encourage and stimulate the preservation of historic buildings or historic commercial areas or neighborhoods, and may only engage in activities consistent with the purposes of the limited charter as set forth in RCW 31.24.190.

(7) "Business development project" means a project controlled by a business, in which a business development company may make a qualified investment, qualified loan, or both.

(8) "Control," "controlled," or "controls," in relation to a borrower or business, has the same meaning as "control of a bank" has under Federal Reserve Regulation O, 12 C.F.R. Sec. 215.2, as it existed on the effective date of this section, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this chapter.

(9) "Controlling person" means a person, including an executive officer or director as defined in Federal Reserve Regulation O, 12 C.F.R. Sec. 215.2, as it existed on the effective date of this section, or such subsequent date as may be

provided by the department by rule, consistent with the purposes of this chapter, who controls a borrower or business.

(10) "Department" means the Washington state department of financial institutions, or its successor.

(11) "Director" means the director of the department of financial institutions, unless used in the context of a member of the board of directors of a business development company created under this chapter.

(12) "Financial institution" means any federally chartered or state-chartered bank or trust company, savings bank or savings and loan association, or credit union.

(13) "Insider transaction" means a transaction between a business development company and a person who is (a) an affiliate of a business development company or (b) an executive officer, director, or principal shareholder, or a related interest of, such a person. As used in this subsection, "affiliate," "executive officer," "director," "principal shareholder," and "related interest" have the same meaning, in relation to a business development company, as such terms have in relation to a member bank pursuant to Federal Reserve Regulation O, 12 C.F.R. Sec. 215.2, as it existed on the effective date of this section, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this chapter.

(14) "Other financial entity" means an insurance company authorized to do business in Washington state, or any other company, limited liability company, partnership, limited partnership, or foundation, other than a financial institution, engaged as a primary activity in the business of lending or investing funds, and which holds a charter or license from an applicable federal or state regulatory authority to engage in such activity.

(15) "Person" means a natural person, partnership, limited partnership, limited liability company, corporation, association, foundation, or other legal or commercial entity.

(16) "Plan of assessment" means a plan for assessment of stockholders, or a class of stockholders, which is part of the business plan of a business development company that has been approved by the department, and which provides for the periodic, equal assessment of all stockholders, or an affected class of stockholders, according to their interest in the business development company, as provided for in section 7 of this act.

(17) "Qualified investment" means any equity investment, or debt investment other than a qualified loan, authorized by this chapter to be made by a business development company to a business:

(a) The principal intent of which:

(i) In the case of a general business development company, is to promote or enhance small business or improvement of the economy of one or more localities within this state, consistent with the general intent and purpose of a business development company, as set forth in section 1 of this act, and with its approved business plan; or

(ii) In the case of a historic business development company, is to promote and/or enhance the special purpose and intent of a historic business development company as set forth in RCW 31.24.190, consistent with its approved business plan; and

(b) Which investment, at the time of its origination, has a reasonable likelihood of being used for such purpose.

(18) "Qualified loan" means any loan authorized by this chapter to be made by a business development company to a borrower;

(a) The principal intent of which:

(i) In the case of a general business development company, is to promote or enhance small business or improvement of the economy of one or more localities within this state, consistent with the general intent and purpose of this chapter, and with its approved business plan; or

(ii) In the case of a historic business development company, is to promote or enhance the special purpose and intent of a historic business development company as set forth in RCW 31.24.190, consistent with its approved business plan; and

(b) Which loan, at the time of its origination, has a reasonable likelihood of being used for such purpose.

(19) "Qualified loan participant" means a financial institution or other financial entity, as defined in this section, or any other person engaged in the business of lending, who participates as a funder of a qualified participation loan.

(20) "Qualified participation loan" means a loan to a borrower or business, in relation to a business development project, made, in whole or in part by qualified loan participants, which has been facilitated, arranged, or partially funded by a business development company.

(21) "Stock" means, in relation to a business development company, any stock or equity interest, of whatever class, in a business development company.

(22) "Stockholder" means, in relation to a stockholder of a business development company, any person authorized either by Title 23B RCW to be a shareholder of a corporation or by chapter 25.15 RCW and this chapter to hold an equity interest in a limited liability company, and may include, without limitation, a financial institution or other financial entity.

Sec. 3. RCW 31.24.020 and 1974 ex.s. c 16 s 1 are each amended to read as follows:

~~(Fifteen or more persons, a majority of whom shall be residents of this state, who may desire to create an industrial development corporation under the provisions of this chapter, for the purpose of promoting, developing and advancing the prosperity and economic welfare of the state and, to that end, to exercise the powers and privileges hereinafter provided, may be incorporated by filing in the office of the secretary of state, as hereinafter provided, articles of incorporation. The articles of incorporation shall contain:~~

~~(1) The name of the corporation, which shall include the words "Development Corporation of Washington."~~

~~(2) The location of the principal office of the corporation, but such corporation may have offices in such other places within the state as may be fixed by the board of directors.~~

~~(3) The purposes for which the corporation is founded, which shall be to promote, stimulate, develop and advance the business prosperity and economic welfare of Washington and its citizens; to encourage and assist through loans, investments or other business transactions in the location of new business and industry in this state and to rehabilitate and assist existing business and industry;~~

~~to stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of this state, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of citizens of this state; similarly, to cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural and recreational developments in this state; and to provide financing for the promotion, development, and conduct of all kinds of business activity in this state.~~

~~(4) The names and post office addresses of the members of the first board of directors, who, unless otherwise provided by the articles of incorporation or the bylaws, shall hold office for the first year of existence of the corporation or until their successors are elected and have qualified.~~

~~(5) Any provision which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation and any provision creating, dividing, limiting and regulating the powers of the corporation, the directors, stockholders or any class of the stockholders, including, but not limited to a list of the officers, and provisions governing the issuance of stock certificates to replace lost or destroyed certificates.~~

~~(6) The amount of authorized capital stock and the number of shares into which it is divided, the par value of each share and the amount of capital with which it will commence business and, if there is more than one class of stock, a description of the different classes; the names and post office addresses of the subscribers of stock and the number of shares subscribed by each. The aggregate of the subscription shall be the minimum amount of capital with which the corporation shall commence business which shall not be less than fifty thousand dollars. The articles of incorporation may also contain any provision consistent with the laws of this state for the regulation of the affairs of the corporation.~~

~~(7) The articles of incorporation shall be in writing, subscribed by not less than five natural persons competent to contract and acknowledged by each of the subscribers before an officer authorized to take acknowledgments and filed in the office of the secretary of state for approval. A duplicate copy so subscribed and acknowledged may also be filed.~~

~~(8) The articles of incorporation shall recite that the corporation is organized under the provisions of this chapter.~~

~~The secretary of state shall not approve articles of incorporation for a corporation organized under this chapter until a total of at least ten national banks, state banks, savings banks, industrial savings banks, federal savings and loan associations, domestic building and loan associations, or insurance companies authorized to do business within this state, or any combination thereof, have agreed in writing to become members of said corporation; and said written agreement shall be filed with the secretary of state with the articles of incorporation and the filing of same shall be a condition precedent to the approval of the articles of incorporation by the secretary of state. Whenever the articles of incorporation shall have been filed in the office of the secretary of state and approved by him and all taxes, fees and charges, have been paid, as required by law, the subscribers, their successors and assigns shall constitute a corporation, and said corporation shall then be authorized to commence~~

~~business, and stock thereof to the extent herein or hereafter duly authorized may from time to time be issued.))~~

~~(1) Five or more persons, a majority of whom are residents of this state and three of which are federally insured depository institutions, who desire to charter a business development company under this chapter, may incorporate as a business development company by filing with the director an application for a business development company charter, which application contains the following:~~

~~(a) A cover letter requesting a charter as a business development company under authority of this chapter, and specifying the purpose of the requested charter;~~

~~(b) A business plan satisfactory to the director, including a plan of assessment in the event that applicant seeks to assess stockholders, or a class of stockholders, as provided for in section 7 of this act;~~

~~(c) Proposed articles of incorporation, in form and substance consistent with the requirements of subsection (4) of this section;~~

~~(d) Proposed bylaws, in form and substance consistent with the requirements of this chapter;~~

~~(e) A filing fee and application review fee as established by the director consistent with section 5 of this act; and~~

~~(f) All other relevant information as is necessary to satisfy the director that such proposed business development company has a reasonable likelihood of (i) fulfilling the purposes of this chapter and (ii) operating in a safe and sound manner.~~

~~(2) In addition to all other requirements of an application, the director shall not grant final approval of an application for organization as a business development company under this chapter, and a business development company shall not commence business, until the applicant certifies to the satisfaction of the director, that a minimum amount of initial capital has been subscribed for, which minimum amount of capital is subject to the determination of the director, who may consider (a) the intended purpose of initial capital and (b) the suitability and sufficiency of the amount of initial capital in relation to the applicant's proposed business plan.~~

~~(3) The articles of incorporation must be in writing, signed by all the incorporators and their representatives and acknowledged before an officer authorized to take acknowledgments.~~

~~(4) The articles of incorporation shall contain:~~

~~(a) The name of the business development company, which must include the word "Development";~~

~~(b) A recital that the business development company is organized under this chapter;~~

~~(c) The location of the principal office of the business development company, but the company may have offices in other places within the state as may be fixed by the board of directors;~~

~~(d) The purposes for which the business development company is founded, which, except for a historic business development company as authorized by RCW 31.24.190, are:~~

~~(i) To promote, stimulate, develop, and advance the business prosperity and economic welfare of Washington and its citizens;~~

(ii) To encourage and assist through financing, investments, or other business transactions, in the location of new business and industry in this state and to rehabilitate and assist existing business and industry;

(iii) To stimulate and assist in the expansion of business activity which will tend to promote the business development and maintain the economic stability of this state, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of citizens of this state;

(iv) To cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural, and/or recreational developments in this state; and

(v) To provide financing for the promotion, development, and conduct of business activity in this state;

(e) The names and mailing addresses of the members of the first board of directors, who, unless otherwise provided by the articles of incorporation or the bylaws, shall hold office for the first year of existence of the business development company or until their successors are elected and have qualified;

(f) Any provision which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the business development company;

(g) Any provision creating, dividing, limiting, and regulating the powers of the business development company, the directors, stockholders or any class of the stockholders, including a designation of the officers, and provisions governing the issuance of stock certificates to replace lost or destroyed certificates;

(h) The amount of authorized capital stock and the number of shares into which it is divided, the par value of each share, and the amount of capital with which it will commence business;

(i) A statement indicating whether capital stock or any class of capital stock shall be assessable stock as part of a plan of assessment;

(j) The names and mailing addresses of the subscribers of stock and the number of shares subscribed by each;

(k) Any other provision consistent with the laws of this state for the regulation of the affairs of the business development company, and Title 23B RCW; and

(l) The signatures of each of the incorporators, who must be the same persons making application for a business development company charter as identified in subsection (1) of this section.

(5) The director has ninety days from submission of a completed application to approve it and issue a certificate of authority. If the director finds that the application is insufficient, the director may either disapprove the application or respond by specifying in writing what changes and modifications, consistent with this chapter, will be necessary to approve such application.

NEW SECTION. Sec. 4. A new section is added to chapter 31.24 RCW to read as follows:

(1) The director shall present the articles of incorporation, after approval by the director, to the secretary of state for filing.

(2) An applicant is not authorized to commence and maintain business as a business development company under this chapter until having received a

certificate of authority from the department to conduct business as a business development company.

NEW SECTION. Sec. 5. A new section is added to chapter 31.24 RCW to read as follows:

The director may, consistent with the requirements for banks under Title 30 RCW, collect from an applicant or business development company, as applicable, application fees, application review fees, periodic examination fees, and similar fees and charges, as may be reasonable for the safe and sound regulation and promotion of business development companies under this chapter.

Sec. 6. RCW 31.24.030 and 1991 c 72 s 49 are each amended to read as follows:

In furtherance of its purposes and in addition to the powers now or hereafter conferred on business corporations by ~~((the provisions of))~~ Title 23B RCW ~~((the corporation shall,))~~ and upon limited liability companies by chapter 25.15 RCW, as applicable, a business development company has, subject to the restrictions and limitations ~~((herem contained, have))~~ in this section, the following powers:

(1) To assess stockholders, or a class of stockholders, of the business development company, if authorized by the articles of incorporation and approved by the department pursuant to a plan of assessment as provided for in section 7 of this act;

(2) To make qualified loans to borrowers in relation to business development projects;

(3) To make qualified investments in businesses in relation to business development projects;

(4) To facilitate and arrange qualified participation loans by qualified loan participants to borrowers in relation to business development projects;

(5) To participate in the partial funding of qualified participation loans;

(6) To elect, appoint, and employ officers, agents, and employees;

(7) To make contracts and incur liabilities for any of the purposes of the ~~((corporation: PROVIDED, That the corporation))~~ business development company. However, a business development company shall not incur any secondary liability by way of guaranty or endorsement of the obligations of any person, firm, ~~((corporation, joint stock))~~ company, association, or trust, or in any other manner~~((:));~~

~~((2))~~ (8) To the extent permitted by other applicable law, to borrow money from ~~((its members and))~~ the federal small business administration and any other similar federal or state agency, for any of the purposes of ~~((the corporation))~~ a business development company;

(9) To borrow money from a financial institution or other financial entity;

(10) To issue ~~((therefor its))~~ bonds, debentures, notes, or other evidence of indebtedness, whether secured or unsecured, and to secure the same by mortgage, pledge, deed of trust, or other lien on its property, franchises, rights, and privileges of every kind and nature or any part ~~((thereof))~~ or interest therein, without securing stockholder ~~((or member))~~ approval~~((: PROVIDED, That no loan to the corporation shall be secured in any manner unless all outstanding loans to the corporation shall be secured equally and ratably in proportion to the unpaid balance of such loans and in the same manner.~~

~~(3) To make loans to any person, firm, corporation, joint stock company, association or trust, and to establish and regulate the terms and conditions with respect to any such loans and the charges for interest and service connected therewith: PROVIDED, That the corporation shall not approve any application for a loan unless and until the person applying for said loan shall show that he has applied for the loan through ordinary banking channels and that the loan has been refused by at least one bank or other financial institution;);~~

~~((4))~~ (11) To purchase, receive, hold, lease, or otherwise acquire, and to sell, convey, transfer, lease, or otherwise dispose of real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by the ~~((corporation from time to time))~~ business development company in the satisfaction of debts or enforcement of obligations(-);

~~((5))~~ (12) To acquire the good will, business, rights, real and personal property, and other assets, or any part thereof, or interest therein, of any persons, firms, corporations, ~~((joint stock companies))~~ limited liability companies, partnerships, limited partnerships, associations, or trusts, and to assume, undertake, or pay the obligations, debts, and liabilities of any such person, firm, corporation, ~~((joint stock company))~~ limited liability company, partnership, limited partnership, association, or trust;

(13) To acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments thereon or for the purpose of disposing of such real estate to others for the construction of industrial plants or other business establishments; and to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of industrial plants or business establishments(-);

~~((6))~~ (14) To acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the stock, shares, bonds, debentures, notes, or other securities and evidences of interest in, or indebtedness of, any person, firm, ~~((corporation, joint stock company))~~ limited liability company, partnership, limited partnership, association, or trust, and while the owner or holder thereof to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon(-);

~~((7))~~ (15) To mortgage, pledge, or otherwise encumber any property, right or things of value, acquired pursuant to the powers contained in subsections ~~((4), (5), or (6))~~ (11), (12), and (14) of this section, as security for the payment of any part of the purchase price thereof(-);

~~((8))~~ (16) To cooperate with and avail itself of the facilities and assistance programs of the United States department of commerce, the United States department of the treasury, the United States department of housing and urban development, the department of community, trade, and economic development, and any other similar state or federal governmental agencies; and to cooperate with and assist, and otherwise encourage organizations in the various communities of the state in the promotion, assistance, and development of the business prosperity and economic welfare of such communities or of this state or of any part thereof(-); and

~~((9))~~ (17) To do all acts and things necessary or convenient to carry out the powers expressly granted in this chapter.

NEW SECTION. Sec. 7. A new section is added to chapter 31.24 RCW to read as follows:

(1) As part of a business plan approved by the department, an applicant or business development company may seek to maintain capital for purposes of making qualified investments and qualified loans by periodically assessing its stockholders, or a class of stockholders, according to a plan of assessment and as agreed upon by affected stockholders by subscription or similar agreement.

(2) A plan of assessment may provide for:

(a) Stockholders, or a class of stockholders, making, when called upon, additional paid-in capital in exchange for additional equity; and/or

(b) Stockholders, or a class of stockholders, making, when called upon, loans or other debt financing to the business development company in exchange for an agreement of repayment.

(3) A plan of assessment shall provide for equal treatment by the board of directors of all stockholders, or members of a class of stockholders, subject to assessment.

(4) In the case of the approval of a plan of assessment, or the examination of the administration of an ongoing plan of assessment, in which assessable stock is held by a financial institution that is also regulated by the department, the department may condition its approval of the implementation or continued administration of a plan of assessment as to the affected financial institution on whether the safety and soundness of such financial institution is or may become unimpaired, or on whether an assessment of such financial institution has not or will not result, in a material adverse affect on the classification of such financial institution, or its lending or investment portfolio. The authority of the department pursuant to this subsection shall be in addition to all other authority of the department under this chapter or any other applicable law, and notwithstanding any other law to the contrary.

Sec. 8. RCW 31.24.070 and 1963 c 162 s 7 are each amended to read as follows:

(1) The stockholders ((and the members)) of the ((corporation shall)) business development company have the following powers ((of the corporation)):

((1)) (a) To determine the number of and elect directors as provided in RCW 31.24.090;

((2)) (b) To make, amend, and repeal bylaws;

((3)) (c) To amend ((this charter)) the articles of incorporation as provided in RCW 31.24.080;

((4)) (d) To dissolve the ((corporation)) company as provided in RCW 31.24.150;

((5)) (e) To do all things necessary or desirable to secure aid, assistance, loans, and other financing from any financial institutions, and from any agency established under ((the small business investment act of 1958, public law 85-699, 85th congress, or other similar)) federal laws ((now or hereafter enacted));

((6)) (f) To exercise such other ((of the)) powers ((of the corporation)) consistent with this chapter as may be conferred on the stockholders ((and the members)) by the bylaws.

(2) As to all matters requiring action by the stockholders ((and the members)) of the ((corporation, said)) business development company, the

stockholders (~~and said members~~) shall vote (~~separately thereon by classes~~), and, except as otherwise (~~herein~~) provided, such matters shall require the affirmative vote of a majority of the votes to which the stockholders present or represented at the meeting shall be entitled (~~and the affirmative vote of a majority of the votes to which the members present or represented at the meeting shall be entitled~~).

(3) Each stockholder shall have one vote, in person or by proxy, for each share of capital stock held (~~by him, and each member shall have one vote, in person or by proxy, except that any member having a loan limit of more than one thousand dollars shall have one additional vote, in person or by proxy, for each additional one thousand dollars which such member is authorized to have outstanding on loans to the corporation at any one time as determined under subsection (3)(b) of RCW 31.24.050~~).

(4) The capital stock of stockholders of a business development company is nonassessable, unless authorized by the department pursuant to a plan of assessment which has been approved by the director as provided for in section 7 of this act.

(5) Except as permitted by a plan of assessment providing for a class of assessable stock pursuant to section 7 of this act or as may otherwise be established by rule, all stock is a single class of voting common stock.

(6) The director may, subject to examination authority, determine that a policy of declaring dividends for stockholders by a particular business development company constitutes an unsafe and unsound practice as to such business development company. If the practice is determined to be unsafe and unsound, the director may instruct such a business development company to cease and desist the declaration and grant of such dividends.

(7) The department may, at the option of the director, adopt rules, consistent with principles of safety and soundness, that, while not prohibiting dividends to stockholders in general, may limit the amount of such dividends and the time and manner of declaring them.

NEW SECTION. Sec. 9. A new section is added to chapter 31.24 RCW to read as follows:

Unless part of an initial or amended business plan approved by the director, or as may otherwise be provided by rule adopted pursuant to RCW 31.24.120(3), the aggregate limit of qualified loans, qualified investment, and partial funding of qualified participation loans by a business development company to a single borrower or business, in relation to a business development project, shall not exceed twenty-five percent of the combined capital, surplus, and undivided profits of the business development company.

NEW SECTION. Sec. 10. A new section is added to chapter 31.24 RCW to read as follows:

(1) A business development company may not be a party to, nor engage in, an insider transaction, unless such an insider transaction is approved or ratified by its board of directors, exclusive of the vote of any interested director.

(2) Any insider transaction is subject to the examination and enforcement authority of the department under this chapter.

Sec. 11. RCW 31.24.080 and 1994 c 92 s 235 are each amended to read as follows:

~~((The articles of incorporation may be amended by the votes of the stockholders and the members of the corporation, voting separately by classes, and such amendments shall require approval by the affirmative vote of two-thirds of the votes to which the stockholders shall be entitled and two-thirds of the votes to which the members shall be entitled: PROVIDED, That no amendment of the articles of incorporation which is inconsistent with the general purposes expressed herein or which authorizes any additional class of capital stock to be issued, or which eliminates or curtails the right of the director to examine the corporation or the obligation of the corporation to make reports as provided in RCW 31.24.120, shall be made: PROVIDED, FURTHER, That no amendment of the articles of incorporation which increases the obligation of a member to make loans to the corporation, or makes any charge in the principal amount, interest rate, maturity date, or in the security or credit position of an outstanding loan of a member to the corporation, or affects a member's right to withdraw from membership as provided herein, or affects a member's voting rights as provided herein, shall be made without the consent of each membership affected by such amendment.~~

~~Within thirty days after any meeting at which an amendment of the articles of incorporation has been adopted, articles of amendment signed and sworn to by the president, treasurer, and a majority of the directors, setting forth such amendment and due adoption thereof, shall be submitted to the secretary of state, who shall examine them and if he finds that they conform to the requirements of this chapter, shall so certify and endorse his or her approval thereon. Thereupon, the articles of amendment shall be filed in the office of the secretary of state and no such amendment shall take effect until such articles of amendment shall have been filed as aforesaid.))~~

(1) The articles of incorporation of a business development company may be amended by the affirmative vote of two-thirds of the votes to which the stockholders are entitled, subject to the written approval of the director.

(2) Within thirty days after an amendment of the articles of incorporation has been adopted and approved by the director, the articles of amendment shall be filed in the office of the secretary of state by the director. An amendment shall not take effect until it has been so filed.

Sec. 12. RCW 31.24.090 and 1974 ex.s. c 16 s 3 are each amended to read as follows:

(1) The business and affairs of ((the corporation)) a business development company shall be managed and conducted by a board of directors, a president, ((a vice president,)) a secretary, and such other officers and such agents as the ((corporation)) company by its bylaws shall authorize. A single authorized individual may jointly hold the offices of secretary and treasurer. The president and the treasurer may not be the same person.

(2) The board of directors shall consist of such number, not less than ((eleven)) five nor more than ((twenty-one)) nine, as shall be determined in the first instance by the incorporators and thereafter annually by ((the members and)) the stockholders of the ((corporation)) business development company. The board of directors;

(a) May exercise all the powers of the ((corporation)) business development company, except ((such as are)) those conferred upon the stockholders by law or

by the bylaws of the ~~((corporation upon the stockholders or members and))~~ business development company; and

(b) Shall choose and appoint all the agents and officers of the ~~((corporation))~~ business development company and fill all vacancies except vacancies in the office of director which shall be filled as ~~((hereinafter))~~ provided in subsections (3) and (4) of this section.

(3) The board of directors shall be elected in the first instance by the incorporators and thereafter at the annual meeting, the day and month of which shall be established by the bylaws ~~((of the corporations))~~, or, if no annual meeting shall be held in the year of incorporation, then within ninety days after the approval of the articles of incorporation at a special meeting as ~~((hereinafter))~~ provided in subsection (4) of this section.

(4) At each annual meeting, or at each special meeting held as provided in subsection (3) of this section, the ~~((members))~~ stockholders of ~~((the corporation))~~ a business development company shall elect ~~((two-thirds))~~ all of the board of directors ~~((and the stockholders shall elect the remaining directors))~~. The directors shall hold office until the next annual meeting of the ~~((corporation))~~ business development company, or special meeting ~~((held in lieu of the annual meeting))~~. The authority of the directors commences immediately after the election and continues until their successors are elected and qualified, unless sooner removed in accordance with the provisions of the bylaws. Any vacancy in the office of a director ~~((elected by the members))~~ shall be filled by the remaining directors ~~((elected by the members, and any vacancy in the office of a director elected by the stockholders shall be filled by the directors elected by the stockholders))~~ at a regular meeting or special meeting called for that purpose. The director appointed to fill such vacancy shall serve until the next annual meeting, resignation, or removal according to law.

(5) Directors and officers shall not be responsible for losses unless the same shall have been occasioned by the ~~((willful))~~ gross negligence or willful misconduct of such directors and officers.

(6) The board of directors shall conduct regular meetings at least every quarter and may hold special meetings as called for pursuant to the bylaws.

(7) Unless otherwise restricted by the articles of incorporation or bylaws, members of the board of directors of a business development company or any committee designated by the board of directors may participate in a meeting of such board or committee by means of a conference telephone or similar communications equipment, in which all persons participating in the meeting can hear each other at the same time. Participation by such means shall constitute presence, in person, at a meeting.

Sec. 13. RCW 31.24.100 and 1963 c 162 s 10 are each amended to read as follows:

~~((Each year the corporation shall set apart as earned surplus not less than ten percent of its net earnings for the preceding fiscal year until such surplus shall be equal in value to one-half of the amount paid in on the capital stock then outstanding. Whenever the amount of surplus established herein shall become impaired, it shall be built up again to the required amount in the manner provided for its original accumulation. Net earnings and surplus shall be determined by the board of directors, after providing for such reserves as said~~

~~directors deem desirable, and the determination of the directors made in good faith shall be conclusive on all persons.))~~

(1) A business development company shall maintain an amount of minimum capital, surplus, and undivided profits that, based upon the determination of the director, shall be deemed safe and sound for each business development company. However, the minimum ratio of paid-in capital to total assets, inclusive of all qualified loans and qualified investments, shall be and remain no less than eight percent.

(2) Subject to subsection (1) of this section, minimum capital, surplus, undivided profits, and net earnings shall be determined by the board of directors, subject to the exercise of prudent business judgment.

Sec. 14. RCW 31.24.110 and 1963 c 162 s 11 are each amended to read as follows:

~~((The corporation shall not deposit any of its funds in any banking institution unless such institution has been designated as a depository by a vote of a majority of the directors present at an authorized meeting of the board of directors, exclusive of any director who is an officer or director of the depository so designated. The corporation))~~ A business development company shall not receive money on deposit.

Sec. 15. RCW 31.24.120 and 1994 c 92 s 236 are each amended to read as follows:

~~((The corporation shall be examined at least once annually by the director and shall make reports of its condition not less than annually to the director and more frequently upon call of the director, who in turn shall make copies of such reports available to the state insurance commissioner and the governor; and the corporation shall also furnish such other information as may from time to time be required by the director and secretary of state. The corporation shall pay the actual cost of the examinations. The director shall exercise the same power and authority over corporations organized under this chapter as is now exercised over banks and trust companies by the provisions of the Title 30 RCW, where the provisions of Title 30 RCW are not in conflict with this chapter.))~~

(1) The director shall exercise the same power and authority over business development companies organized under this chapter as exercised over banks and trust companies under Title 30 RCW, to the extent Title 30 RCW does not conflict with this chapter.

(2) A business development company shall be examined at least once every twenty-four months by the director and shall make reports of its condition not less than annually to the director, and more frequently in the discretion of the director. The business development company shall pay the actual cost of the examinations.

(3) To assure the safety and soundness of business development companies and to fulfill the purposes of this chapter, the director may, by examination, rule, and interpretation, establish and enforce safety and soundness and examination standards, for all operations and activities of and related to business development companies.

Sec. 16. RCW 31.24.130 and 1963 c 162 s 13 are each amended to read as follows:

(1) The first meeting of ~~((the corporation))~~ a business development company shall be called by a notice signed by three or more of the incorporators, stating the time, place, and purpose of the meeting, a copy of which notice shall be mailed, or delivered, to each incorporator at least five days before the day appointed for the meeting. ~~((Said))~~ The first meeting may be held without such notice upon agreement in writing to that effect signed by all the incorporators. ~~((There shall be recorded in the minutes of the meeting))~~ A copy of ~~((said))~~ the notice or ~~((of such))~~ unanimous agreement of the incorporators shall be recorded in the minutes of the first meeting.

(2) At ~~((such))~~ the first meeting, the incorporators shall ~~((organize by the choice, by ballot, of a temporary clerk; by the adoption of bylaws, by the election by ballot of directors; and by action upon such other matters within the powers of the corporation as the incorporators may see fit.)),~~ consistent with Title 23B RCW:

(a) Choose a temporary recording secretary;

(b) Adopt bylaws;

(c) Elect directors; and

(d) Engage in other business within the powers of the business development company as the incorporators present may see fit.

(3) Upon being sworn in at the first meeting, the temporary ~~((clerk shall be sworn and))~~ recording secretary shall make and attest a record of the proceedings. ~~((Ten))~~

(4) At least five of the incorporators shall ~~((be))~~ constitute a quorum for the transaction of business at a first meeting.

Sec. 17. RCW 31.24.140 and 1963 c 162 s 14 are each amended to read as follows:

Unless otherwise provided in the articles of incorporation, the period of duration of ~~((the corporation))~~ a business development company shall be perpetual, subject, however, to the right of the stockholders ~~((and the members))~~ to dissolve the ~~((corporation prior to the expiration of said period))~~ business development company as provided in RCW 31.24.150.

Sec. 18. RCW 31.24.150 and 1991 c 72 s 50 are each amended to read as follows:

~~((The corporation may))~~ A business development company, upon the affirmative vote of two-thirds of the votes ~~((to which))~~ of the stockholders entitled to vote their shares, shall ~~((be entitled and two-thirds of the votes to which the member shall be entitled))~~ dissolve ~~((said corporation))~~ the business development company as provided by Title 23B RCW, ~~((insofar as))~~ to the extent that Title 23B RCW is not in conflict with ~~((the provisions of))~~ this chapter. Upon ~~((any))~~ dissolution of the ~~((corporation))~~ business development company, none of the ~~((corporation's))~~ business development company's assets shall be distributed to the stockholders until all sums due the ~~((members of the corporation as))~~ creditors thereof have been paid in full.

Sec. 19. RCW 31.24.170 and 1963 c 162 s 17 are each amended to read as follows:

Any ~~((corporation))~~ business development company organized under ~~((the provisions of))~~ this chapter shall be a state development company, as ~~((defined in))~~ authorized under Title V of the small business investment act of 1958,

Public Law 85-699, (~~85th congress~~) 15 U.S.C. Sec. 695, as amended, or any other similar federal legislation(~~, and shall be authorized to operate on a statewide basis~~).

Sec. 20. RCW 31.24.190 and 1973 1st ex.s. c 90 s 2 are each amended to read as follows:

(1) In addition to the purposes specified in RCW 31.24.020(~~(2) [(3)] an industrial development corporation~~) a historic business development company may be formed for one or more of the following purposes:

(a) To encourage and stimulate the preservation of historic buildings or historic commercial areas or neighborhoods by returning them to economically productive uses which are compatible with or enhance the historic character of such buildings (~~(or)~~), commercial areas, or neighborhoods;

(b) To stimulate and assist in the development of business or other activities which have an impact upon the preservation of historic buildings (~~(or)~~), commercial areas, or neighborhoods;

(c) To cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of historical preservation activities; and

(d) To provide financing through loans, investments of other business transactions for the promotion, development, and conduct of all kinds of business activity (~~which~~) that encourages or relates to historic preservation. (~~An industrial development corporation created to carry out the purposes of this section~~)

(2) A historic business development company shall not engage in the broad economic and business promotion activities permitted by (~~RCW 31.24.020(3) which are not related to the purposes of this section. Any such industrial development corporation shall in all other respects be subject to the provisions of this chapter~~) a general business development company.

(3) A general business development company may, in addition to all other activities permitted by this chapter, engage in those activities specifically permitted of a historic business development company organized under subsection (1) of this section.

NEW SECTION. Sec. 21. A new section is added to chapter 31.24 RCW to read as follows:

Chapter 30.44 RCW applies to the insolvency and liquidation of a business development company organized under this chapter.

NEW SECTION. Sec. 22. A new section is added to chapter 31.24 RCW to read as follows:

The director has the same power and authority to exercise supervisory direction and conservatorship of, and to issue cease and desist orders upon, a business development company organized under this chapter, as the director has in regard to a bank under Title 30 RCW.

NEW SECTION. Sec. 23. A new section is added to chapter 31.24 RCW to read as follows:

(1) Subject to written approval of the director, one or more general business development companies may merge into or consolidate with each other consistent with chapter 30.49 RCW.

(2) Upon ninety days advance application to and written approval of the director, a historic business development company may convert its charter to that of a general business development company. An application for conversion shall contain a cover letter requesting conversion, the proposed articles of amendments and bylaws amendments, a modified business plan, and other relevant information in form and substance similar to the requirements of a de novo application for a general business development company as provided in RCW 31.24.020. In making a determination of whether to approve or deny such a conversion, the director shall consider:

(a) The historic performance and safety and soundness of the historic business development company;

(b) Whether the conversion to a general business development company will have a likelihood of continuing to fulfill the purposes of this chapter;

(c) Whether the applicant will have a likelihood of remaining safe and sound as a general business development company and pursuant to its proposed modified business plan; and

(d) Whether the proposed conversion would serve, or otherwise not detract from, the needs and convenience of the community served by the business development company.

NEW SECTION. Sec. 24. A new section is added to chapter 31.24 RCW to read as follows:

(1) Notwithstanding any other provision of this chapter, a development credit corporation created under chapter 31.20 RCW, or any other company incorporated under Title 23B RCW, may convert to a business development company by filing an application with the department and receiving written approval of the director within ninety days of the date the application is received.

(2) In addition to all other requirements of a business development company pursuant to this chapter, the director shall not approve an application for conversion of a development credit corporation unless:

(a) A minimum of three stockholders of such corporation are financial institutions;

(b) The majority of outstanding shares of common stock of such corporation are held by financial institutions;

(c) The articles of incorporation of such a corporation are amended to conform to the requirements of RCW 31.24.020;

(d) The bylaws of such a corporation are amended to conform to the requirements of this chapter;

(e) The business plan of the corporation is consistent with the requirements of this chapter and has been approved by the director; and

(f) The corporation otherwise satisfies the director that all other requirements of a business development company under this chapter have been met. However, such a corporation is not required to have had a minimum of five incorporators at the time it originally was incorporated with the secretary of state, as provided for in RCW 31.24.020(1).

(3) Upon approval by the director of the corporation's application for conversion, the amended articles of incorporation, as approved by the director, shall be filed by the director with the secretary of state in the same manner provided for the filing of initial articles of incorporation under section 4 of this act. Such corporation shall not commence operation as a business development

company until the director has issued such corporation a certificate of authority to conduct business as a business development company.

NEW SECTION. Sec. 25. A new section is added to chapter 31.24 RCW to read as follows:

The existing privileges, immunities, and requirements of confidentiality and disclosure with respect to examination records and information obtained by the director in conducting examinations, which are applicable to banks, as set forth in RCW 30.04.075, apply to examination records and information obtained by the director in conducting examinations of business development companies organized under this chapter.

NEW SECTION. Sec. 26. A new section is added to chapter 31.24 RCW to read as follows:

Notwithstanding any other provision of this chapter, a business development company organized under this chapter may be chartered as a limited liability company, or may convert to doing business as a limited liability company, to the same extent and subject to the same terms and conditions as permitted for a bank organized under Title 30 RCW, including, without limitation, requirements related to director approval, operational matters, corporate governance, and restrictions on complete dissociation. However:

(1) The rights of stockholders, as defined in this chapter, supersede the provisions of Title 30 RCW to the contrary; and

(2) The limited liability company agreement, or other governing charter document of the limited liability company, must contain the same or substantially similar recitals as required in RCW 31.24.020 with respect to business purpose, organizational authority, board of directors, management, and limitations on liability of directors and officers.

NEW SECTION. Sec. 27. A new section is added to chapter 31.24 RCW to read as follows:

(1) An applicant may apply simultaneously for both a business development company charter, under this chapter, and for a license as a nondepository lender of federally guaranteed small business loans, under chapter 31.40 RCW.

(2) An applicant may apply simultaneously for both a business development company charter, under this chapter, and for a license as a nondepository lender of guaranteed agricultural loans, under chapter 31.35 RCW.

(3) Notwithstanding any provisions of this chapter or chapter 31.35 or 31.40 RCW, applications presented to the director as set forth in subsections (1) and (2) of this section shall be considered and evaluated by the director as one application, and an applicant:

(a) If granted a business development company charter based on a joint application as provided in subsections (1) and (2) of this section, shall pay fees and charges only as required by this chapter and be subject to joint and simultaneous application review and periodic examination; and

(b) If denied a business development company charter when having made a joint application as provided in subsections (1) and (2) of this section, shall pay fees and charges only as required by this chapter.

(4) An existing business development company organized under this chapter may apply for either a license, under chapter 31.35 RCW, or a license, under chapter 31.40 RCW, or both; and, if granted, the business development company,

as a dual licensee, shall then pay fees and charges only as required by this chapter and be subject to joint and simultaneous application review and periodic examination.

NEW SECTION. Sec. 28. A new section is added to chapter 31.35 RCW to read as follows:

Section 27 (2) through (4) of this act supersede any contrary provision of this chapter.

NEW SECTION. Sec. 29. A new section is added to chapter 31.40 RCW to read as follows:

Section 27 (1), (3), and (4) of this act supersede any contrary provision of this chapter.

Sec. 30. RCW 31.40.090 and 1994 c 92 s 268 are each amended to read as follows:

(1) The director shall examine each licensee not less than once ~~((each year))~~ every twenty-four months.

(2) The director may with or without notice and at any time during regular business hours examine a licensee or a subsidiary of a licensee.

(3) A director, officer, or employee of a licensee or of a subsidiary of a licensee being examined by the director or a person having custody of any of the books, accounts, or records of the licensee or of the subsidiary shall otherwise facilitate the examination so far as it is in his or her power to do so.

(4) If in the director's opinion it is necessary in the examination of a licensee, or of a subsidiary of a licensee, the director may retain any certified public accountant, attorney, appraiser, or other person to assist the director. The licensee being examined shall pay the fees of a person retained by the director under this subsection.

NEW SECTION. Sec. 31. A new section is added to chapter 31.24 RCW to read as follows:

The director has broad administrative authority and discretion to adopt rules to carry out the purposes of this chapter.

NEW SECTION. Sec. 32. A new section is added to chapter 31.24 RCW to read as follows:

This chapter shall be known and may be cited as the "business development company act."

NEW SECTION. Sec. 33. The following acts or parts of acts are each repealed:

(1) RCW 31.24.040 (Organizations authorized to acquire, hold and dispose of corporate bonds, securities, stock, etc.—Membership—Rights and powers—Limitation on stock ownership) and 1963 c 162 s 4;

(2) RCW 31.24.050 (Membership by financial institutions—Loans to corporation by members—Limitations—Interest) and 1974 ex.s. c 16 s 2, 1973 1st ex.s. c 90 s 1, & 1963 c 162 s 5;

(3) RCW 31.24.060 (Membership—Duration—Withdrawal) and 1963 c 162 s 6; and

(4) RCW 31.24.180 (Calendar year adopted as fiscal year) and 1963 c 162 s 18.

Passed by the Senate February 13, 2006.
Passed by the House February 28, 2006.
Approved by the Governor March 17, 2006.
Filed in Office of Secretary of State March 17, 2006.

CHAPTER 88

[Engrossed House Bill 3192]

REAL PROPERTY—STREET, SEWER PROJECT REIMBURSEMENT

AN ACT Relating to reimbursement by property owners for street, road, and water or sewer projects; and amending RCW 35.72.020, 35.91.020, and 57.22.020.

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

Sec. 1. RCW 35.72.020 and 1983 c 126 s 2 are each amended to read as follows:

(1) Except as otherwise provided in subsection (2) of this section, the contract may provide for the partial reimbursement to the owner or the owner's assigns for a period not to exceed fifteen years of a portion of the costs of the project by other property owners who:

~~((1))~~ (a) Are determined to be within the assessment reimbursement area pursuant to RCW 35.72.040;

~~((2))~~ (b) Are determined to have a reimbursement share based upon a benefit to the property owner pursuant to RCW 35.72.030;

~~((3))~~ (c) Did not contribute to the original cost of the street project; and

~~((4))~~ (d) Subsequently develop their property within the ~~((fifteen-year))~~ period of time that the contract is effective and at the time of development were not required to install similar street projects because they were already provided for by the contract.

Street projects subject to reimbursement may include design, grading, paving, installation of curbs, gutters, storm drainage, sidewalks, street lighting, traffic controls, and other similar improvements, as required by the street standards of the city, town, or county.

(2)(a) The contract may provide for an extension of the fifteen-year reimbursement period for a time not to exceed the duration of any moratorium, phasing ordinance, concurrency designation, or other governmental action that prevents making applications for, or the approval of, any new development within the benefit area for a period of six months or more.

(b) Upon the extension of the reimbursement period pursuant to (a) of this subsection, the contract must specify the duration of the contract extension and must be filed and recorded with the county auditor. Property owners who are subject to the reimbursement obligations under subsection (1) of this section shall be notified by the appropriate county, city, or town of the extension filed under this subsection.

(3) Each contract shall include a provision requiring that every two years from the date the contract is executed a property owner entitled to reimbursement under this section provide the appropriate county, city, or town with information regarding the current contract name, address, and telephone number of the person, company, or partnership that originally entered into the contract. If the property owner fails to comply with the notification requirements of this subsection within sixty days of the specified time, then the

contracting county, city, or town may collect any reimbursement funds owed to the property owner under the contract. Such funds must be deposited in the capital fund of the county, city, or town.

Sec. 2. RCW 35.91.020 and 1999 c 153 s 38 are each amended to read as follows:

(1) Except as provided under subsection (2) of this section, the governing body of any city, town, county, water-sewer district, or drainage district, hereinafter referred to as a "municipality" may contract with owners of real estate for the construction of storm, sanitary, or combination sewers, pumping stations, and disposal plants, water mains, hydrants, reservoirs, or appurtenances, hereinafter called "water or sewer facilities," within their boundaries or (except for counties) within ten miles from their corporate limits connecting with the public water or sewerage system to serve the area in which the real estate of such owners is located, and to provide for a period of not to exceed fifteen years for the reimbursement of such owners and their assigns by any owner of real estate who did not contribute to the original cost of such water or sewer facilities and who subsequently tap onto or use the same of a fair prora share of the cost of the construction of said water or sewer facilities, including not only those directly connected thereto, but also users connected to laterals or branches connecting thereto, subject to such reasonable rules and regulations as the governing body of such municipality may provide or contract, and notwithstanding the provisions of any other law.

(2)(a) The contract may provide for an extension of the fifteen-year reimbursement period for a time not to exceed the duration of any moratorium, phasing ordinance, concurrency designation, or other governmental action that prevents making applications for, or the approval of, any new development within the benefit area for a period of six months or more.

(b) Upon the extension of the reimbursement period pursuant to (a) of this subsection, the contract must specify the duration of the contract extension and must be filed and recorded with the county auditor. Property owners who are subject to the reimbursement obligations under subsection (1) of this section shall be notified by the contracting municipality of the extension filed under this subsection.

(3) Each contract shall include a provision requiring that every two years from the date the contract is executed a property owner entitled to reimbursement under this section provide the contracting municipality with information regarding the current contract name, address, and telephone number of the person, company, or partnership that originally entered into the contract. If the property owner fails to comply with the notification requirements of this subsection within sixty days of the specified time, then the contracting municipality may collect any reimbursement funds owed to the property owner under the contract. Such funds must be deposited in the capital fund of the municipality.

(4) To the extent it may require in the performance of such contract, such municipality may install said water or sewer facilities in and along the county streets in the area to be served as hereinabove provided, subject to such reasonable requirements as to the manner of occupancy of such streets as the county may by resolution provide. The provisions of such contract shall not be effective as to any owner of real estate not a party thereto unless such contract

has been recorded in the office of the county auditor of the county in which the real estate of such owner is located prior to the time such owner taps into or connects to said water or sewer facilities.

Sec. 3. RCW 57.22.020 and 1996 c 230 s 802 are each amended to read as follows:

(1) Except as otherwise provided in subsection (2) of this section, the contract shall also provide, subject to the terms and conditions in this section, for the reimbursement to the owner or the owner's assigns for a period not to exceed fifteen years of a portion of the costs of the facilities constructed pursuant to such contract from connection charges received by the district from other property owners who subsequently connect to or use the facilities within the ((fifteen-year)) period of time that the contract is effective and who did not contribute to the original cost of such facilities.

(2)(a) The contract may provide for an extension of the fifteen-year reimbursement period for a time not to exceed the duration of any moratorium, phasing ordinance, concurrency designation, or other governmental action that prevents making applications for, or the approval of, any new development for a period of six months or more within the benefit area of the system extensions authorized under this chapter.

(b) Upon the extension of the reimbursement period pursuant to (a) of this subsection, the contract must specify the duration of the contract extension and must be filed and recorded with the county auditor. Property owners who are subject to the reimbursement obligations under subsection (1) of this section shall be notified by the water-sewer district of the extension filed under this subsection.

(3) Each contract shall include a provision requiring that every two years from the date the contract is executed a property owner entitled to reimbursement under this section provide the water-sewer district with information regarding the current contract name, address, and telephone number of the person, company, or partnership that originally entered into the contract. If the property owner fails to comply with the notification requirements of this subsection within sixty days of the specified time, then the water-sewer district may collect any reimbursement funds owed to the property owner under the contract. Such funds must be deposited in the capital fund of the water-sewer district.

Passed by the House February 13, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 17, 2006.

Filed in Office of Secretary of State March 17, 2006.

CHAPTER 89

[Substitute House Bill 3185]

WAGE PAYMENT REQUIREMENTS—VIOLATIONS

AN ACT Relating to violations of wage payment requirements; adding new sections to chapter 49.48 RCW; creating a new section; and prescribing penalties.

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

NEW SECTION. Sec. 1. DEFINITIONS. The definitions in this section apply throughout this section and sections 2 through 5 of this act:

(1) "Citation" means a written determination by the department that a wage payment requirement has been violated.

(2) "Department" means the department of labor and industries.

(3) "Determination of compliance" means a written determination by the department that wage payment requirements have not been violated.

(4) "Director" means the director of the department of labor and industries, or the director's authorized representative.

(5) "Employee" has the meaning provided in: (a) RCW 49.46.010 for purposes of a wage payment requirement set forth in RCW 49.46.020 or 49.46.130; and (b) RCW 49.12.005 for purposes of a wage payment requirement set forth in RCW 49.48.010, 49.52.050, or 49.52.060.

(6) "Employer" has the meaning provided in RCW 49.46.010 for purposes of a wage payment requirement set forth in RCW 49.46.020, 49.46.130, 49.48.010, 49.52.050, or 49.52.060.

(7) "Notice of assessment" means a written notice by the department that, based on a citation, the employer shall pay the amounts assessed under section 2 of this act.

(8) "Wage" has the meaning provided in RCW 49.46.010.

(9) "Wage complaint" means a complaint from an employee to the department that asserts that an employer has violated one or more wage payment requirements and that is reduced to writing.

(10) "Wage payment requirement" means a wage payment requirement set forth in RCW 49.46.020, 49.46.130, 49.48.010, 49.52.050, or 49.52.060, and any related rules adopted by the department.

(11) "Willful" means a knowing and intentional action that is neither accidental nor the result of a bona fide dispute, as evaluated under the standards applicable to wage payment violations under RCW 49.52.050(2).

NEW SECTION. Sec. 2. CITATIONS AND NOTICES OF ASSESSMENT—CIVIL PENALTIES. (1) If an employee files a wage complaint with the department, the department shall investigate the wage complaint. Unless otherwise resolved, the department shall issue either a citation and notice of assessment or a determination of compliance: (a) No later than sixty days after the date on which the department received the wage complaint, unless the department extends this time period for good cause; and (b) no later than three years after the date on which the cause of action accrued, unless a longer period of time applies under law. Such cause of action for wage claims accrues from the date when the wages are due. The department shall send the citation and notice of assessment or the determination of compliance to both the employer and the employee by service of process or certified mail to their last known addresses.

(2) If the department determines that an employer has violated a wage payment requirement and issues to the employer a citation and notice of assessment, the department may order the employer to pay employees all wages owed, including interest of one percent per month on all wages owed, to the employee.

(3) If the department determines that the violation of the wage payment requirement was a willful violation, the department also may order the employer to pay the department a civil penalty as specified in (a) of this subsection.

(a) A civil penalty for a willful violation of a wage payment requirement shall be not less than five hundred dollars or an amount equal to ten percent of the total amount of unpaid wages, whichever is greater. The maximum civil penalty for a willful violation of a wage payment requirement shall be twenty thousand dollars.

(b) The department may not assess a civil penalty if the employer reasonably relied on: (i) A rule related to any wage payment requirement; (ii) a written order, ruling, approval, opinion, advice, determination, or interpretation of the director; or (iii) an interpretive or administrative policy issued by the department and filed with the office of the code reviser. In accordance with the department's retention schedule obligations under chapter 40.14 RCW, the department shall maintain a complete and accurate record of all written orders, rulings, approvals, opinions, advice, determinations, and interpretations for purposes of determining whether an employer is immune from civil penalties under (b)(ii) of this subsection.

(c) The department shall waive any civil penalty assessed against an employer under this section if the director determines that the employer has provided payment to the employee of all wages that the department determined that the employer owed to the employee, including interest, within ten business days of the employer's receipt of the citation and notice of assessment from the department.

(d) The department may waive at any time a civil penalty assessed under this section, in whole or in part, if the director determines that the employer paid all wages owed to an employee.

(e) The department shall deposit civil penalties paid under this section in the supplemental pension fund established under RCW 51.44.033.

(4) Upon payment by an employer, and acceptance by an employee, of all wages and interest assessed by the department in a citation and notice of assessment issued to the employer, the fact of such payment by the employer, and of such acceptance by the employee, shall: (a) Constitute a full and complete satisfaction by the employer of all specific wage payment requirements addressed in the citation and notice of assessment; and (b) bar the employee from initiating or pursuing any court action or other judicial or administrative proceeding based on the specific wage payment requirements addressed in the citation and notice of assessment. The citation and notice of assessment shall include a notification and summary of the specific requirements of this subsection.

NEW SECTION. Sec. 3. ADMINISTRATIVE APPEALS. (1) A person, firm, or corporation aggrieved by a citation and notice of assessment or a determination of compliance issued by the department under section 2 of this act may appeal the citation and notice of assessment or the determination of compliance to the director by filing a notice of appeal with the director within thirty days of the department's issuance of the citation and notice of assessment or the determination of compliance. A citation and notice of assessment or a determination of compliance not appealed within thirty days is final and binding, and not subject to further appeal.

(2) A notice of appeal filed with the director under this section shall stay the effectiveness of the citation and notice of assessment or the determination of compliance pending final review of the appeal by the director as provided for in chapter 34.05 RCW.

(3) Upon receipt of a notice of appeal, the director shall assign the hearing to an administrative law judge of the office of administrative hearings to conduct the hearing and issue an initial order. The hearing and review procedures shall be conducted in accordance with chapter 34.05 RCW, and the standard of review by the administrative law judge of an appealed citation and notice of assessment or an appealed determination of compliance shall be de novo. Any party who seeks to challenge an initial order shall file a petition for administrative review with the director within thirty days after service of the initial order. The director shall conduct administrative review in accordance with chapter 34.05 RCW.

(4) The director shall issue all final orders after appeal of the initial order. The final order of the director is subject to judicial review in accordance with chapter 34.05 RCW.

(5) Orders that are not appealed within the time period specified in this section and chapter 34.05 RCW are final and binding, and not subject to further appeal.

(6) An employer who fails to allow adequate inspection of records in an investigation by the department under this chapter within a reasonable time period may not use such records in any appeal under this section to challenge the correctness of any determination by the department of wages owed.

NEW SECTION. Sec. 4. ELECTION OF REMEDY. (1) An employee who has filed a wage complaint with the department may elect to terminate the department's administrative action, thereby preserving any private right of action, by providing written notice to the department within ten business days after the employee's receipt of the department's citation and notice of assessment.

(2) If the employee elects to terminate the department's administrative action: (a) The department shall immediately discontinue its action against the employer; (b) the department shall vacate a citation and notice of assessment already issued by the department to the employer; and (c) the citation and notice of assessment, and any related findings of fact or conclusions of law by the department, and any payment or offer of payment by the employer of the wages, including interest, assessed by the department in the citation and notice of assessment, shall not be admissible in any court action or other judicial or administrative proceeding.

(3) Nothing in this section shall be construed to limit or affect: (a) The right of any employee to pursue any judicial, administrative, or other action available with respect to an employer; (b) the right of the department to pursue any judicial, administrative, or other action available with respect to an employee that is identified as a result of a wage complaint; or (c) the right of the department to pursue any judicial, administrative, or other action available with respect to an employer in the absence of a wage complaint. For purposes of this subsection, "employee" means an employee other than an employee who has filed a wage complaint with the department and who thereafter has elected to terminate the department's administrative action as provided in subsection (1) of this section.

NEW SECTION. Sec. 5. COLLECTION PROCEDURES. (1) After a final order is issued under section 3 of this act, if an employer defaults in the payment of: (a) Any wages determined by the department to be owed to an employee, including interest; or (b) any civil penalty ordered by the department under section 2 of this act, the director may file with the clerk of any county within the state a warrant in the amount of the payment plus any filing fees. The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the employer mentioned in the warrant, the amount of payment due on it plus any filing fees, and the date when the warrant was filed. The aggregate amount of the warrant as docketed becomes a lien upon the title to, and interest in, all real and personal property of the employer against whom the warrant is issued, the same as a judgment in a civil case docketed in the office of the clerk. The sheriff shall proceed upon the warrant in all respects and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgment in a court of competent jurisdiction. The warrant so docketed is sufficient to support the issuance of writs of garnishment in favor of the state in a manner provided by law in case of judgment, wholly or partially unsatisfied. The clerk of the court is entitled to a filing fee which will be added to the amount of the warrant. A copy of the warrant shall be mailed to the employer within three days of filing with the clerk.

(2)(a) The director may issue to any person, firm, corporation, other entity, municipal corporation, political subdivision of the state, a public corporation, or any agency of the state, a notice and order to withhold and deliver property of any kind when he or she has reason to believe that there is in the possession of the person, firm, corporation, other entity, municipal corporation, political subdivision of the state, public corporation, or agency of the state, property that is or will become due, owing, or belonging to an employer upon whom a notice of assessment has been served by the department for payments or civil penalties due to the department. The effect of a notice and order is continuous from the date the notice and order is first made until the liability out of which the notice and order arose is satisfied or becomes unenforceable because of lapse of time. The department shall release the notice and order when the liability out of which the notice and order arose is satisfied or becomes unenforceable by reason of lapse of time and shall notify the person against whom the notice and order was made that the notice and order has been released.

(b) The notice and order to withhold and deliver must be served by the sheriff of the county or by the sheriff's deputy, by certified mail, return receipt requested, or by the director. A person, firm, corporation, other entity, municipal corporation, political subdivision of the state, public corporation, or agency of the state upon whom service has been made shall answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice and order. Upon service of the notice and order, if the party served possesses any property that may be subject to the claim of the department, the party shall promptly deliver the property to the director. The director shall hold the property in trust for application on the employer's indebtedness to the department, or for return without interest, in accordance with a final determination of a petition for

review. In the alternative, the party shall furnish a good and sufficient surety bond satisfactory to the director conditioned upon final determination of liability. If a party served and named in the notice fails to answer the notice within the time prescribed in this section, the court may render judgment by default against the party for the full amount claimed by the director in the notice, together with costs. If a notice is served upon an employer and the property subject to it is wages, the employer may assert in the answer all exemptions provided for by chapter 6.27 RCW to which the wage earner is entitled.

(3) In addition to the procedure for collection of wages owed, including interest, and civil penalties as set forth in this section, the department may recover wages owed, including interest, and civil penalties assessed under section 2 of this act in a civil action brought in a court of competent jurisdiction of the county where the violation is alleged to have occurred.

(4) This section does not affect other collection remedies that are otherwise provided by law.

NEW SECTION. Sec. 6. RULE-MAKING AUTHORITY. The director may adopt rules to carry out the purposes of sections 1 through 5 of this act.

NEW SECTION. Sec. 7. CODIFICATION. Sections 1 through 6 of this act are each added to chapter 49.48 RCW.

NEW SECTION. Sec. 8. CAPTIONS. Captions used in this act are not any part of the law.

Passed by the House February 11, 2006.

Passed by the Senate March 1, 2006.

Approved by the Governor March 17, 2006.

Filed in Office of Secretary of State March 17, 2006.

CHAPTER 90

[Substitute House Bill 3182]

TRIBAL FOSTER CARE LICENSING

AN ACT Relating to tribal foster care licensing; amending RCW 74.15.190; and reenacting and amending RCW 74.15.020.

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

Sec. 1. RCW 74.15.020 and 2001 c 230 s 1, 2001 c 144 s 1, and 2001 c 137 s 3 are each reenacted and amended to read as follows:

For the purpose of chapter 74.15 RCW and RCW 74.13.031, and unless otherwise clearly indicated by the context thereof, the following terms shall mean:

(1) "Agency" means any person, firm, partnership, association, corporation, or facility which receives children, expectant mothers, or persons with developmental disabilities for control, care, or maintenance outside their own homes, or which places, arranges the placement of, or assists in the placement of children, expectant mothers, or persons with developmental disabilities for foster care or placement of children for adoption, and shall include the following irrespective of whether there is compensation to the agency or to the children, expectant mothers or persons with developmental disabilities for services rendered:

(a) "Child day-care center" means an agency which regularly provides care for a group of children for periods of less than twenty-four hours;

(b) "Child-placing agency" means an agency which places a child or children for temporary care, continued care, or for adoption;

(c) "Community facility" means a group care facility operated for the care of juveniles committed to the department under RCW 13.40.185. A county detention facility that houses juveniles committed to the department under RCW 13.40.185 pursuant to a contract with the department is not a community facility;

(d) "Crisis residential center" means an agency which is a temporary protective residential facility operated to perform the duties specified in chapter 13.32A RCW, in the manner provided in RCW 74.13.032 through 74.13.036;

(e) "Emergency respite center" is an agency that may be commonly known as a crisis nursery, that provides emergency and crisis care for up to seventy-two hours to children who have been admitted by their parents or guardians to prevent abuse or neglect. Emergency respite centers may operate for up to twenty-four hours a day, and for up to seven days a week. Emergency respite centers may provide care for children ages birth through seventeen, and for persons eighteen through twenty with developmental disabilities who are admitted with a sibling or siblings through age seventeen. Emergency respite centers may not substitute for crisis residential centers or HOPE centers, or any other services defined under this section, and may not substitute for services which are required under chapter 13.32A or 13.34 RCW;

(f) "Family day-care provider" means a child day-care provider who regularly provides child day care for not more than twelve children in the provider's home in the family living quarters;

(g) "Foster-family home" means an agency which regularly provides care on a twenty-four hour basis to one or more children, expectant mothers, or persons with developmental disabilities in the family abode of the person or persons under whose direct care and supervision the child, expectant mother, or person with a developmental disability is placed;

(h) "Group-care facility" means an agency, other than a foster-family home, which is maintained and operated for the care of a group of children on a twenty-four hour basis;

(i) "HOPE center" means an agency licensed by the secretary to provide temporary residential placement and other services to street youth. A street youth may remain in a HOPE center for thirty days while services are arranged and permanent placement is coordinated. No street youth may stay longer than thirty days unless approved by the department and any additional days approved by the department must be based on the unavailability of a long-term placement option. A street youth whose parent wants him or her returned to home may remain in a HOPE center until his or her parent arranges return of the youth, not longer. All other street youth must have court approval under chapter 13.34 or 13.32A RCW to remain in a HOPE center up to thirty days;

(j) "Maternity service" means an agency which provides or arranges for care or services to expectant mothers, before or during confinement, or which provides care as needed to mothers and their infants after confinement;

(k) "Responsible living skills program" means an agency licensed by the secretary that provides residential and transitional living services to persons ages sixteen to eighteen who are dependent under chapter 13.34 RCW and who have

been unable to live in his or her legally authorized residence and, as a result, the minor lived outdoors or in another unsafe location not intended for occupancy by the minor. Dependent minors ages fourteen and fifteen may be eligible if no other placement alternative is available and the department approves the placement;

(1) "Service provider" means the entity that operates a community facility.

(2) "Agency" shall not include the following:

(a) Persons related to the child, expectant mother, or person with developmental disability in the following ways:

(i) Any blood relative, including those of half-blood, and including first cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law;

(iv) Spouses of any persons named in (i), (ii), or (iii) of this subsection (2)(a), even after the marriage is terminated; or

(v) Extended family members, as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent who provides care in the family abode on a twenty-four-hour basis to an Indian child as defined in 25 U.S.C. Sec. 1903(4);

(b) Persons who are legal guardians of the child, expectant mother, or persons with developmental disabilities;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where: (i) The person providing care for periods of less than twenty-four hours does not conduct such activity on an ongoing, regularly scheduled basis for the purpose of engaging in business, which includes, but is not limited to, advertising such care; or (ii) the parent and person providing care on a twenty-four-hour basis have agreed to the placement in writing and the state is not providing any payment for the care;

(d) Parents on a mutually cooperative basis exchange care of one another's children;

(e) A person, partnership, corporation, or other entity that provides placement or similar services to exchange students or international student exchange visitors or persons who have the care of an exchange student in their home;

(f) A person, partnership, corporation, or other entity that provides placement or similar services to international children who have entered the country by obtaining visas that meet the criteria for medical care as established by the United States immigration and naturalization service, or persons who have the care of such an international child in their home;

(g) Nursery schools or kindergartens which are engaged primarily in educational work with preschool children and in which no child is enrolled on a regular basis for more than four hours per day;

(h) Schools, including boarding schools, which are engaged primarily in education, operate on a definite school year schedule, follow a stated academic

curriculum, accept only school-age children and do not accept custody of children;

(i) Seasonal camps of three months' or less duration engaged primarily in recreational or educational activities;

(j) Hospitals licensed pursuant to chapter 70.41 RCW when performing functions defined in chapter 70.41 RCW, nursing homes licensed under chapter 18.51 RCW and boarding homes licensed under chapter 18.20 RCW;

(k) Licensed physicians or lawyers;

(l) Facilities providing care to children for periods of less than twenty-four hours whose parents remain on the premises to participate in activities other than employment;

(m) Facilities approved and certified under chapter 71A.22 RCW;

(n) Any agency having been in operation in this state ten years prior to June 8, 1967, and not seeking or accepting moneys or assistance from any state or federal agency, and is supported in part by an endowment or trust fund;

(o) Persons who have a child in their home for purposes of adoption, if the child was placed in such home by a licensed child-placing agency, an authorized public or tribal agency or court or if a replacement report has been filed under chapter 26.33 RCW and the placement has been approved by the court;

(p) An agency operated by any unit of local, state, or federal government or an agency(~~(-located within the boundaries of a federally recognized Indian reservation,))~~ licensed by ~~((the))~~ an Indian tribe pursuant to RCW 74.15.190;

(q) A maximum or medium security program for juvenile offenders operated by or under contract with the department;

(r) An agency located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter.

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

(4) "Juvenile" means a person under the age of twenty-one who has been sentenced to a term of confinement under the supervision of the department under RCW 13.40.185.

(5) "Probationary license" means a license issued as a disciplinary measure to an agency that has previously been issued a full license but is out of compliance with licensing standards.

(6) "Requirement" means any rule, regulation, or standard of care to be maintained by an agency.

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

(8) "Street youth" means a person under the age of eighteen who lives outdoors or in another unsafe location not intended for occupancy by the minor and who is not residing with his or her parent or at his or her legally authorized residence.

(9) "Transitional living services" means at a minimum, to the extent funds are available, the following:

(a) Educational services, including basic literacy and computational skills training, either in local alternative or public high schools or in a high school equivalency program that leads to obtaining a high school equivalency degree;

(b) Assistance and counseling related to obtaining vocational training or higher education, job readiness, job search assistance, and placement programs;

(c) Counseling and instruction in life skills such as money management, home management, consumer skills, parenting, health care, access to community resources, and transportation and housing options;

(d) Individual and group counseling; and

(e) Establishing networks with federal agencies and state and local organizations such as the United States department of labor, employment and training administration programs including the job training partnership act which administers private industry councils and the job corps; vocational rehabilitation; and volunteer programs.

Sec. 2. RCW 74.15.190 and 1987 c 170 s 13 are each amended to read as follows:

(1)(a) The state of Washington recognizes the authority of Indian tribes within the state to license agencies, located within the boundaries of a federally recognized Indian reservation, to receive children for control, care, and maintenance outside their own homes, or to place, receive, arrange the placement of, or assist in the placement of children for foster care or adoption.

(b) The state of Washington recognizes the ability of the Indian tribes within the state to enter into agreements with the state to license agencies located on or near the federally recognized Indian reservation or, for those federally recognized tribes that do not have a reservation, then on or near the federally designated service delivery area, to receive children for control, care, and maintenance outside their own homes, or to place, receive, arrange the placement of, or assist in the placement of children for foster care.

(c) The department and state licensed child-placing agencies may place children in tribally licensed facilities if the requirements of RCW 74.15.030 (2)(b) and (3) and supporting rules are satisfied before placing the children in such facilities by the department or any state licensed child-placing agency.

(2) The department may enter into written agreements with Indian tribes within the state to define the terms under which the tribe may license agencies pursuant to subsection (1) of this section. The agreements shall include a definition of what are the geographic boundaries of the tribe for the purposes of licensing and may include locations on or near the federally recognized Indian reservation or, for those federally recognized tribes that do not have a reservation, then on or near the federally designated service delivery area.

(3) The department and its employees are immune from civil liability for damages arising from the conduct of agencies licensed by a tribe.

Passed by the House March 4, 2006.

Passed by the Senate February 28, 2006.

Approved by the Governor March 17, 2006.

Filed in Office of Secretary of State March 17, 2006.

CHAPTER 91

[House Bill 3156]

ASSET BUILDING—PILOT PROGRAM

AN ACT Relating to creating a pilot program to assist in asset building for low-income persons; adding new sections to chapter 43.63A RCW; creating a new section; and providing an expiration date.

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

NEW SECTION. Sec. 1. The legislature recognizes that one in four families lack the financial resources to sustain their family for a period of three months at the federal poverty level. Low-income wage earners need tools to allow them to better control, manage, and increase their financial resources. The legislature is committed to supporting the collaboration of community-based, faith-based, governmental, job training, health care, and social service agencies to help low-income families achieve greater prosperity.

NEW SECTION. Sec. 2. A new section is added to chapter 43.63A RCW to read as follows:

(1) The department of community, trade, and economic development must establish a process to offer consulting services to community action agencies, established under RCW 43.63A.115, who are interested in developing pilot programs to assist low-income families accumulate assets. In implementing a pilot program, the community action agency applicant is encouraged to facilitate bringing together community partners to determine the asset building programs to initiate within the community.

(2) The department must select the pilot sites through an application process developed by the department and beginning by July 31, 2006. The department must offer consulting services to no less than four sites with at least one of the pilot sites located in eastern Washington.

(3) A community action agency as established in RCW 43.63A.115 may submit an application to be selected as a pilot site. To be considered for a pilot site, the application must demonstrate how the site will meet the following criteria. The application must:

(a) Identify the local agency that will be the lead agency for the pilot program;

(b) Describe how the lead agency will work with community partners, including local government, to implement the pilot program activities described in this section. The application must specifically identify the community partners with whom the community action agency will be collaborating and the role of the partners;

(c) Identify the areas of potential need based upon input from the community partners. Areas of potential need may include financial literacy, assistance with federal income tax preparation and the use of tax credits, the use of individual development accounts, and other asset-building strategies; and

(d) Identify the resources within the community that might support training for the implementation of the selected best practices chosen to address the needs identified by the community.

(4) The department must report to the legislature by December 1, 2007, on the progress of the implementation of the pilot programs including the application process, the status of the programs, and any implementation issues that arose in initiating the pilot programs.

(5) As used in this section, "asset" or "asset building" means investment or savings for an investment in a family home, higher education, small business, or other long-term asset that will assist low-income families to attain greater self-sufficiency.

NEW SECTION. Sec. 3. A new section is added to chapter 43.63A RCW to read as follows:

To the extent funding is appropriated, the department of community, trade, and economic development must establish a program to create an outreach campaign to increase the number of eligible families who claim the federal earned income tax credit. The department may work collaboratively with other state agencies, private and nonprofit agencies, local communities, and others with expertise that might assist the department in implementing the program.

NEW SECTION. **Sec. 4.** This act expires January 1, 2008.

Passed by the House March 4, 2006.

Passed by the Senate February 28, 2006.

Approved by the Governor March 17, 2006.

Filed in Office of Secretary of State March 17, 2006.

CHAPTER 92

[Substitute House Bill 3150]

WINE INDUSTRY—PROMOTION

AN ACT Relating to efforts to promote the wine industry; and reenacting and amending RCW 66.28.010.

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

Sec. 1. RCW 66.28.010 and 2004 c 160 s 9 and 2004 c 62 s 1 are each reenacted and amended to read as follows:

(1)(a) No manufacturer, importer, distributor, or authorized representative, or person financially interested, directly or indirectly, in such business; whether resident or nonresident, shall have any financial interest, direct or indirect, in any licensed retail business, unless the retail business is owned by a corporation in which a manufacturer or importer has no direct stock ownership and there are no interlocking officers and directors, the retail license is held by a corporation that is not owned directly or indirectly by a manufacturer or importer, the sales of liquor are incidental to the primary activity of operating the property as a hotel, alcoholic beverages produced by the manufacturer or importer or their subsidiaries are not sold at the licensed premises, and the board reviews the ownership and proposed method of operation of all involved entities and determines that there will not be an unacceptable level of control or undue influence over the operation or the retail licensee; nor shall any manufacturer, importer, distributor, or authorized representative own any of the property upon which such licensed persons conduct their business; nor shall any such licensed person, under any arrangement whatsoever, conduct his or her business upon property in which any manufacturer, importer, distributor, or authorized representative has any interest unless title to that property is owned by a corporation in which a manufacturer has no direct stock ownership and there are no interlocking officers or directors, the retail license is held by a corporation that is not owned directly or indirectly by the manufacturer, the sales of liquor are incidental to the primary activity of operating the property either as a hotel or as an amphitheater offering live musical and similar live entertainment activities to the public, alcoholic beverages produced by the manufacturer or any of its subsidiaries are not sold at the licensed premises, and the board reviews the ownership and proposed method of operation of all involved entities and determines that there will not be an unacceptable level of control or undue

influence over the operation of the retail licensee. Except as provided in subsection (3) of this section, no manufacturer, importer, distributor, or authorized representative shall advance moneys or moneys' worth to a licensed person under an arrangement, nor shall such licensed person receive, under an arrangement, an advance of moneys or moneys' worth. "Person" as used in this section only shall not include those state or federally chartered banks, state or federally chartered savings and loan associations, state or federally chartered mutual savings banks, or institutional investors which are not controlled directly or indirectly by a manufacturer, importer, distributor, or authorized representative as long as the bank, savings and loan association, or institutional investor does not influence or attempt to influence the purchasing practices of the retailer with respect to alcoholic beverages. Except as otherwise provided in this section, no manufacturer, importer, distributor, or authorized representative shall be eligible to receive or hold a retail license under this title, nor shall such manufacturer, importer, distributor, or authorized representative sell at retail any liquor as herein defined. A corporation granted an exemption under this subsection may use debt instruments issued in connection with financing construction or operations of its facilities.

(b) Nothing in this section shall prohibit a licensed domestic brewery or microbrewery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the brewery premises and nothing in this section shall prohibit a domestic winery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the winery premises. Such beer and wine so sold at retail shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210 and to reporting and bonding requirements as prescribed by regulations adopted by the board pursuant to chapter 34.05 RCW, and beer and wine that is not produced by the brewery or winery shall be purchased from a licensed beer or wine distributor.

(c) Nothing in this section shall prohibit a licensed distiller, domestic brewery, microbrewery, domestic winery, or a lessee of a licensed domestic brewer, microbrewery, or domestic winery, from being licensed as a spirits, beer, and wine restaurant pursuant to chapter 66.24 RCW for the purpose of selling liquor at a spirits, beer, and wine restaurant premises on the property on which the primary manufacturing facility of the licensed distiller, domestic brewer, microbrewery, or domestic winery is located or on contiguous property owned or leased by the licensed distiller, domestic brewer, microbrewery, or domestic winery as prescribed by rules adopted by the board pursuant to chapter 34.05 RCW.

(d) Nothing in this section prohibits retail licensees with a caterer's endorsement issued under RCW 66.24.320 or 66.24.420 from operating on a domestic winery premises.

(e) Nothing in this section prohibits domestic wineries and retailers licensed under chapter 66.24 RCW from jointly producing brochures and materials promoting tourism in Washington state which contain information regarding retail licensees, domestic wineries, and their products.

(f) Nothing in this section prohibits domestic wineries and retail licensees from identifying the wineries on private labels authorized under RCW 66.24.400, 66.24.425, and 66.24.450.

(2) Financial interest, direct or indirect, as used in this section, shall include any interest, whether by stock ownership, mortgage, lien, or through interlocking directors, or otherwise. Pursuant to rules promulgated by the board in accordance with chapter 34.05 RCW manufacturers, distributors, and importers may perform, and retailers may accept the service of building, rotating and restocking case displays and stock room inventories; rotating and rearranging can and bottle displays of their own products; provide point of sale material and brand signs; price case goods of their own brands; and perform such similar normal business services as the board may by regulation prescribe.

(3)(a) This section does not prohibit a manufacturer, importer, or distributor from providing services to a special occasion licensee for: (i) Installation of draft beer dispensing equipment or advertising, (ii) advertising, pouring, or dispensing of beer or wine at a beer or wine tasting exhibition or judging event, or (iii) a special occasion licensee from receiving any such services as may be provided by a manufacturer, importer, or distributor. Nothing in this section shall prohibit a retail licensee, or any person financially interested, directly or indirectly, in such a retail licensee from having a financial interest, direct or indirect, in a business which provides, for a compensation commensurate in value to the services provided, bottling, canning or other services to a manufacturer, so long as the retail licensee or person interested therein has no direct financial interest in or control of said manufacturer.

(b) A person holding contractual rights to payment from selling a liquor distributor's business and transferring the license shall not be deemed to have a financial interest under this section if the person (i) lacks any ownership in or control of the distributor, (ii) is not employed by the distributor, and (iii) does not influence or attempt to influence liquor purchases by retail liquor licensees from the distributor.

(c) The board shall adopt such rules as are deemed necessary to carry out the purposes and provisions of subsection (3)(a) of this section in accordance with the administrative procedure act, chapter 34.05 RCW.

(4) A license issued under RCW 66.24.395 does not constitute a retail license for the purposes of this section.

(5) A public house license issued under RCW 66.24.580 does not violate the provisions of this section as to a retailer having an interest directly or indirectly in a liquor-licensed manufacturer.

Passed by the House February 10, 2006.

Passed by the Senate February 28, 2006.

Approved by the Governor March 17, 2006.

Filed in Office of Secretary of State March 17, 2006.

CHAPTER 93

[House Bill 3139]

MENTAL HEALTH CARE—MINORS—CAREGIVER CONSENT

AN ACT Relating to kinship caregivers' consent for mental health care of minors; and amending RCW 7.70.065, 71.34.020, 71.34.500, and 71.34.530.

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

Sec. 1. RCW 7.70.065 and 2005 c 440 s 2 are each amended to read as follows:

(1) Informed consent for health care for a patient who is not competent, as defined in RCW 11.88.010(1)(e), to consent may be obtained from a person authorized to consent on behalf of such patient.

(a) Persons authorized to provide informed consent to health care on behalf of a patient who is not competent to consent, based upon a reason other than incapacity as defined in RCW 11.88.010(1)(d), shall be a member of one of the following classes of persons in the following order of priority:

- (i) The appointed guardian of the patient, if any;
- (ii) The individual, if any, to whom the patient has given a durable power of attorney that encompasses the authority to make health care decisions;
- (iii) The patient's spouse;
- (iv) Children of the patient who are at least eighteen years of age;
- (v) Parents of the patient; and
- (vi) Adult brothers and sisters of the patient.

(b) If the health care provider seeking informed consent for proposed health care of the patient who is not competent to consent under RCW 11.88.010(1)(e), other than a person determined to be incapacitated because he or she is under the age of majority and who is not otherwise authorized to provide informed consent, makes reasonable efforts to locate and secure authorization from a competent person in the first or succeeding class and finds no such person available, authorization may be given by any person in the next class in the order of descending priority. However, no person under this section may provide informed consent to health care:

- (i) If a person of higher priority under this section has refused to give such authorization; or
- (ii) If there are two or more individuals in the same class and the decision is not unanimous among all available members of that class.

(c) Before any person authorized to provide informed consent on behalf of a patient not competent to consent under RCW 11.88.010(1)(e), other than a person determined to be incapacitated because he or she is under the age of majority and who is not otherwise authorized to provide informed consent, exercises that authority, the person must first determine in good faith that that patient, if competent, would consent to the proposed health care. If such a determination cannot be made, the decision to consent to the proposed health care may be made only after determining that the proposed health care is in the patient's best interests.

(2) Informed consent for health care, including mental health care, for a patient who is not competent, as defined in RCW 11.88.010(1)(e), because he or she is under the age of majority and who is not otherwise authorized to provide informed consent, may be obtained from a person authorized to consent on behalf of such a patient.

(a) Persons authorized to provide informed consent to health care, including mental health care, on behalf of a patient who is incapacitated, as defined in RCW 11.88.010(1)(e), because he or she is under the age of majority and who is not otherwise authorized to provide informed consent, shall be a member of one of the following classes of persons in the following order of priority:

(i) The appointed guardian, or legal custodian authorized pursuant to Title 26 RCW, of the minor patient, if any;

(ii) A person authorized by the court to consent to medical care for a child in out-of-home placement pursuant to chapter 13.32A or 13.34 RCW, if any;

(iii) Parents of the minor patient;

(iv) The individual, if any, to whom the minor's parent has given a signed authorization to make health care decisions for the minor patient; and

(v) A competent adult representing himself or herself to be a relative responsible for the health care of such minor patient or a competent adult who has signed and dated a declaration under penalty of perjury pursuant to RCW 9A.72.085 stating that the adult person is a relative responsible for the health care of the minor patient. Such declaration shall be effective for up to six months from the date of the declaration.

(b) A health care provider may, but is not required to, rely on the representations or declaration of a person claiming to be a relative responsible for the care of the minor patient, under (a)(v) of this subsection, if the health care provider does not have actual notice of the falsity of any of the statements made by the person claiming to be a relative responsible for the health care of the minor patient.

(c) A health care facility or a health care provider may, in its discretion, require documentation of a person's claimed status as being a relative responsible for the health care of the minor patient. However, there is no obligation to require such documentation.

(d) The health care provider or health care facility where services are rendered shall be immune from suit in any action, civil or criminal, or from professional or other disciplinary action when such reliance is based on a declaration signed under penalty of perjury pursuant to RCW 9A.72.085 stating that the adult person is a relative responsible for the health care of the minor patient under (a)(v) of this subsection.

(3) For the purposes of this section, "health care," "health care provider," and "health care facility" shall be defined as established in RCW 70.02.010.

Sec. 2. RCW 71.34.020 and 1998 c 296 s 8 are each amended to read as follows:

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

(1) "Child psychiatrist" means a person having a license as a physician and surgeon in this state, who has had graduate training in child psychiatry in a program approved by the American Medical Association or the American Osteopathic Association, and who is board eligible or board certified in child psychiatry.

(2) "Children's mental health specialist" means:

(a) A mental health professional who has completed a minimum of one hundred actual hours, not quarter or semester hours, of specialized training devoted to the study of child development and the treatment of children; and

(b) A mental health professional who has the equivalent of one year of full-time experience in the treatment of children under the supervision of a children's mental health specialist.

(3) "Commitment" means a determination by a judge or court commissioner, made after a commitment hearing, that the minor is in need of

inpatient diagnosis, evaluation, or treatment or that the minor is in need of less restrictive alternative treatment.

(4) "~~(County-)~~ Designated mental health professional" means a mental health professional designated by one or more counties to perform the functions of a ~~(county-)~~ designated mental health professional described in this chapter.

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

(6) "Evaluation and treatment facility" means a public or private facility or unit that is certified by the department to provide emergency, inpatient, residential, or outpatient mental health evaluation and treatment services for minors. A physically separate and separately-operated portion of a state hospital may be designated as an evaluation and treatment facility for minors. A facility which is part of or operated by the department or federal agency does not require certification. No correctional institution or facility, juvenile court detention facility, or jail may be an evaluation and treatment facility within the meaning of this chapter.

(7) "Evaluation and treatment program" means the total system of services and facilities coordinated and approved by a county or combination of counties for the evaluation and treatment of minors under this chapter.

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

(9) "Inpatient treatment" means twenty-four-hour-per-day mental health care provided within a general hospital, psychiatric hospital, or residential treatment facility certified by the department as an evaluation and treatment facility for minors.

(10) "Less restrictive alternative" or "less restrictive setting" means outpatient treatment provided to a minor who is not residing in a facility providing inpatient treatment as defined in this chapter.

(11) "Likelihood of serious harm" means either: (a) A substantial risk that physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (b) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or (c) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others.

(12) "Medical necessity" for inpatient care means a requested service which is reasonably calculated to: (a) Diagnose, correct, cure, or alleviate a mental disorder; or (b) prevent the worsening of mental conditions that endanger life or cause suffering and pain, or result in illness or infirmity or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction, and there is no adequate less restrictive alternative available.

(13) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions. The presence of alcohol abuse, drug abuse, juvenile criminal history,

antisocial behavior, or mental retardation alone is insufficient to justify a finding of "mental disorder" within the meaning of this section.

(14) "Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary under this chapter.

(15) "Minor" means any person under the age of eighteen years.

(16) "Outpatient treatment" means any of the nonresidential services mandated under chapter 71.24 RCW and provided by licensed services providers as identified by RCW 71.24.025(~~(3)~~).

(17) "Parent" means:

(a) A biological or adoptive parent who has legal custody of the child, including either parent if custody is shared under a joint custody agreement; or

(b) A person or agency judicially appointed as legal guardian or custodian of the child.

(18) "Professional person in charge" or "professional person" means a physician or other mental health professional empowered by an evaluation and treatment facility with authority to make admission and discharge decisions on behalf of that facility.

(19) "Psychiatric nurse" means a registered nurse who has a bachelor's degree from an accredited college or university, and who has had, in addition, at least two years' experience in the direct treatment of mentally ill or emotionally disturbed persons, such experience gained under the supervision of a mental health professional. "Psychiatric nurse" shall also mean any other registered nurse who has three years of such experience.

(20) "Psychiatrist" means a person having a license as a physician in this state who has completed residency training in psychiatry in a program approved by the American Medical Association or the American Osteopathic Association, and is board eligible or board certified in psychiatry.

(21) "Psychologist" means a person licensed as a psychologist under chapter 18.83 RCW.

(22) "Responsible other" means the minor, the minor's parent or estate, or any other person legally responsible for support of the minor.

(23) "Secretary" means the secretary of the department or secretary's designee.

(24) "Start of initial detention" means the time of arrival of the minor at the first evaluation and treatment facility offering inpatient treatment if the minor is being involuntarily detained at the time. With regard to voluntary patients, "start of initial detention" means the time at which the minor gives notice of intent to leave under the provisions of this chapter.

Sec. 3. RCW 71.34.500 and 2005 c 371 s 2 are each amended to read as follows:

(1) A minor thirteen years or older may admit himself or herself to an evaluation and treatment facility for inpatient mental treatment, without parental consent. The admission shall occur only if the professional person in charge of the facility concurs with the need for inpatient treatment. Parental authorization, or authorization from a person who may consent on behalf of the minor pursuant to RCW 7.70.065, is required for inpatient treatment of a minor under the age of thirteen.

(2) When, in the judgment of the professional person in charge of an evaluation and treatment facility, there is reason to believe that a minor is in need of inpatient treatment because of a mental disorder, and the facility provides the type of evaluation and treatment needed by the minor, and it is not feasible to treat the minor in any less restrictive setting or the minor's home, the minor may be admitted to an evaluation and treatment facility.

(3) Written renewal of voluntary consent must be obtained from the applicant no less than once every twelve months. The minor's need for continued inpatient treatments shall be reviewed and documented no less than every one hundred eighty days.

Sec. 4. RCW 71.34.530 and 1998 c 296 s 12 are each amended to read as follows:

Any minor thirteen years or older may request and receive outpatient treatment without the consent of the minor's parent. Parental authorization, or authorization from a person who may consent on behalf of the minor pursuant to RCW 7.70.065, is required for outpatient treatment of a minor under the age of thirteen.

Passed by the House March 4, 2006.

Passed by the Senate February 28, 2006.

Approved by the Governor March 17, 2006.

Filed in Office of Secretary of State March 17, 2006.

CHAPTER 94

[Substitute House Bill 3137]

STATE PATROL RETIREMENT BENEFITS—SURVIVOR BENEFITS

AN ACT Relating to benefits for surviving spouses of disabled Washington state patrol officers; amending RCW 43.43.270, 41.45.0631, and 41.45.070; and providing an effective date.

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

Sec. 1. RCW 43.43.270 and 2002 c 158 s 15 are each amended to read as follows:

For members commissioned prior to January 1, 2003:

(1) The normal form of retirement allowance shall be an allowance which shall continue as long as the member lives.

(2) If a member should die while in service the member's lawful spouse shall be paid an allowance which shall be equal to fifty percent of the average final salary of the member. If the member should die after retirement the member's lawful spouse shall be paid an allowance which shall be equal to the retirement allowance then payable to the member or fifty percent of the final average salary used in computing the member's retirement allowance, whichever is less. The allowance paid to the lawful spouse shall continue as long as the spouse lives: PROVIDED, That if a surviving spouse who is receiving benefits under this subsection marries another member of this retirement system who subsequently predeceases such spouse, the spouse shall then be entitled to receive the higher of the two survivors' allowances for which eligibility requirements were met, but a surviving spouse shall not receive more than one survivor's allowance from this system at the same time under this subsection. To be eligible for an allowance the lawful surviving spouse of a retired member

shall have been married to the member prior to the member's retirement and continuously thereafter until the date of the member's death or shall have been married to the retired member at least two years prior to the member's death. The allowance paid to the lawful spouse may be divided with an ex spouse of the member by a dissolution order as defined in RCW 41.50.500(3) incident to a divorce occurring after July 1, 2002. The dissolution order must specifically divide both the member's benefit and any spousal survivor benefit, and must fully comply with RCW 41.50.670 and 41.50.700.

(3) If a member should die, either while in service or after retirement, the member's surviving unmarried children under the age of eighteen years shall be provided for in the following manner:

(a) If there is a surviving spouse, each child shall be entitled to a benefit equal to five percent of the final average salary of the member or retired member. The combined benefits to the surviving spouse and all children shall not exceed sixty percent of the final average salary of the member or retired member; and

(b) If there is no surviving spouse or the spouse should die, the child or children shall be entitled to a benefit equal to thirty percent of the final average salary of the member or retired member for one child and an additional ten percent for each additional child. The combined benefits to the children under this subsection shall not exceed sixty percent of the final average salary of the member or retired member. Payments under this subsection shall be prorated equally among the children, if more than one.

(4) If a member should die in the line of duty while employed by the Washington state patrol, the member's surviving children under the age of twenty years and eleven months if attending any high school, college, university, or vocational or other educational institution accredited or approved by the state of Washington shall be provided for in the following manner:

(a) If there is a surviving spouse, each child shall be entitled to a benefit equal to five percent of the final average salary of the member. The combined benefits to the surviving spouse and all children shall not exceed sixty percent of the final average salary of the member;

(b) If there is no surviving spouse or the spouse should die, the unmarried child or children shall be entitled to receive a benefit equal to thirty percent of the final average salary of the member or retired member for one child and an additional ten percent for each additional child. The combined benefits to the children under this subsection shall not exceed sixty percent of the final average salary. Payments under this subsection shall be prorated equally among the children, if more than one; and

(c) If a beneficiary under this subsection reaches the age of twenty-one years during the middle of a term of enrollment the benefit shall continue until the end of that term.

(5)(a) The provisions of this section shall apply to members who have been retired on disability as provided in RCW 43.43.040 if the officer was a member of the Washington state patrol retirement system at the time of such disability retirement.

(b) For the purposes of this subsection, average final salary as used in subsection (2) of this section means:

(i) For members commissioned prior to January 1, 2003, the average monthly salary received by active members of the patrol of the rank at which the member became disabled, during the two years prior to the death of the disabled member; and

(ii) For members commissioned on or after January 1, 2003, the average monthly salary received by active members of the patrol of the rank at which the member became disabled, during the five years prior to the death of the disabled member.

(c) The changes to the definitions of average final salary for the survivors of disabled members in this subsection shall apply retroactively. The department shall correct future payments to eligible survivors of members disabled prior to the effective date of this act, and, as soon as administratively practicable, pay each survivor a lump sum payment reflecting the difference, as determined by the director, between the survivor benefits previously received by the member, and those the member would have received under the definitions of average final salary created in this act.

Sec. 2. RCW 41.45.0631 and 2001 c 329 s 11 are each amended to read as follows:

Beginning July 1, 2001, the required contribution rate for members of the Washington state patrol retirement system shall be two percent or equal to the employer rate adopted under RCW 41.45.060 and 41.45.070 for the Washington state patrol retirement system, whichever is greater. The employee contribution rate shall not, however, include any increase as a result of distributions under RCW 43.43.270(2) for survivors of members who became disabled under RCW 43.43.040(2) prior to July 1, 2006.

Sec. 3. RCW 41.45.070 and 2004 c 242 s 41 are each amended to read as follows:

(1) In addition to the basic employer contribution rate established in RCW 41.45.060 or 41.45.054, the department shall also charge employers of public employees' retirement system, teachers' retirement system, school employees' retirement system, public safety employees' retirement system, or Washington state patrol retirement system members an additional supplemental rate to pay for the cost of additional benefits, if any, granted to members of those systems. Except as provided in subsections (6) and (7) of this section, the supplemental contribution rates required by this section shall be calculated by the state actuary and shall be charged regardless of language to the contrary contained in the statute which authorizes additional benefits.

(2) In addition to the basic member, employer, and state contribution rate established in RCW 41.45.0604 for the law enforcement officers' and fire fighters' retirement system plan 2, the department shall also establish supplemental rates to pay for the cost of additional benefits, if any, granted to members of the law enforcement officers' and fire fighters' retirement system plan 2. Except as provided in subsection (6) of this section, these supplemental rates shall be calculated by the actuary retained by the law enforcement officers' and fire fighters' board and the state actuary through the process provided in RCW 41.26.720(1)(a) and the state treasurer shall transfer the additional required contributions regardless of language to the contrary contained in the statute which authorizes the additional benefits.

(3) The supplemental rate charged under this section to fund benefit increases provided to active members of the public employees' retirement system plan 1, the teachers' retirement system plan 1, and Washington state patrol retirement system, shall be calculated as the level percentage of all members' pay needed to fund the cost of the benefit not later than June 30, 2024.

(4) The supplemental rate charged under this section to fund benefit increases provided to active and retired members of the public employees' retirement system plan 2 and plan 3, the teachers' retirement system plan 2 and plan 3, the public safety employees' retirement system plan 2, or the school employees' retirement system plan 2 and plan 3 shall be calculated as the level percentage of all members' pay needed to fund the cost of the benefit, as calculated under RCW 41.45.060, 41.45.061, or 41.45.067.

(5) The supplemental rate charged under this section to fund postretirement adjustments which are provided on a nonautomatic basis to current retirees shall be calculated as the percentage of pay needed to fund the adjustments as they are paid to the retirees. The supplemental rate charged under this section to fund automatic postretirement adjustments for active or retired members of the public employees' retirement system plan 1 and the teachers' retirement system plan 1 shall be calculated as the level percentage of pay needed to fund the cost of the automatic adjustments not later than June 30, 2024.

(6) A supplemental rate shall not be charged to pay for the cost of additional benefits granted to members pursuant to chapter 340, Laws of 1998.

(7) A supplemental rate shall not be charged to pay for the cost of additional benefits granted to members pursuant to chapter 41.31A RCW; section 309, chapter 341, Laws of 1998; or section 701, chapter 341, Laws of 1998.

(8) A supplemental rate shall not be charged to pay for the cost of additional benefits granted to members and survivors pursuant to this act.

NEW SECTION. Sec. 4. Section 3 of this act takes effect July 1, 2006.

Passed by the House February 13, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 17, 2006.

Filed in Office of Secretary of State March 17, 2006.

CHAPTER 95

[House Bill 3122]

CHILD PROTECTIVE, CHILD WELFARE, ADULT PROTECTIVE SERVICES—STAFF SAFETY

AN ACT Relating to the safety of child protective, child welfare, and adult protective services workers; amending RCW 9A.46.110; adding a new section to chapter 74.04 RCW; creating new sections; and providing an expiration date.

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

NEW SECTION. Sec. 1. The legislature finds that employees of the department of social and health services who provide child protective, child welfare, and adult protective services are sometimes faced with highly volatile, hostile, and/or threatening situations during the course of performing their official duties. The legislature finds that the work group convened by the department of social and health services pursuant to chapter 389, Laws of 2005,

has made various recommendations regarding policies and protocols to address the safety of workers. The legislature intends to implement the work group's recommendations for statutory changes in recognition of the sometimes hazardous nature of employment in child protective, child welfare, and adult protective services.

NEW SECTION. Sec. 2. A new section is added to chapter 74.04 RCW to read as follows:

(1) For purposes of this section only, "assault" means an unauthorized touching of a child protective, child welfare, or adult protective services worker employed by the department of social and health services resulting in physical injury to the employee.

(2) In recognition of the hazardous nature of employment in child protective, child welfare, and adult protective services, the legislature hereby provides a supplementary program to reimburse employees of the department, for some of their costs attributable to their being the victims of assault while in the course of discharging their assigned duties. This program shall be limited to the reimbursement provided in this section.

(3) An employee is only entitled to receive the reimbursement provided in this section if the secretary of social and health services, or the secretary's designee, finds that each of the following has occurred:

(a) A person has assaulted the employee while the employee was in the course of performing his or her official duties and, as a result thereof, the employee has sustained demonstrated physical injuries which have required the employee to miss days of work;

(b) The assault cannot be attributable to any extent to the employee's negligence, misconduct, or failure to comply with any rules or conditions of employment; and

(c) The department of labor and industries has approved the employee's workers' compensation application pursuant to chapter 51.32 RCW.

(4) The reimbursement authorized under this section shall be as follows:

(a) The employee's accumulated sick leave days shall not be reduced for the workdays missed;

(b) For each workday missed for which the employee is not eligible to receive compensation under chapter 51.32 RCW, the employee shall receive full pay; and

(c) In respect to workdays missed for which the employee will receive or has received compensation under chapter 51.32 RCW, the employee shall be reimbursed in an amount which, when added to that compensation, will result in the employee receiving full pay for the workdays missed.

(5) Reimbursement under this section may not last longer than three hundred sixty-five consecutive days after the date of the injury.

(6) The employee shall not be entitled to the reimbursement provided in subsection (4) of this section for any workday for which the secretary, or the secretary's designee, finds that the employee has not diligently pursued his or her compensation remedies under chapter 51.32 RCW.

(7) The reimbursement shall only be made for absences which the secretary, or the secretary's designee, believes are justified.

(8) While the employee is receiving reimbursement under this section, he or she shall continue to be classified as a state employee and the reimbursement amount shall be considered as salary or wages.

(9) All reimbursement payments required to be made to employees under this section shall be made by the department. The payments shall be considered as a salary or wage expense and shall be paid by the department in the same manner and from the same appropriations as other salary and wage expenses of the department.

(10) Should the legislature revoke the reimbursement authorized under this section or repeal this section, no affected employee is entitled thereafter to receive the reimbursement as a matter of contractual right.

Sec. 3. RCW 9A.46.110 and 2003 c 53 s 70 are each amended to read as follows:

(1) A person commits the crime of stalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime:

(a) He or she intentionally and repeatedly harasses or repeatedly follows another person; and

(b) The person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or of another person. The feeling of fear must be one that a reasonable person in the same situation would experience under all the circumstances; and

(c) The stalker either:

(i) Intends to frighten, intimidate, or harass the person; or

(ii) Knows or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.

(2)(a) It is not a defense to the crime of stalking under subsection (1)(c)(i) of this section that the stalker was not given actual notice that the person did not want the stalker to contact or follow the person; and

(b) It is not a defense to the crime of stalking under subsection (1)(c)(ii) of this section that the stalker did not intend to frighten, intimidate, or harass the person.

(3) It shall be a defense to the crime of stalking that the defendant is a licensed private investigator acting within the capacity of his or her license as provided by chapter 18.165 RCW.

(4) Attempts to contact or follow the person after being given actual notice that the person does not want to be contacted or followed constitutes prima facie evidence that the stalker intends to intimidate or harass the person. "Contact" includes, in addition to any other form of contact or communication, the sending of an electronic communication to the person.

(5)(a) Except as provided in (b) of this subsection, a person who stalks another person is guilty of a gross misdemeanor.

(b) A person who stalks another is guilty of a class C felony if any of the following applies: (i) The stalker has previously been convicted in this state or any other state of any crime of harassment, as defined in RCW 9A.46.060, of the same victim or members of the victim's family or household or any person specifically named in a protective order; (ii) the stalking violates any protective order protecting the person being stalked; (iii) the stalker has previously been convicted of a gross misdemeanor or felony stalking offense under this section

for stalking another person; (iv) the stalker was armed with a deadly weapon, as defined in RCW 9.94A.602, while stalking the person; (v) the stalker's victim is or was a law enforcement officer, judge, juror, attorney, victim advocate, legislator, ~~((or))~~ community correction's officer, or an employee of the child protective, child welfare, or adult protective services division within the department of social and health services, and the stalker stalked the victim to retaliate against the victim for an act the victim performed during the course of official duties or to influence the victim's performance of official duties; or (vi) the stalker's victim is a current, former, or prospective witness in an adjudicative proceeding, and the stalker stalked the victim to retaliate against the victim as a result of the victim's testimony or potential testimony.

(6) As used in this section:

(a) "Follows" means deliberately maintaining visual or physical proximity to a specific person over a period of time. A finding that the alleged stalker repeatedly and deliberately appears at the person's home, school, place of employment, business, or any other location to maintain visual or physical proximity to the person is sufficient to find that the alleged stalker follows the person. It is not necessary to establish that the alleged stalker follows the person while in transit from one location to another.

(b) "Harasses" means unlawful harassment as defined in RCW 10.14.020.

(c) "Protective order" means any temporary or permanent court order prohibiting or limiting violence against, harassment of, contact or communication with, or physical proximity to another person.

(d) "Repeatedly" means on two or more separate occasions.

NEW SECTION. Sec. 4. The department of social and health services shall report to the governor and the appropriate committees of the legislature by December 1, 2006, on the implementation of those recommendations contained in the department's October 2005 report entitled child protective services - staff safety.

NEW SECTION. Sec. 5. Section 4 of this act expires January 1, 2007.

Passed by the House March 6, 2006.

Passed by the Senate March 3, 2006.

Approved by the Governor March 17, 2006.

Filed in Office of Secretary of State March 17, 2006.

CHAPTER 96

[House Bill 3048]

UNIFORM INTERSTATE FAMILY SUPPORT ACT—EFFECTIVE DATE

AN ACT Relating to the uniform interstate family support act; and amending RCW 26.21A.900.

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

Sec. 1. RCW 26.21A.900 and 2002 c 198 s 906 are each amended to read as follows:

This act takes effect ~~((six months after the amendment by congress to 42 U.S.C. Sec. 666(f) authorizing or mandating states to adopt this version of the uniform interstate family support act))~~ January 1, 2007.

Passed by the House February 8, 2006.
Passed by the Senate March 3, 2006.
Approved by the Governor March 17, 2006.
Filed in Office of Secretary of State March 17, 2006.

CHAPTER 97

[House Bill 3041]

VOTER REGISTRATION

AN ACT Relating to voter registration; and amending RCW 29A.08.140 and 29A.08.145.

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

Sec. 1. RCW 29A.08.140 and 2004 c 267 s 112 are each amended to read as follows:

The registration files of all precincts shall be closed against ~~((original registration or))~~ transfers for thirty days immediately preceding every primary, special election, and general election to be held in such precincts.

The county auditor shall give notice of the closing of the precinct files for ~~((original registration and))~~ transfer and notice of the special registration and voting procedure provided by RCW 29A.08.145 by one publication in a newspaper of general circulation in the county at least five days before the closing of the precinct files.

No person may vote at any primary, special election, or general election in a precinct polling place unless he or she has registered to vote at least thirty days before that primary or election and appears on the official statewide voter registration list. If a person, otherwise qualified to vote in the state, county, and precinct in which he or she applies for registration, does not register at least thirty days before any primary, special election, or general election, he or she may register and vote by absentee ballot for that primary or election under RCW 29A.08.145.

Sec. 2. RCW 29A.08.145 and 2005 c 246 s 10 are each amended to read as follows:

This section establishes a special procedure which an elector not registered in the state may use to register to vote ~~((or transfer a voter registration by changing his or her address))~~ during the period beginning after the closing of registration for voting at the polls under RCW 29A.08.140 and ending on the fifteenth day before a primary, special election, or general election. A qualified elector in the state may register to vote ~~((or change his or her registration address))~~ in person in the office of the county auditor of the county in which the applicant resides, or at a voter registration location specifically designated for this purpose by the county auditor or secretary of state, and apply for an absentee ballot for that primary or election. The auditor or registration assistant shall register that individual in the manner provided in this chapter. The application for an absentee ballot executed by the newly registered ~~((or transferred))~~ voter for the primary or election that follows the execution of the registration shall be promptly transmitted to the auditor with the completed voter registration form.

Passed by the House February 8, 2006.
Passed by the Senate March 3, 2006.

Approved by the Governor March 17, 2006.

Filed in Office of Secretary of State March 17, 2006.

CHAPTER 98

[House Bill 3001]

LIMOUSINES

AN ACT Relating to regulation of limousines; amending RCW 46.04.274; and providing an effective date.

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

Sec. 1. RCW 46.04.274 and 1996 c 87 s 2 are each amended to read as follows:

"Limousine" means a category of for hire, chauffeur-driven, unmetered, unmarked luxury motor vehicles ~~((that meets one of the following definitions:~~

~~(1) "Stretch limousine" means an automobile with a seating capacity of not more than twelve passengers in the rear seating area. The wheelbase has been factory or otherwise altered beyond the original manufacturer's specifications and meets standards of the United States department of transportation. The automobile is equipped with amenities in the rear seating area not normally found in passenger cars. These amenities may include, but are not limited to a television, musical sound system, telephone, ice storage, power operated dividers, or additional interior lighting. The term "stretch limousine" excludes trucks, auto transportation companies, excursion buses, charter buses, minibuses, vehicles regulated under chapter 81.66 RCW, taxicabs, executive sedans, funeral home vehicles, station wagons, executive vans, vans, minivans, and courtesy vans.~~

~~(2) "Executive sedan" means a four door sedan automobile having a seating capacity of not more than three passengers behind the driver and a minimum wheelbase of 114.5 inches. An executive sedan is equipped with standard factory amenities, and the wheelbase may not be altered. The term "executive sedan" excludes trucks, auto transportation companies, excursion buses, minibuses, charter buses, vehicles regulated under chapter 81.66 RCW, taxicabs, stretch limousines, funeral home vehicles, station wagons, executive vans, vans, minivans, and courtesy vans.~~

~~(3) "Executive van" means a van, minivan, or minibus having a seating capacity of not less than seven passengers and not more than fourteen passengers behind the driver. The term "executive van" excludes trucks, auto transportation companies, excursion buses, charter buses, vehicles regulated under chapter 81.66 RCW, taxicabs, stretch limousines, executive sedans, funeral home vehicles, station wagons, and courtesy vans.~~

~~(4) "Classic car" means a fine or distinctive, American or foreign automobile that is thirty years old or older). The director in consultation with the Washington state patrol will by rule define the categories of limousines.~~

NEW SECTION. **Sec. 2.** This act takes effect November 1, 2006.

Passed by the House February 10, 2006.

Passed by the Senate March 1, 2006.

Approved by the Governor March 17, 2006.
Filed in Office of Secretary of State March 17, 2006.

CHAPTER 99

[Substitute House Bill 2974]

HEALTH PROFESSIONS DISCIPLINE

AN ACT Relating to health professions discipline; amending RCW 18.130.060, 18.130.070, 18.130.050, 18.130.080, 18.130.160, and 18.130.175; adding new sections to chapter 18.130 RCW; adding a new section to chapter 43.43 RCW; repealing RCW 18.57.174 and 18.71.0193; providing an effective date; and providing an expiration date.

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

Sec. 1. RCW 18.130.060 and 2001 c 101 s 1 are each amended to read as follows:

In addition to the authority specified in RCW 18.130.050, the secretary has the following additional authority:

(1) To employ such investigative, administrative, and clerical staff as necessary for the enforcement of this chapter;

(2) Upon the request of a board, to appoint pro tem members to participate as members of a panel of the board in connection with proceedings specifically identified in the request. Individuals so appointed must meet the same minimum qualifications as regular members of the board. Pro tem members appointed for matters under this chapter are appointed for a term of no more than one year. No pro tem member may serve more than four one-year terms. While serving as board members pro tem, persons so appointed have all the powers, duties, and immunities, and are entitled to the emoluments, including travel expenses in accordance with RCW 43.03.050 and 43.03.060, of regular members of the board. The chairperson of a panel shall be a regular member of the board appointed by the board chairperson. Panels have authority to act as directed by the board with respect to all matters concerning the review, investigation, and adjudication of all complaints, allegations, charges, and matters subject to the jurisdiction of the board. The authority to act through panels does not restrict the authority of the board to act as a single body at any phase of proceedings within the board's jurisdiction. Board panels may make interim orders and issue final decisions with respect to matters and cases delegated to the panel by the board. Final decisions may be appealed as provided in chapter 34.05 RCW, the administrative procedure act;

(3) To establish fees to be paid for witnesses, expert witnesses, and consultants used in any investigation and to establish fees to witnesses in any agency adjudicative proceeding as authorized by RCW 34.05.446;

(4) To conduct investigations and practice reviews at the direction of the disciplining authority and to issue subpoenas, administer oaths, and take depositions in the course of conducting those investigations and practice reviews at the direction of the disciplining authority;

(5) To have the health professions regulatory program establish a system to recruit potential public members, to review the qualifications of such potential members, and to provide orientation to those public members appointed pursuant to law by the governor or the secretary to the boards and commissions

specified in RCW 18.130.040(2)(b), and to the advisory committees and councils for professions specified in RCW 18.130.040(2)(a); and

(6) To adopt rules, in consultation with the disciplining authorities, requiring every license holder to report information identified in RCW 18.130.070.

Sec. 2. RCW 18.130.070 and 2005 c 470 s 2 are each amended to read as follows:

(1)(a) The ((disciplining authority may)) secretary shall adopt rules requiring ((any person, including, but not limited to, licensees, corporations, organizations, health care facilities, impaired practitioner programs, or voluntary substance abuse monitoring programs approved by the disciplining authority and state or local governmental agencies,)) every license holder to report to the appropriate disciplining authority any conviction, determination, or finding that ((a) another license holder has committed an act which constitutes unprofessional conduct, or to report information to the disciplining authority, an impaired practitioner program, or voluntary substance abuse monitoring program approved by the disciplining authority, which indicates that the other license holder may not be able to practice his or her profession with reasonable skill and safety to consumers as a result of a mental or physical condition.

(b) The secretary may adopt rules to require other persons, including corporations, organizations, health care facilities, impaired practitioner programs, or voluntary substance abuse monitoring programs approved by a disciplining authority, and state or local government agencies to report:

(i) Any conviction, determination, or finding that a license holder has committed an act which constitutes unprofessional conduct; or

(ii) Information to the disciplining authority, an impaired practitioner program, or voluntary substance abuse monitoring program approved by the disciplining authority, which indicates that the license holder may not be able to practice his or her profession with reasonable skill and safety to consumers as a result of a mental or physical condition.

(c) If a report has been made by a hospital to the department pursuant to RCW 70.41.210, a report to the disciplining authority is not required. To facilitate meeting the intent of this section, the cooperation of agencies of the federal government is requested by reporting any conviction, determination, or finding that a federal employee or contractor regulated by the disciplining authorities enumerated in this chapter has committed an act which constituted unprofessional conduct and reporting any information which indicates that a federal employee or contractor regulated by the disciplining authorities enumerated in this chapter may not be able to practice his or her profession with reasonable skill and safety as a result of a mental or physical condition.

(d) Reporting under this section is not required by:

(i) Any entity with a peer review committee, quality improvement committee or other similarly designated professional review committee, or by a license holder who is a member of such committee, during the investigative phase of the respective committee's operations if the investigation is completed in a timely manner; or

(ii) An impaired practitioner program or voluntary substance abuse monitoring program approved by a disciplining authority under RCW 18.130.175 if the license holder is currently enrolled in the treatment program,

so long as the license holder actively participates in the treatment program and the license holder's impairment does not constitute a clear and present danger to the public health, safety, or welfare.

(2) If a person fails to furnish a required report, the disciplining authority may petition the superior court of the county in which the person resides or is found, and the court shall issue to the person an order to furnish the required report. A failure to obey the order is a contempt of court as provided in chapter 7.21 RCW.

(3) A person is immune from civil liability, whether direct or derivative, for providing information to the disciplining authority pursuant to the rules adopted under subsection (1) of this section.

(4)(a) The holder of a license subject to the jurisdiction of this chapter shall report to the disciplining authority:

(i) Any conviction, determination, or finding that ((the licensee)) he or she has committed unprofessional conduct or is unable to practice with reasonable skill or safety; and

(ii) Any disqualification from participation in the federal medicare program, under Title XVIII of the federal social security act or the federal medicaid program, under Title XIX of the federal social security act.

(b) Failure to report within thirty days of notice of the conviction, determination, ((or)) finding, or disqualification constitutes grounds for disciplinary action.

NEW SECTION. Sec. 3. A new section is added to chapter 18.130 RCW to read as follows:

Any individual who applies for a license or temporary practice permit or holds a license or temporary practice permit and is prohibited from practicing a health care profession in another state because of an act of unprofessional conduct that is substantially equivalent to an act of unprofessional conduct prohibited by this chapter or any of the chapters specified in RCW 18.130.040 is prohibited from practicing a health care profession in this state until proceedings of the appropriate disciplining authority have been completed under RCW 18.130.050.

Sec. 4. RCW 18.130.050 and 1995 c 336 s 4 are each amended to read as follows:

The disciplining authority has the following authority:

(1) To adopt, amend, and rescind such rules as are deemed necessary to carry out this chapter;

(2) To investigate all complaints or reports of unprofessional conduct as defined in this chapter and to hold hearings as provided in this chapter;

(3) To issue subpoenas and administer oaths in connection with any investigation, hearing, or proceeding held under this chapter;

(4) To take or cause depositions to be taken and use other discovery procedures as needed in any investigation, hearing, or proceeding held under this chapter;

(5) To compel attendance of witnesses at hearings;

(6) In the course of investigating a complaint or report of unprofessional conduct, to conduct practice reviews;

(7) To take emergency action ordering summary suspension of a license, or restriction or limitation of the ((licensee's)) license holder's practice pending proceedings by the disciplining authority. Consistent with section 3 of this act, a disciplining authority shall issue a summary suspension of the license or temporary practice permit of a license holder prohibited from practicing a health care profession in another state, federal, or foreign jurisdiction because of an act of unprofessional conduct that is substantially equivalent to an act of unprofessional conduct prohibited by this chapter or any of the chapters specified in RCW 18.130.040. The summary suspension remains in effect until proceedings by the Washington disciplining authority have been completed;

(8) To use a presiding officer as authorized in RCW 18.130.095(3) or the office of administrative hearings as authorized in chapter 34.12 RCW to conduct hearings. The disciplining authority shall make the final decision regarding disposition of the license unless the disciplining authority elects to delegate in writing the final decision to the presiding officer;

(9) To use individual members of the boards to direct investigations. However, the member of the board shall not subsequently participate in the hearing of the case;

(10) To enter into contracts for professional services determined to be necessary for adequate enforcement of this chapter;

(11) To contract with licensees or other persons or organizations to provide services necessary for the monitoring and supervision of licensees who are placed on probation, whose professional activities are restricted, or who are for any authorized purpose subject to monitoring by the disciplining authority;

(12) To adopt standards of professional conduct or practice;

(13) To grant or deny license applications, and in the event of a finding of unprofessional conduct by an applicant or license holder, to impose any sanction against a license applicant or license holder provided by this chapter;

(14) To designate individuals authorized to sign subpoenas and statements of charges;

(15) To establish panels consisting of three or more members of the board to perform any duty or authority within the board's jurisdiction under this chapter;

(16) To review and audit the records of licensed health facilities' or services' quality assurance committee decisions in which a licensee's practice privilege or employment is terminated or restricted. Each health facility or service shall produce and make accessible to the disciplining authority the appropriate records and otherwise facilitate the review and audit. Information so gained shall not be subject to discovery or introduction into evidence in any civil action pursuant to RCW 70.41.200(3).

Sec. 5. RCW 18.130.080 and 1998 c 132 s 9 are each amended to read as follows:

(1) A person, including but not limited to consumers, licensees, corporations, organizations, health care facilities, impaired practitioner programs, or voluntary substance abuse monitoring programs approved by disciplining authorities, and state and local governmental agencies, may submit a written complaint to the disciplining authority charging a license holder or applicant with unprofessional conduct and specifying the grounds therefor or to report information to the disciplining authority, or voluntary substance abuse monitoring program, or an impaired practitioner program approved by the

disciplining authority, which indicates that the license holder may not be able to practice his or her profession with reasonable skill and safety to consumers as a result of a mental or physical condition. If the disciplining authority determines that the complaint merits investigation, or if the disciplining authority has reason to believe, without a formal complaint, that a license holder or applicant may have engaged in unprofessional conduct, the disciplining authority shall investigate to determine whether there has been unprofessional conduct. In determining whether or not to investigate, the disciplining authority shall consider any prior complaints received by the disciplining authority, any prior findings of fact under RCW 18.130.110, any stipulations to informal disposition under RCW 18.130.172, and any comparable action taken by other state disciplining authorities.

(2) Notwithstanding subsection (1) of this section, the disciplining authority shall initiate an investigation in every instance where the disciplining authority receives information that a health care provider has been disqualified from participating in the federal medicare program, under Title XVIII of the federal social security act, or the federal medicaid program, under Title XIX of the federal social security act.

(3) A person who files a complaint or reports information under this section in good faith is immune from suit in any civil action related to the filing or contents of the complaint.

Sec. 6. RCW 18.130.160 and 2001 c 195 s 1 are each amended to read as follows:

Upon a finding, after hearing, that a license holder or applicant has committed unprofessional conduct or is unable to practice with reasonable skill and safety due to a physical or mental condition, the disciplining authority may issue an order providing for one or any combination of the following:

- (1) Revocation of the license;
- (2) Suspension of the license for a fixed or indefinite term;
- (3) Restriction or limitation of the practice;
- (4) Requiring the satisfactory completion of a specific program of remedial education or treatment;
- (5) The monitoring of the practice by a supervisor approved by the disciplining authority;
- (6) Censure or reprimand;
- (7) Compliance with conditions of probation for a designated period of time;
- (8) Payment of a fine for each violation of this chapter, not to exceed five thousand dollars per violation. Funds received shall be placed in the health professions account;
- (9) Denial of the license request;
- (10) Corrective action;
- (11) Refund of fees billed to and collected from the consumer;
- (12) A surrender of the practitioner's license in lieu of other sanctions, which must be reported to the federal data bank.

Any of the actions under this section may be totally or partly stayed by the disciplining authority. Safeguarding the public's health and safety is the paramount responsibility of every disciplining authority and in determining what action is appropriate, the disciplining authority must first consider what

sanctions are necessary to protect or compensate the public. Only after such provisions have been made may the disciplining authority consider and include in the order requirements designed to rehabilitate the license holder or applicant. All costs associated with compliance with orders issued under this section are the obligation of the license holder or applicant.

The licensee or applicant may enter into a stipulated disposition of charges that includes one or more of the sanctions of this section, but only after a statement of charges has been issued and the licensee has been afforded the opportunity for a hearing and has elected on the record to forego such a hearing. The stipulation shall either contain one or more specific findings of unprofessional conduct or inability to practice, or a statement by the licensee acknowledging that evidence is sufficient to justify one or more specified findings of unprofessional conduct or inability to practice. The stipulation entered into pursuant to this subsection shall be considered formal disciplinary action for all purposes.

Sec. 7. RCW 18.130.175 and 2005 c 274 s 233 are each amended to read as follows:

(1) In lieu of disciplinary action under RCW 18.130.160 and if the disciplining authority determines that the unprofessional conduct may be the result of substance abuse, the disciplining authority may refer the license holder to a voluntary substance abuse monitoring program approved by the disciplining authority.

The cost of the treatment shall be the responsibility of the license holder, but the responsibility does not preclude payment by an employer, existing insurance coverage, or other sources. Primary alcoholism or other drug addiction treatment shall be provided by approved treatment programs under RCW 70.96A.020 or by any other provider approved by the entity or the commission. However, nothing shall prohibit the disciplining authority from approving additional services and programs as an adjunct to primary alcoholism or other drug addiction treatment. The disciplining authority may also approve the use of out-of-state programs. Referral of the license holder to the program shall be done only with the consent of the license holder. Referral to the program may also include probationary conditions for a designated period of time. If the license holder does not consent to be referred to the program or does not successfully complete the program, the disciplining authority may take appropriate action under RCW 18.130.160 which includes suspension of the license unless or until the disciplining authority, in consultation with the director of the voluntary substance abuse monitoring program, determines the license holder is able to practice safely. The secretary shall adopt uniform rules for the evaluation by the disciplinary authority of a relapse or program violation on the part of a license holder in the substance abuse monitoring program. The evaluation shall encourage program participation with additional conditions, in lieu of disciplinary action, when the disciplinary authority determines that the license holder is able to continue to practice with reasonable skill and safety.

(2) In addition to approving substance abuse monitoring programs that may receive referrals from the disciplining authority, the disciplining authority may establish by rule requirements for participation of license holders who are not being investigated or monitored by the disciplining authority for substance abuse. License holders voluntarily participating in the approved programs

without being referred by the disciplining authority shall not be subject to disciplinary action under RCW 18.130.160 for their substance abuse, and shall not have their participation made known to the disciplining authority, if they meet the requirements of this section and the program in which they are participating.

(3) The license holder shall sign a waiver allowing the program to release information to the disciplining authority if the licensee does not comply with the requirements of this section or is unable to practice with reasonable skill or safety. The substance abuse program shall report to the disciplining authority any license holder who fails to comply with the requirements of this section or the program or who, in the opinion of the program, is unable to practice with reasonable skill or safety. License holders shall report to the disciplining authority if they fail to comply with this section or do not complete the program's requirements. License holders may, upon the agreement of the program and disciplining authority, reenter the program if they have previously failed to comply with this section.

(4) The treatment and pretreatment records of license holders referred to or voluntarily participating in approved programs shall be confidential, shall be exempt from chapter 42.56 RCW, and shall not be subject to discovery by subpoena or admissible as evidence except for monitoring records reported to the disciplining authority for cause as defined in subsection (3) of this section. Monitoring records relating to license holders referred to the program by the disciplining authority or relating to license holders reported to the disciplining authority by the program for cause, shall be released to the disciplining authority at the request of the disciplining authority. Records held by the disciplining authority under this section shall be exempt from chapter 42.56 RCW and shall not be subject to discovery by subpoena except by the license holder.

(5) "Substance abuse," as used in this section, means the impairment, as determined by the disciplining authority, of a license holder's professional services by an addiction to, a dependency on, or the use of alcohol, legend drugs, or controlled substances.

(6) This section does not affect an employer's right or ability to make employment-related decisions regarding a license holder. This section does not restrict the authority of the disciplining authority to take disciplinary action for any other unprofessional conduct.

(7) A person who, in good faith, reports information or takes action in connection with this section is immune from civil liability for reporting information or taking the action.

(a) The immunity from civil liability provided by this section shall be liberally construed to accomplish the purposes of this section and the persons entitled to immunity shall include:

- (i) An approved monitoring treatment program;
- (ii) The professional association operating the program;
- (iii) Members, employees, or agents of the program or association;
- (iv) Persons reporting a license holder as being possibly impaired or providing information about the license holder's impairment; and
- (v) Professionals supervising or monitoring the course of the impaired license holder's treatment or rehabilitation.

(b) The courts are strongly encouraged to impose sanctions on clients and their attorneys whose allegations under this subsection are not made in good faith and are without either reasonable objective, substantive grounds, or both.

(c) The immunity provided in this section is in addition to any other immunity provided by law.

NEW SECTION. Sec. 8. A new section is added to chapter 43.43 RCW to read as follows:

(1) Upon a guilty plea or conviction of a person for any felony crime involving homicide under chapter 9A.32 RCW, assault under chapter 9A.36 RCW, kidnapping under chapter 9A.40 RCW, or sex offenses under chapter 9A.44 RCW, the prosecuting attorney shall notify the state patrol of such guilty pleas or convictions.

(2) When the state patrol receives information that a person has pled guilty to or been convicted of one of the felony crimes under subsection (1) of this section, the state patrol shall transmit that information to the department of health. It is the duty of the department of health to identify whether the person holds a credential issued by a disciplining authority listed under RCW 18.130.040, and provide this information to the disciplining authority that issued the credential to the person who pled guilty or was convicted of a crime listed in subsection (1) of this section.

NEW SECTION. Sec. 9. A new section is added to chapter 18.130 RCW to read as follows:

(1) When developing its biennial budget request for appropriation of the health professions account created in RCW 43.70.320, beginning in the 2007-2009 budget and continuing in subsequent biennia, the department shall specify the number of full-time employees designated as investigators and attorneys and the costs associated with supporting their activities. The department shall also specify the additional full-time employees designated as investigators and attorneys that are required to achieve a staffing level that is able to respond promptly, competently, and appropriately to the workload associated with health professions disciplinary activities and the costs associated with supporting disciplinary activities. In identifying the need for additional staff, the department shall develop a formula based on its prior experience with staff levels compared to the number of providers, complaints, investigations, and other criteria that the department determines is relevant to staffing level decisions. The department must request additional funds for activities that most critically impact public health and safety. The budget request must specify the methodology used for each biennium.

(2) The joint legislative audit and review committee, in consultation with the department, shall report to the legislature by December 1, 2010, with recommendations for formulas for determining appropriate staffing levels for investigators and attorneys at the department of health involved in the health professions disciplinary process to achieve prompt, competent, and appropriate responses to complaints of unprofessional conduct. The report must be based upon the department's prior experience with staff levels compared to the number of providers, complaints, investigations, and other criteria that the department finds are relevant to determining appropriate staffing levels.

(3) This section expires July 1, 2011.

NEW SECTION. Sec. 10. The following acts or parts of acts are each repealed:

(1) RCW 18.57.174 (Duty to report unprofessional conduct—Exceptions) and 2000 c 171 s 20 & 1986 c 300 s 9; and

(2) RCW 18.71.0193 (Duty to report unprofessional conduct—Exceptions) and 1994 sp.s. c 9 s 327 & 1986 c 300 s 5.

NEW SECTION. Sec. 11. Section 7 of this act takes effect July 1, 2006.

Passed by the House March 4, 2006.

Passed by the Senate March 3, 2006.

Approved by the Governor March 17, 2006.

Filed in Office of Secretary of State March 17, 2006.

CHAPTER 100

[House Bill 2972]

HEALTH BENEFIT PLANS

AN ACT Relating to community rates for health benefit plans; amending RCW 48.20.028, 48.44.022, and 48.46.064; adding a new section to chapter 48.20 RCW; adding a new section to chapter 48.44 RCW; adding a new section to chapter 48.46 RCW; and creating a new section.

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

Sec. 1. RCW 48.20.028 and 2000 c 79 s 4 are each amended to read as follows:

(1) Premiums for health benefit plans for individuals shall be calculated using the adjusted community rating method that spreads financial risk across the carrier's entire individual product population, except the individual product population covered under section 2 of this act. All such rates shall conform to the following:

(a) The insurer shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;
- (iii) Age;
- (iv) Tenure discounts; and
- (v) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments which shall begin with age twenty and end with age sixty-five. Individuals under the age of twenty shall be treated as those age twenty.

(c) The insurer shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection.

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs not to exceed twenty percent.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (i) Changes to the family composition;
- (ii) Changes to the health benefit plan requested by the individual; or
- (iii) Changes in government requirements affecting the health benefit plan.

(g) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(h) A tenure discount for continuous enrollment in the health plan of two years or more may be offered, not to exceed ten percent.

(2) Adjusted community rates established under this section shall pool the medical experience of all individuals purchasing coverage, except individuals purchasing coverage under section 2 of this act, and shall not be required to be pooled with the medical experience of health benefit plans offered to small employers under RCW 48.21.045.

(3) As used in this section, "health benefit plan," "adjusted community rate," and "wellness activities" mean the same as defined in RCW 48.43.005.

(4) This section shall not apply to premiums for health benefit plans covered under section 2 of this act.

NEW SECTION. Sec. 2. A new section is added to chapter 48.20 RCW to read as follows:

(1) Premiums for health benefit plans for individuals who purchase the plan as a member of a purchasing pool:

(a) Consisting of five hundred or more individuals affiliated with a particular industry;

(b) To whom care management services are provided as a benefit of pool membership; and

(c) Which allows contributions from more than one employer to be used towards the purchase of an individual's health benefit plan; shall be calculated using the adjusted community rating method that spreads financial risk across the entire purchasing pool of which the individual is a member. All such rates shall conform to the following:

(i) The insurer shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (A) Geographic area;
- (B) Family size;
- (C) Age;
- (D) Tenure discounts; and
- (E) Wellness activities.

(ii) The adjustment for age in (c)(i)(C) of this subsection may not use age brackets smaller than five-year increments which shall begin with age twenty

and end with age sixty-five. Individuals under the age of twenty shall be treated as those age twenty.

(iii) The insurer shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer, and coverage for which medicare is not the primary payer. Both rates are subject to the requirements of this subsection.

(iv) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(v) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs not to exceed twenty percent.

(vi) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (A) Changes to the family composition;
- (B) Changes to the health benefit plan requested by the individual; or
- (C) Changes in government requirements affecting the health benefit plan.

(vii) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(viii) A tenure discount for continuous enrollment in the health plan of two years or more may be offered, not to exceed ten percent.

(2) Adjusted community rates established under this section shall not be required to be pooled with the medical experience of health benefit plans offered to small employers under RCW 48.21.045.

(3) As used in this section, "health benefit plan," "adjusted community rates," and "wellness activities" mean the same as defined in RCW 48.43.005.

Sec. 3. RCW 48.44.022 and 2004 c 244 s 6 are each amended to read as follows:

(1) Except for health benefit plans covered under section 4 of this act, premium rates for health benefit plans for individuals shall be subject to the following provisions:

(a) The health care service contractor shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;
- (iii) Age;
- (iv) Tenure discounts; and
- (v) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments which shall begin with age twenty and end with age sixty-five. Individuals under the age of twenty shall be treated as those age twenty.

(c) The health care service contractor shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection.

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (i) Changes to the family composition;
- (ii) Changes to the health benefit plan requested by the individual; or
- (iii) Changes in government requirements affecting the health benefit plan.

(g) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(h) A tenure discount for continuous enrollment in the health plan of two years or more may be offered, not to exceed ten percent.

(2) Adjusted community rates established under this section shall pool the medical experience of all individuals purchasing coverage, except individuals purchasing coverage under section 4 of this act, and shall not be required to be pooled with the medical experience of health benefit plans offered to small employers under RCW 48.44.023.

(3) As used in this section and RCW 48.44.023 "health benefit plan," "small employer," "adjusted community rates," and "wellness activities" mean the same as defined in RCW 48.43.005.

NEW SECTION. Sec. 4. A new section is added to chapter 48.44 RCW to read as follows:

(1) Premiums for health benefit plans for individuals who purchase the plan as a member of a purchasing pool:

(a) Consisting of five hundred or more individuals affiliated with a particular industry;

(b) To whom care management services are provided as a benefit of pool membership; and

(c) Which allows contributions from more than one employer to be used towards the purchase of an individual's health benefit plan; shall be calculated using the adjusted community rating method that spreads financial risk across the entire purchasing pool of which the individual is a member. Such rates are subject to the following provisions:

(i) The health care service contractor shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (A) Geographic area;
- (B) Family size;

- (C) Age;
- (D) Tenure discounts; and
- (E) Wellness activities.

(ii) The adjustment for age in (c)(i)(C) of this subsection may not use age brackets smaller than five-year increments which shall begin with age twenty and end with age sixty-five. Individuals under the age of twenty shall be treated as those age twenty.

(iii) The health care service contractor shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer, and coverage for which medicare is not the primary payer. Both rates are subject to the requirements of this subsection.

(iv) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(v) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs.

(vi) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (A) Changes to the family composition;
- (B) Changes to the health benefit plan requested by the individual; or
- (C) Changes in government requirements affecting the health benefit plan.

(vii) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(viii) A tenure discount for continuous enrollment in the health plan of two years or more may be offered, not to exceed ten percent.

(2) Adjusted community rates established under this section shall not be required to be pooled with the medical experience of health benefit plans offered to small employers under RCW 48.44.023.

(3) As used in this section and RCW 48.44.023, "health benefit plan," "small employer," "adjusted community rates," and "wellness activities" mean the same as defined in RCW 48.43.005.

Sec. 5. RCW 48.46.064 and 2004 c 244 s 8 are each amended to read as follows:

(1) Except for health benefit plans covered under section 6 of this act, premium rates for health benefit plans for individuals shall be subject to the following provisions:

(a) The health maintenance organization shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (i) Geographic area;
- (ii) Family size;
- (iii) Age;
- (iv) Tenure discounts; and
- (v) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments which shall begin with age twenty and end with age sixty-five. Individuals under the age of twenty shall be treated as those age twenty.

(c) The health maintenance organization shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection.

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (i) Changes to the family composition;
- (ii) Changes to the health benefit plan requested by the individual; or
- (iii) Changes in government requirements affecting the health benefit plan.

(g) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(h) A tenure discount for continuous enrollment in the health plan of two years or more may be offered, not to exceed ten percent.

(2) Adjusted community rates established under this section shall pool the medical experience of all individuals purchasing coverage, except individuals purchasing coverage under section 5 of this act, and shall not be required to be pooled with the medical experience of health benefit plans offered to small employers under RCW 48.46.066.

(3) As used in this section and RCW 48.46.066, "health benefit plan," "adjusted community rate," "small employer," and "wellness activities" mean the same as defined in RCW 48.43.005.

NEW SECTION. Sec. 6. A new section is added to chapter 48.46 RCW to read as follows:

(1) Premiums for health benefit plans for individuals who purchase the plan as a member of a purchasing pool:

(a) Consisting of five hundred or more individuals affiliated with a particular industry;

(b) To whom care management services are provided as a benefit of pool membership; and

(c) Which allows contributions from more than one employer to be used towards the purchase of an individual's health benefit plan;

shall be calculated using the adjusted community rating method that spreads financial risk across the entire purchasing pool of which the individual is a member. Such rates are subject to the following provisions:

(i) The health maintenance organization shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

- (A) Geographic area;
- (B) Family size;
- (C) Age;
- (D) Tenure discounts; and
- (E) Wellness activities.

(ii) The adjustment for age in (c)(i)(C) of this subsection may not use age brackets smaller than five-year increments which shall begin with age twenty and end with age sixty-five. Individuals under the age of twenty shall be treated as those age twenty.

(iii) The health maintenance organization shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer, and coverage for which medicare is not the primary payer. Both rates are subject to the requirements of this subsection.

(iv) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(v) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs.

(vi) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

- (A) Changes to the family composition;
- (B) Changes to the health benefit plan requested by the individual; or
- (C) Changes in government requirements affecting the health benefit plan.

(vii) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(viii) A tenure discount for continuous enrollment in the health plan of two years or more may be offered, not to exceed ten percent.

(2) Adjusted community rates established under this section shall not be required to be pooled with the medical experience of health benefit plans offered to small employers under RCW 48.46.066.

(3) As used in this section and RCW 48.46.066, "health benefit plan," "adjusted community rates," "small employer," and "wellness activities" mean the same as defined in RCW 48.43.005.

NEW SECTION. Sec. 7. No policy or contract may be solicited, or contribution collected under this act until a federal opinion is received by the insurance commissioner indicating whether the purchasing pools referenced in sections 2, 4, and 6 of this act are legal. The commissioner shall request such an opinion from the federal departments of labor, treasury, health and human services, or other appropriate federal agencies no later than August 1, 2006. Upon receipt, the commissioner shall forward the opinion to the legislature, and within thirty days, provide the legislature with a report assessing the legality and

potential impact of these purchasing pools on the uninsured and insurance markets in Washington state.

Passed by the House March 4, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 17, 2006.

Filed in Office of Secretary of State March 17, 2006.

CHAPTER 101

[House Bill 2897]

LIQUOR LICENSES—PASSENGER VESSELS

AN ACT Relating to liquor licensees holding a caterer's endorsement; and amending RCW 66.04.010, 66.24.320, 66.24.420, and 66.24.210.

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

Sec. 1. RCW 66.04.010 and 2005 c 151 s 1 are each amended to read as follows:

In this title, unless the context otherwise requires:

(1) "Alcohol" is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance. The term "alcohol" does not include alcohol in the possession of a manufacturer or distiller of alcohol fuel, as described in RCW 66.12.130, which is intended to be denatured and used as a fuel for use in motor vehicles, farm implements, and machines or implements of husbandry.

(2) "Authorized representative" means a person who:

(a) Is required to have a federal basic permit issued pursuant to the federal alcohol administration act, 27 U.S.C. Sec. 204;

(b) Has its business located in the United States outside of the state of Washington;

(c) Acquires ownership of beer or wine for transportation into and resale in the state of Washington; and which beer or wine is produced anywhere outside Washington by a brewery or winery which does not hold a certificate of approval issued by the board; and

(d) Is appointed by the brewery or winery referenced in (c) of this subsection as its exclusive authorized representative for marketing and selling its products within the United States in accordance with a written agreement between the authorized representative and such brewery or winery pursuant to this title. The board may waive the requirement for the written agreement of exclusivity in situations consistent with the normal marketing practices of certain products, such as classified growths.

(3) "Beer" means any malt beverage or malt liquor as these terms are defined in this chapter.

(4) "Beer distributor" means a person who buys beer from a domestic brewery, microbrewery, beer certificate of approval holder, or beer importers, or who acquires foreign produced beer from a source outside of the United States, for the purpose of selling the same pursuant to this title, or who represents such brewer or brewery as agent.

(5) "Beer importer" means a person or business within Washington who purchases beer from a beer certificate of approval holder or who acquires foreign produced beer from a source outside of the United States for the purpose of selling the same pursuant to this title.

(6) "Brewer" or "brewery" means any person engaged in the business of manufacturing beer and malt liquor. Brewer includes a brand owner of malt beverages who holds a brewer's notice with the federal bureau of alcohol, tobacco, and firearms at a location outside the state and whose malt beverage is contract-produced by a licensed in-state brewery, and who may exercise within the state, under a domestic brewery license, only the privileges of storing, selling to licensed beer distributors, and exporting beer from the state.

(7) "Board" means the liquor control board, constituted under this title.

(8) "Club" means an organization of persons, incorporated or unincorporated, operated solely for fraternal, benevolent, educational, athletic or social purposes, and not for pecuniary gain.

(9) "Consume" includes the putting of liquor to any use, whether by drinking or otherwise.

(10) "Contract liquor store" means a business that sells liquor on behalf of the board through a contract with a contract liquor store manager.

(11) "Dentist" means a practitioner of dentistry duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.32 RCW.

(12) "Distiller" means a person engaged in the business of distilling spirits.

(13) "Domestic brewery" means a place where beer and malt liquor are manufactured or produced by a brewer within the state.

(14) "Domestic winery" means a place where wines are manufactured or produced within the state of Washington.

(15) "Druggist" means any person who holds a valid certificate and is a registered pharmacist and is duly and regularly engaged in carrying on the business of pharmaceutical chemistry pursuant to chapter 18.64 RCW.

(16) "Drug store" means a place whose principal business is, the sale of drugs, medicines and pharmaceutical preparations and maintains a regular prescription department and employs a registered pharmacist during all hours the drug store is open.

(17) "Employee" means any person employed by the board.

(18) "Fund" means 'liquor revolving fund.'

(19) "Hotel" means every building or other structure kept, used, maintained, advertised or held out to the public to be a place where food is served and sleeping accommodations are offered for pay to transient guests, in which twenty or more rooms are used for the sleeping accommodation of such transient guests and having one or more dining rooms where meals are served to such transient guests, such sleeping accommodations and dining rooms being conducted in the same building and buildings, in connection therewith, and such structure or structures being provided, in the judgment of the board, with adequate and sanitary kitchen and dining room equipment and capacity, for preparing, cooking and serving suitable food for its guests: PROVIDED FURTHER, That in cities and towns of less than five thousand population, the board shall have authority to waive the provisions requiring twenty or more rooms.

(20) "Importer" means a person who buys distilled spirits from a distillery outside the state of Washington and imports such spirituous liquor into the state for sale to the board or for export.

(21) "Imprisonment" means confinement in the county jail.

(22) "Liquor" includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating; and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating. Liquor does not include confections or food products that contain one percent or less of alcohol by weight.

(23) "Manufacturer" means a person engaged in the preparation of liquor for sale, in any form whatsoever.

(24) "Malt beverage" or "malt liquor" means any beverage such as beer, ale, lager beer, stout, and porter obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than eight percent of alcohol by weight, and not less than one-half of one percent of alcohol by volume. For the purposes of this title, any such beverage containing more than eight percent of alcohol by weight shall be referred to as "strong beer."

(25) "Package" means any container or receptacle used for holding liquor.

(26) "Passenger vessel" means any boat, ship, vessel, barge, or other floating craft of any kind carrying passengers for compensation.

(27) "Permit" means a permit for the purchase of liquor under this title.

~~((27))~~ (28) "Person" means an individual, copartnership, association, or corporation.

~~((28))~~ (29) "Physician" means a medical practitioner duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.71 RCW.

~~((29))~~ (30) "Prescription" means a memorandum signed by a physician and given by him to a patient for the obtaining of liquor pursuant to this title for medicinal purposes.

~~((30))~~ (31) "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; those parts of establishments where beer may be sold under this title, soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, and other public conveyances of all kinds and character, and the depots and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, and/or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

~~((31))~~ (32) "Regulations" means regulations made by the board under the powers conferred by this title.

~~((32))~~ (33) "Restaurant" means any establishment provided with special space and accommodations where, in consideration of payment, food, without lodgings, is habitually furnished to the public, not including drug stores and soda fountains.

~~((33))~~ (34) "Sale" and "sell" include exchange, barter, and traffic; and also include the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatever commonly used to describe malt or brewed liquor or of wine, by any person to any person; and also include a sale or selling within the state to a foreign consignee or his agent in the state. "Sale" and "sell" shall not include the giving, at no charge, of a reasonable amount of liquor by a person not licensed by the board to a person not licensed by the board, for personal use only. "Sale" and "sell" also does not include a raffle authorized under RCW 9.46.0315: PROVIDED, That the nonprofit organization conducting the raffle has obtained the appropriate permit from the board.

~~((34))~~ (35) "Soda fountain" means a place especially equipped with apparatus for the purpose of dispensing soft drinks, whether mixed or otherwise.

~~((35))~~ (36) "Spirits" means any beverage which contains alcohol obtained by distillation, including wines exceeding twenty-four percent of alcohol by volume.

~~((36))~~ (37) "Store" means a state liquor store established under this title.

~~((37))~~ (38) "Tavern" means any establishment with special space and accommodation for sale by the glass and for consumption on the premises, of beer, as herein defined.

~~((38))~~ (39) "Winery" means a business conducted by any person for the manufacture of wine for sale, other than a domestic winery.

~~((39))~~ (40)(a) "Wine" means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, et cetera) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than twenty-four percent of alcohol by volume, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding twenty-four percent of alcohol by volume and not less than one-half of one percent of alcohol by volume. For purposes of this title, any beverage containing no more than fourteen percent of alcohol by volume when bottled or packaged by the manufacturer shall be referred to as "table wine," and any beverage containing alcohol in an amount more than fourteen percent by volume when bottled or packaged by the manufacturer shall be referred to as "fortified wine." However, "fortified wine" shall not include: ~~((a))~~ (i) Wines that are both sealed or capped by cork closure and aged two years or more; and ~~((b))~~ (ii) wines that contain more than fourteen percent alcohol by volume solely as a result of the natural fermentation process and that have not been produced with the addition of wine spirits, brandy, or alcohol.

(b) This subsection shall not be interpreted to require that any wine be labeled with the designation "table wine" or "fortified wine."

~~((40))~~ (41) "Wine distributor" means a person who buys wine from a domestic winery, wine certificate of approval holder, or wine importer, or who

acquires foreign produced wine from a source outside of the United States, for the purpose of selling the same not in violation of this title, or who represents such vintner or winery as agent.

~~((41))~~ (42) "Wine importer" means a person or business within Washington who purchases wine from a wine certificate of approval holder or who acquires foreign produced wine from a source outside of the United States for the purpose of selling the same pursuant to this title.

Sec. 2. RCW 66.24.320 and 2005 c 152 s 1 are each amended to read as follows:

There shall be a beer and/or wine restaurant license to sell beer, including strong beer, or wine, or both, at retail, for consumption on the premises. A patron of the licensee may remove from the premises, recorked or recapped in its original container, any portion of wine that was purchased for consumption with a meal.

(1) The annual fee shall be two hundred dollars for the beer license, two hundred dollars for the wine license, or four hundred dollars for a combination beer and wine license.

(2)(a) The board may issue a caterer's endorsement to this license to allow the licensee to remove from the liquor stocks at the licensed premises, only those types of liquor that are authorized under the on-premises license privileges for sale and service at event locations at a specified date and, except as provided in subsection (3) of this section, place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be a society or organization as defined by RCW 66.24.375 is waived. Cost of the endorsement is three hundred fifty dollars.

(b) The holder of this license with catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(3) Licensees under this section that hold a caterer's endorsement are allowed to use this endorsement on a domestic winery premises or on the premises of a passenger vessel under the following conditions:

(a) Agreements between the domestic winery or the passenger vessel, as the case may be, and the retail licensee shall be in writing, contain no exclusivity clauses regarding the alcohol beverages to be served, and be filed with the board; and

(b) The domestic winery or passenger vessel, as the case may be, and the retail licensee shall be separately contracted and compensated by the persons sponsoring the event for their respective services.

(4) The holder of this license or its manager may furnish beer or wine to the licensee's employees free of charge as may be required for use in connection with instruction on beer and wine. The instruction may include the history, nature, values, and characteristics of beer or wine, the use of wine lists, and the methods of presenting, serving, storing, and handling beer or wine. The beer

and/or wine licensee must use the beer or wine it obtains under its license for the sampling as part of the instruction. The instruction must be given on the premises of the beer and/or wine licensee.

Sec. 3. RCW 66.24.420 and 2004 c 62 s 3 are each amended to read as follows:

(1) The spirits, beer, and wine restaurant license shall be issued in accordance with the following schedule of annual fees:

(a) The annual fee for a spirits, beer, and wine restaurant license shall be graduated according to the dedicated dining area and type of service provided as follows:

Less than 50% dedicated dining area	\$2,000
50% or more dedicated dining area	\$1,600
Service bar only	\$1,000

(b) The annual fee for the license when issued to any other spirits, beer, and wine restaurant licensee outside of incorporated cities and towns shall be prorated according to the calendar quarters, or portion thereof, during which the licensee is open for business, except in case of suspension or revocation of the license.

(c) Where the license shall be issued to any corporation, association or person operating a bona fide restaurant in an airport terminal facility providing service to transient passengers with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place(~~(= PROVIDED, That)~~). The holder of a master license for a restaurant in an airport terminal facility ((shall be required to)) must maintain in a substantial manner at least one place on the premises for preparing, cooking, and serving of complete meals, and such food service shall be available on request in other licensed places on the premises(= PROVIDED, FURTHER, That). An additional license fee of twenty-five percent of the annual master license fee shall be required for such duplicate licenses.

(d) Where the license shall be issued to any corporation, association, or person operating dining places at a publicly or privately owned civic or convention center with facilities for sports, entertainment, or conventions, or a combination thereof, with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place(~~(= PROVIDED, That)~~). The holder of a master license for a dining place at such a publicly or privately owned civic or convention center ((shall be required to)) must maintain in a substantial manner at least one place on the premises for preparing, cooking, and serving of complete meals, and food service shall be available on request in other licensed places on the premises(= PROVIDED FURTHER, That). An additional license fee of ten dollars shall be required for such duplicate licenses.

(e) Where the license shall be issued to any corporation, association or person operating more than one building containing dining places at privately owned facilities which are open to the public and where there is a continuity of ownership of all adjacent property, such license shall be issued upon the payment of an annual fee which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to the additional dining places on the property or, in the case of a spirits, beer, and wine restaurant licensed hotel, property owned or controlled by leasehold interest by that hotel for use as a conference or convention center or banquet facility open to the general public for special events in the same metropolitan area, at the discretion of the board and a duplicate license may be issued for each additional place(~~(: PROVIDED, That)~~). The holder of the master license for the dining place shall not offer alcoholic beverages for sale, service, and consumption at the additional place unless food service is available at both the location of the master license and the duplicate license(~~(: PROVIDED FURTHER, That)~~). An additional license fee of twenty dollars shall be required for such duplicate licenses.

(2) The board, so far as in its judgment is reasonably possible, shall confine spirits, beer, and wine restaurant licenses to the business districts of cities and towns and other communities, and not grant such licenses in residential districts, nor within the immediate vicinity of schools, without being limited in the administration of this subsection to any specific distance requirements.

(3) The board shall have discretion to issue spirits, beer, and wine restaurant licenses outside of cities and towns in the state of Washington. The purpose of this subsection is to enable the board, in its discretion, to license in areas outside of cities and towns and other communities, establishments which are operated and maintained primarily for the benefit of tourists, vacationers and travelers, and also golf and country clubs, and common carriers operating dining, club and buffet cars, or boats.

(4) The total number of spirits, beer, and wine restaurant licenses issued in the state of Washington by the board, not including spirits, beer, and wine private club licenses, shall not in the aggregate at any time exceed one license for each fifteen hundred of population in the state, determined according to the yearly population determination developed by the office of financial management pursuant to RCW 43.62.030.

(5) Notwithstanding the provisions of subsection (4) of this section, the board shall refuse a spirits, beer, and wine restaurant license to any applicant if in the opinion of the board the spirits, beer, and wine restaurant licenses already granted for the particular locality are adequate for the reasonable needs of the community.

(6)(a) The board may issue a caterer's endorsement to this license to allow the licensee to remove the liquor stocks at the licensed premises, for use as liquor for sale and service at event locations at a specified date and, except as provided in subsection (7) of this section, place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be a society or organization

as defined by RCW 66.24.375 is waived. Cost of the endorsement is three hundred fifty dollars.

(b) The holder of this license with catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(7) Licensees under this section that hold a caterer's endorsement are allowed to use this endorsement on a domestic winery premises or on the premises of a passenger vessel under the following conditions:

(a) Agreements between the domestic winery or passenger vessel, as the case may be, and the retail licensee shall be in writing, contain no exclusivity clauses regarding the alcohol beverages to be served, and be filed with the board; and

(b) The domestic winery or passenger vessel, as the case may be, and the retail licensee shall be separately contracted and compensated by the persons sponsoring the event for their respective services.

Sec. 4. RCW 66.24.210 and 2001 c 124 s 1 are each amended to read as follows:

(1) There is hereby imposed upon all wines except cider sold to wine distributors and the Washington state liquor control board, within the state a tax at the rate of twenty and one-fourth cents per liter. There is hereby imposed on all cider sold to wine distributors and the Washington state liquor control board within the state a tax at the rate of three and fifty-nine one-hundredths cents per liter(~~(= PROVIDED, HOWEVER, That)~~). However, wine sold or shipped in bulk from one winery to another winery shall not be subject to such tax. The tax provided for in this section shall be collected by direct payments based on wine purchased by wine distributors. Every person purchasing wine under the provisions of this section shall on or before the twentieth day of each month report to the board all purchases during the preceding calendar month in such manner and upon such forms as may be prescribed by the board, and with such report shall pay the tax due from the purchases covered by such report unless the same has previously been paid. Any such purchaser of wine whose applicable tax payment is not postmarked by the twentieth day following the month of purchase will be assessed a penalty at the rate of two percent a month or fraction thereof. The board may require that every such person shall execute to and file with the board a bond to be approved by the board, in such amount as the board may fix, securing the payment of the tax. If any such person fails to pay the tax when due, the board may forthwith suspend or cancel the license until all taxes are paid.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section. All revenues collected during any month from this additional tax shall be transferred to the state general fund by the twenty-fifth day of the following month.

(3) An additional tax is imposed on wines subject to tax under subsection (1) of this section, at the rate of one-fourth of one cent per liter for wine sold after June 30, 1987. After June 30, 1996, such additional tax does not apply to cider. An additional tax of five one-hundredths of one cent per liter is imposed

on cider sold after June 30, 1996. All revenues collected under this subsection (3) shall be disbursed quarterly to the Washington wine commission for use in carrying out the purposes of chapter 15.88 RCW.

(4) An additional tax is imposed on all wine subject to tax under subsection (1) of this section. The additional tax is equal to twenty-three and forty-four one-hundredths cents per liter on fortified wine as defined in RCW 66.04.010(~~(38)~~) (40) when bottled or packaged by the manufacturer, one cent per liter on all other wine except cider, and eighteen one-hundredths of one cent per liter on cider. All revenues collected during any month from this additional tax shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520 by the twenty-fifth day of the following month.

(5)(a) An additional tax is imposed on all cider subject to tax under subsection (1) of this section. The additional tax is equal to two and four one-hundredths cents per liter of cider sold after June 30, 1996, and before July 1, 1997, and is equal to four and seven one-hundredths cents per liter of cider sold after June 30, 1997.

(b) All revenues collected from the additional tax imposed under this subsection (5) shall be deposited in the health services account under RCW 43.72.900.

(6) For the purposes of this section, "cider" means table wine that contains not less than one-half of one percent of alcohol by volume and not more than seven percent of alcohol by volume and is made from the normal alcoholic fermentation of the juice of sound, ripe apples or pears. "Cider" includes, but is not limited to, flavored, sparkling, or carbonated cider and cider made from condensed apple or pear must.

Passed by the House February 8, 2006.

Passed by the Senate February 28, 2006.

Approved by the Governor March 17, 2006.

Filed in Office of Secretary of State March 17, 2006.

CHAPTER 102

[Second Substitute House Bill 2805]

MISSING PERSONS

AN ACT Relating to missing persons; amending RCW 68.50.320; adding new sections to chapter 36.28A RCW; adding a new section to chapter 43.103 RCW; adding a new section to chapter 43.43 RCW; and creating new sections.

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

NEW SECTION. Sec. 1. The legislature finds that there were over forty-six thousand reports of persons missing nationwide and over five hundred missing persons in the state of Washington. Major catastrophic events in other parts of the United States this year have also emphasized that identifying victims in mass disasters is often impossible, due to the deficiency in planning by communities and governments. It is the intent of this act to build upon the research and findings of the Washington state missing persons task force, assembled by the state attorney general in 2003, the United States department of justice, and others to aid in recovery of missing persons and the identification of human remains.

NEW SECTION. Sec. 2. A new section is added to chapter 36.28A RCW to read as follows:

The Washington association of county officials, in consultation with the Washington association of sheriffs and police chiefs, the Washington association of coroners and medical examiners, the forensic investigations council, the Washington state patrol, and other interested agencies and individuals, shall convene a committee to coordinate the use of the latest technology and available science to improve reporting of missing persons, to improve the communication within the state and with national data bases, to enhance the dissemination of information to other agencies and the public, and to improve reporting for missing persons and the collection and preservation of evidence.

Protocols for the investigation of reported missing persons, identification of human remains, and recommended protocols for the reporting and identification of persons missing as the result of major events not limited to tsunami, earthquake, or acts of terrorism shall be endorsed by the groups named in this section who shall then seek the voluntary adoption of the same by all local law enforcement agencies, coroners, medical examiners, and others charged with locating missing persons or identifying human remains.

NEW SECTION. Sec. 3. A new section is added to chapter 43.103 RCW to read as follows:

The Washington state forensic investigations council, in cooperation with the Washington association of coroners and medical examiners and other interested agencies, shall develop training modules that are essential to the effective implementation and use of missing persons protocols using funds provided in RCW 43.79.445. The training modules must provide training through classes and media that will train and educate small departments or those at remote locations with the least disruption. The modules will include, but will not be limited to: The reporting process, the use of forms and protocols, the effective use of resources, the collection and importance of evidence and preservation of biological evidence, and risk assessment of the individuals reported missing.

NEW SECTION. Sec. 4. A new section is added to chapter 36.28A RCW to read as follows:

The Washington association of sheriffs and police chiefs shall create and maintain a statewide web site, which shall be available to the public. The web site shall post relevant information concerning persons reported missing in the state of Washington. For missing persons, the web site shall contain, but is not limited to: The person's name, physical description, photograph, and other information that is deemed necessary according to the adopted protocols. This web site shall allow citizens to more broadly disseminate information regarding missing persons for at least thirty days. Due to the large number of reports received on persons who are overdue and subsequently appear, the information will be removed from the web site after thirty days, unless persons filing the report have notified local law enforcement that the person is still missing.

NEW SECTION. Sec. 5. A new section is added to chapter 36.28A RCW to read as follows:

The Washington state patrol shall establish an interface with local law enforcement and the Washington association of sheriffs and police chiefs

missing persons web site, the toll-free twenty-four hour hotline, and national and other statewide missing persons systems or clearinghouses.

Local law enforcement agencies shall file an official missing persons report and enter biographical information into the state missing persons computerized network within twelve hours after notification of a missing person's report is received under this chapter.

Sec. 6. RCW 68.50.320 and 2001 c 223 s 1 are each amended to read as follows:

When a person reported missing has not been found within thirty days of the report, or at any time the investigating agency suspects criminal activity to be the basis of the victim being missing, the sheriff, chief of police, county coroner or county medical examiner, or other law enforcement authority initiating and conducting the investigation for the missing person shall: (1) File a missing person's report with the Washington state patrol missing and unidentified persons unit; (2) initiate the collection of DNA samples from the known missing person and their family members for nuclear and mitochondrial DNA testing along with the necessary consent forms; and (3) ask the missing person's family or next of kin to give written consent to contact the dentist or dentists of the missing person and request the person's dental records.

~~((When a person reported missing has not been found within thirty days, the sheriff, chief of police, or other law enforcement authority initiating and conducting the investigation for the missing person shall confer with the county coroner or medical examiner prior to the preparation of a missing person's report. After conferring with the coroner or medical examiner, the sheriff, chief of police, or other law enforcement authority shall submit a missing person's report and the dental records received under this section to the dental identification system of the state patrol identification and criminal history section on forms supplied by the state patrol for such purpose.))~~

As soon as possible after collecting the DNA samples and obtaining the dental records, the sheriff, chief of police, or other law enforcement authority shall submit the DNA samples for nuclear DNA testing to the Washington state patrol crime laboratory in their jurisdiction. The DNA samples for mitochondrial DNA testing shall be submitted to the federal bureau of investigation. Dental records shall be submitted as soon as possible to the Washington state patrol missing and unidentified persons unit.

The descriptive information from missing person's reports and dental data submitted to the state patrol missing persons and unidentified persons unit shall be recorded and maintained by the Washington state patrol missing and unidentified persons unit in the applicable dedicated missing person's data bases.

In cases where criminal activity is suspected, the state patrol shall conduct nuclear DNA typing for entry into the state missing person's DNA data base as soon as possible.

When a person reported missing has been found, the sheriff, chief of police, coroner or medical examiner, or other law enforcement authority shall report such information to the state patrol.

The dental identification system shall maintain a file of information regarding persons reported to it as missing. The file shall contain the information referred to in this section and such other information as the state patrol finds relevant to assist in the location of a missing person.

The files of the dental identification system shall, upon request, be made available to law enforcement agencies attempting to locate missing persons.

NEW SECTION. Sec. 7. A new section is added to chapter 43.43 RCW to read as follows:

Biological samples taken for a missing person's investigation under RCW 68.50.320 shall be forwarded as appropriate to the federal bureau of investigation upon receipt of the DNA samples and to the Washington state patrol crime lab as soon as possible. The crime laboratory of the state patrol will provide guidance to agencies regarding where samples should be sent, conduct nuclear DNA testing of the biological sample where appropriate and, in the event additional testing is required, the mitochondrial DNA testing will be conducted through the federal bureau of investigation. Priority for testing shall be given to active criminal cases. If substantial delays in testing occur or federal testing is no longer available, the legislature should provide funding to implement mitochondrial technology in the state of Washington.

NEW SECTION. Sec. 8. If specific funding for the purposes of section 4 of this act, referencing this act and section 4 of this act by bill or chapter number and section number, is not provided by June 30, 2006, in the omnibus appropriations act, section 4 of this act is null and void.

NEW SECTION. Sec. 9. If specific funding for the purposes of section 5 of this act, referencing this act and section 5 of this act by bill or chapter number and section number, is not provided by June 30, 2006, in the omnibus appropriations act, section 5 of this act is null and void.

Passed by the House February 11, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 17, 2006.

Filed in Office of Secretary of State March 17, 2006.

CHAPTER 103

[Substitute House Bill 2573]

HEALTH INFORMATION TECHNOLOGY

AN ACT Relating to health information technology; amending RCW 41.05.021 and 41.05.075; and creating new sections.

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

NEW SECTION. Sec. 1. (1) The legislature recognizes that improvements in the quality of health care lead to better health care outcomes for the residents of Washington state and contain health care costs. The improvements are facilitated by the adoption of electronic medical records and other health information technologies.

(2) It is the intent of the legislature to encourage all hospitals, integrated delivery systems, and providers in the state of Washington to adopt health information technologies by the year 2012.

Sec. 2. RCW 41.05.021 and 2005 c 446 s 1 are each amended to read as follows:

(1) The Washington state health care authority is created within the executive branch. The authority shall have an administrator appointed by the

governor, with the consent of the senate. The administrator shall serve at the pleasure of the governor. The administrator may employ up to seven staff members, who shall be exempt from chapter 41.06 RCW, and any additional staff members as are necessary to administer this chapter. The administrator may delegate any power or duty vested in him or her by this chapter, including authority to make final decisions and enter final orders in hearings conducted under chapter 34.05 RCW. The primary duties of the authority shall be to: Administer state employees' insurance benefits and retired or disabled school employees' insurance benefits; administer the basic health plan pursuant to chapter 70.47 RCW; study state-purchased health care programs in order to maximize cost containment in these programs while ensuring access to quality health care; and implement state initiatives, joint purchasing strategies, and techniques for efficient administration that have potential application to all state-purchased health services. The authority's duties include, but are not limited to, the following:

(a) To administer health care benefit programs for employees and retired or disabled school employees as specifically authorized in RCW 41.05.065 and in accordance with the methods described in RCW 41.05.075, 41.05.140, and other provisions of this chapter;

(b) To analyze state-purchased health care programs and to explore options for cost containment and delivery alternatives for those programs that are consistent with the purposes of those programs, including, but not limited to:

(i) Creation of economic incentives for the persons for whom the state purchases health care to appropriately utilize and purchase health care services, including the development of flexible benefit plans to offset increases in individual financial responsibility;

(ii) Utilization of provider arrangements that encourage cost containment, including but not limited to prepaid delivery systems, utilization review, and prospective payment methods, and that ensure access to quality care, including assuring reasonable access to local providers, especially for employees residing in rural areas;

(iii) Coordination of state agency efforts to purchase drugs effectively as provided in RCW 70.14.050;

(iv) Development of recommendations and methods for purchasing medical equipment and supporting services on a volume discount basis;

(v) Development of data systems to obtain utilization data from state-purchased health care programs in order to identify cost centers, utilization patterns, provider and hospital practice patterns, and procedure costs, utilizing the information obtained pursuant to RCW 41.05.031; and

(vi) In collaboration with other state agencies that administer state purchased health care programs, private health care purchasers, health care facilities, providers, and carriers((:));

(A) Use evidence-based medicine principles to develop common performance measures and implement financial incentives in contracts with insuring entities, health care facilities, and providers that:

~~((A))~~ (I) Reward improvements in health outcomes for individuals with chronic diseases, increased utilization of appropriate preventive health services, and reductions in medical errors; and

~~((B))~~ (II) Increase, through appropriate incentives to insuring entities, health care facilities, and providers, the adoption and use of information technology that contributes to improved health outcomes, better coordination of care, and decreased medical errors;

(B) Through state health purchasing, reimbursement, or pilot strategies, promote and increase the adoption of health information technology systems, including electronic medical records, by hospitals as defined in RCW 70.41.020(4), integrated delivery systems, and providers that:

(I) Facilitate diagnosis or treatment;

(II) Reduce unnecessary duplication of medical tests;

(III) Promote efficient electronic physician order entry;

(IV) Increase access to health information for consumers and their providers; and

(V) Improve health outcomes;

(C) Coordinate a strategy for the adoption of health information technology systems using the final health information technology report and recommendations developed under chapter 261, Laws of 2005.

(c) To analyze areas of public and private health care interaction;

(d) To provide information and technical and administrative assistance to the board;

(e) To review and approve or deny applications from counties, municipalities, and other political subdivisions of the state to provide state-sponsored insurance or self-insurance programs to their employees in accordance with the provisions of RCW 41.04.205, setting the premium contribution for approved groups as outlined in RCW 41.05.050;

(f) To establish billing procedures and collect funds from school districts ~~(and educational service districts under RCW 28A.400.400)~~ in a way that minimizes the administrative burden on districts;

(g) To publish and distribute to nonparticipating school districts and educational service districts by October 1st of each year a description of health care benefit plans available through the authority and the estimated cost if school districts and educational service district employees were enrolled; ~~(and)~~

(h) To apply for, receive, and accept grants, gifts, and other payments, including property and service, from any governmental or other public or private entity or person, and make arrangements as to the use of these receipts to implement initiatives and strategies developed under this section; and

(i) To promulgate and adopt rules consistent with this chapter as described in RCW 41.05.160.

(2) On and after January 1, 1996, the public employees' benefits board may implement strategies to promote managed competition among employee health benefit plans. Strategies may include but are not limited to:

(a) Standardizing the benefit package;

(b) Soliciting competitive bids for the benefit package;

(c) Limiting the state's contribution to a percent of the lowest priced qualified plan within a geographical area;

(d) Monitoring the impact of the approach under this subsection with regards to: Efficiencies in health service delivery, cost shifts to subscribers, access to and choice of managed care plans statewide, and quality of health services. The health care authority shall also advise on the value of

administering a benchmark employer-managed plan to promote competition among managed care plans.

Sec. 3. RCW 41.05.075 and 2005 c 446 s 2 are each amended to read as follows:

(1) The administrator shall provide benefit plans designed by the board through a contract or contracts with insuring entities, through self-funding, self-insurance, or other methods of providing insurance coverage authorized by RCW 41.05.140.

(2) The administrator shall establish a contract bidding process that:

(a) Encourages competition among insuring entities;

(b) Maintains an equitable relationship between premiums charged for similar benefits and between risk pools including premiums charged for retired state and school district employees under the separate risk pools established by RCW 41.05.022 and 41.05.080 such that insuring entities may not avoid risk when establishing the premium rates for retirees eligible for medicare;

(c) Is timely to the state budgetary process; and

(d) Sets conditions for awarding contracts to any insuring entity.

(3) The administrator shall establish a requirement for review of utilization and financial data from participating insuring entities on a quarterly basis.

(4) The administrator shall centralize the enrollment files for all employee and retired or disabled school employee health plans offered under chapter 41.05 RCW and develop enrollment demographics on a plan-specific basis.

(5) All claims data shall be the property of the state. The administrator may require of any insuring entity that submits a bid to contract for coverage all information deemed necessary including:

(a) Subscriber or member demographic and claims data necessary for risk assessment and adjustment calculations in order to fulfill the administrator's duties as set forth in this chapter; and

(b) Subscriber or member demographic and claims data necessary to implement performance measures or financial incentives related to performance under subsection (7) of this section.

(6) All contracts with insuring entities for the provision of health care benefits shall provide that the beneficiaries of such benefit plans may use on an equal participation basis the services of practitioners licensed pursuant to chapters 18.22, 18.25, 18.32, 18.53, 18.57, 18.71, 18.74, 18.83, and 18.79 RCW, as it applies to registered nurses and advanced registered nurse practitioners. However, nothing in this subsection may preclude the administrator from establishing appropriate utilization controls approved pursuant to RCW 41.05.065(2) (a), (b), and (d).

(7) The administrator shall, in collaboration with other state agencies that administer state purchased health care programs, private health care purchasers, health care facilities, providers, and carriers~~((;))~~;

(a) Use evidence-based medicine principles to develop common performance measures and implement financial incentives in contracts with insuring entities, health care facilities, and providers that:

~~((a))~~ (i) Reward improvements in health outcomes for individuals with chronic diseases, increased utilization of appropriate preventive health services, and reductions in medical errors; and

~~((b))~~ (ii) Increase, through appropriate incentives to insuring entities, health care facilities, and providers, the adoption and use of information technology that contributes to improved health outcomes, better coordination of care, and decreased medical errors;

(b) Through state health purchasing, reimbursement, or pilot strategies, promote and increase the adoption of health information technology systems, including electronic medical records, by hospitals as defined in RCW 70.41.020(4), integrated delivery systems, and providers that:

(i) Facilitate diagnosis or treatment;

(ii) Reduce unnecessary duplication of medical tests;

(iii) Promote efficient electronic physician order entry;

(iv) Increase access to health information for consumers and their providers;

and

(v) Improve health outcomes;

(c) Coordinate a strategy for the adoption of health information technology systems using the final health information technology report and recommendations developed under chapter 261, Laws of 2005.

NEW SECTION. Sec. 4. (1) The department of corrections shall create a demonstration project with one county jail system, one city jail system in the same county as the county jail system, and one state prison to demonstrate an integrated electronic health records system to facilitate and expedite the transfer of inmate health information between state and local correctional facilities.

(a) The demonstration project shall at a minimum be partially operational prior to September 1, 2006.

(b) The demonstration project data shall be available to the legislature by December 31, 2006.

(c) If specific funding is not provided for this subsection, the department is not required to complete the demonstration project.

(2) The department of corrections, in consultation with the Washington state health care authority, the Washington association of sheriffs and police chiefs, the Washington association of county officials, the Washington state association of counties, and the association of Washington cities shall prepare a recommendation to the 2007 legislature on how to implement a statewide integrated electronic health records system to facilitate and expedite the transfer of inmate health information between state and local correctional facilities. The recommendation shall include data from similar demonstration projects, the cost necessary to implement the statewide program, anticipated savings created to state and local governments, the benefits of such a system, any relevant data from other states that have implemented similar statewide programs, and whether any statutory changes are necessary to implement a statewide system. The recommendations shall be presented to the legislature by December 31, 2006.

Passed by the House March 4, 2006.

Passed by the Senate March 3, 2006.

Approved by the Governor March 17, 2006.

Filed in Office of Secretary of State March 17, 2006.

CHAPTER 104

[Substitute House Bill 2500]

HEALTH CARRIER INFORMATION

AN ACT Relating to health carrier information; adding a new section to chapter 48.43 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. Health carriers are currently required to file statutory annual statements with the office of the insurance commissioner or the national association of insurance commissioners. These annual statements are extensive and contain a significant amount of financial information. These annual statements are public documents; however, such financial information can be complex and difficult to read and understand.

It is the intent of this act to provide a method of reporting certain financial data in a user friendly format. It is also the intent of this act, to the extent possible, to utilize existing information from the annual statements when developing the additional or supplemental data statement required by this act, and to the extent possible, avoid imposing additional reporting requirements that have the unintended consequences of unduly increasing administrative costs for carriers required to file such information.

NEW SECTION. Sec. 2. A new section is added to chapter 48.43 RCW to read as follows:

(1) Each health carrier offering a health benefit plan shall submit to the commissioner on or before April 1st of each year as part of the additional data statement or as a supplemental data statement the following information:

(a) The following information for the preceding year that is derived from the carrier's annual statement, including the exhibit of premiums, enrollments, and utilization for its Washington business, and the additional data to the annual statement. The information must be shown for five categories, total, individual contracts, small group contracts, and large group contracts (excluding government contracts), and government contracts:

- (i) The total number of members;
- (ii) The total amount of revenue;
- (iii) The total amount of hospital and medical payments;
- (iv) The medical loss ratio, that is computed by dividing the total amount of hospital and medical payments by the total amount of revenues;
- (v) The average amount of premiums per member per month; and
- (vi) The percentage change in the average premium per member per month, measured from the previous year; and

(b) The following aggregate financial information for the preceding year that is derived from the carrier's annual statement:

- (i) The total amount of claim adjustment expenses;
- (ii) The total amount of general administrative expenses, including identification of the five largest nonmedical administrative expenses and the assessment against the carrier for the Washington state health insurance pool;
- (iii) The total amount of the reserves maintained for unpaid claims;
- (iv) The total net underwriting gain or loss;
- (v) The carrier's net income after taxes;
- (vi) Dividends to stockholders;

- (vii) The net change in capital and surplus from the prior year; and
- (viii) The total amount of the capital and surplus.

(2) A carrier shall electronically submit the information described in subsection (1) of this section in a format and according to instructions prescribed by the commissioner.

(3) The commissioner shall make the information reported under this section available to the public in a format that allows comparison among carriers through a searchable public web site on the internet.

(4) For the purposes of licensed disability insurers, the commissioner shall work collaboratively with insurers to develop an additional or supplemental data statement that utilizes to the maximum extent possible information from the annual statement forms that are currently filed by these entities.

Passed by the House March 4, 2006.

Passed by the Senate March 1, 2006.

Approved by the Governor March 17, 2006.

Filed in Office of Secretary of State March 17, 2006.

CHAPTER 105

[Second Substitute House Bill 2498]

CLUSTER-BASED ECONOMIC DEVELOPMENT

AN ACT Relating to cluster-based economic development; and amending RCW 43.330.090.

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

Sec. 1. RCW 43.330.090 and 2005 c 136 s 14 are each amended to read as follows:

(1) The department shall work with private sector organizations, industry and cluster associations, federal agencies, state agencies that use a cluster-based approach to service delivery, local governments, local associate development organizations, and higher education and training institutions ~~((to assist))~~ in the development of industry cluster-based strategies to diversify the economy, facilitate technology transfer and diffusion, and increase value-added production ~~((by focusing on targeted sectors))~~. The industry clusters targeted ~~((sectors))~~ by the department may include, but are not limited to, ~~((software, forest products, biotechnology, environmental industries, recycling markets and waste reduction, aerospace, food processing, tourism, film and video, microelectronics, new materials, robotics, and machine tools))~~ aerospace, agriculture, food processing, forest products, marine services, health and biomedical, software, digital and interactive media, transportation and distribution, and microelectronics. The department shall, on a continuing basis, evaluate the potential return to the state from devoting additional resources to ~~((a targeted sector's))~~ an industry cluster-based approach to economic development and ~~((including))~~ identifying and assisting additional ((sectors in its efforts)) clusters. The department shall use information gathered in each service delivery region in formulating its ~~((sectoral))~~ industry cluster-based strategies and ~~((in designating new targeted sectors))~~ shall assist local communities in identifying regional industry clusters and developing industry cluster-based strategies.

(2) The department shall pursue a coordinated program to expand the tourism industry throughout the state in cooperation with the public and private

tourism development organizations. The department, in operating its tourism program, shall:

(a) Promote Washington as a tourism destination to national and international markets to include nature-based and wildlife viewing tourism;

(b) Provide information to businesses and local communities on tourism opportunities that could expand local revenues;

(c) Assist local communities to strengthen their tourism partnerships, including their relationships with state and local agencies;

(d) Provide leadership training and assistance to local communities to facilitate the development and implementation of local tourism plans;

(e) Coordinate the development of a statewide tourism and marketing plan. The department's tourism planning efforts shall be carried out in conjunction with public and private tourism development organizations including the department of fish and wildlife and other appropriate agencies. The plan shall specifically address mechanisms for: (i) Funding national and international marketing and nature-based tourism efforts; (ii) interagency cooperation; and (iii) integrating the state plan with local tourism plans.

(3) The department may, in carrying out its efforts to expand the tourism industry in the state:

(a) Solicit and receive gifts, grants, funds, fees, and endowments, in trust or otherwise, from tribal, local or other governmental entities, as well as private sources, and may expend the same or any income therefrom for tourism purposes. All revenue received for tourism purposes shall be deposited into the tourism development and promotion account created in RCW 43.330.094;

(b) Host conferences and strategic planning workshops relating to the promotion of nature-based and wildlife viewing tourism;

(c) Conduct or contract for tourism-related studies;

(d) Contract with individuals, businesses, or public entities to carry out its tourism-related activities under this section;

(e) Provide tourism-related organizations with marketing and other technical assistance;

(f) Evaluate and make recommendations on proposed tourism-related policies.

(4)(a) The department shall promote, market, and encourage growth in the production of films and videos, as well as television commercials within the state; to this end the department is directed to assist in the location of a film and video production studio within the state.

(b) The department may, in carrying out its efforts to encourage film and video production in the state, solicit and receive gifts, grants, funds, fees, and endowments, in trust or otherwise, from tribal, local, or other governmental entities, as well as private sources, and may expend the same or any income therefrom for the encouragement of film and video production. All revenue received for such purposes shall be deposited into the film and video promotion account created in RCW 43.330.092.

(5) In assisting in the development of ~~((a targeted sector))~~ regional and statewide industry cluster-based strategies, the department's activities ~~((may))~~ shall include, but are not limited to:

(a) ~~((Conducting))~~ Facilitating regional focus group discussions ~~((; facilitating meetings;))~~ and conducting studies to identify ~~((members of the~~

~~sector)) industry clusters, appraise the current ((state of the sector)) information linkages within a cluster, and identify issues of common concern within ((the sector)) a cluster;~~

~~(b) Supporting ((the formation of)) industry and cluster associations, publications of association and cluster directories, and related efforts to create or expand the activities ((of)) of industry and cluster associations;~~

~~(c) ((Assisting in the formation of flexible networks by providing (i) agency employees or private sector consultants trained to act as flexible network brokers and (ii) funding for potential flexible network participants for the purpose of organizing or implementing a flexible network;~~

~~(d) Helping establish research consortia;~~

~~(e) Facilitating joint training and education programs;~~

~~(f) Promoting cooperative market development activities;~~

~~(g) Analyzing the need, feasibility, and cost of establishing product certification and testing facilities and services; and~~

~~(h) Providing for methods of electronic communication and information dissemination among firms and groups of firms to facilitate network activity)) Administering a competitive grant program to fund activities designed to further regional cluster growth. In administering the program, the department shall work with an industry cluster advisory committee with equal representation from the work force training and education coordinating board, the state board for community and technical colleges, the employment security department, business, and labor.~~

~~(i) The industry cluster advisory committee shall recommend criteria for evaluating applications for grant funds and recommend applicants for receipt of grant funds.~~

~~(ii) Applicants must include organizations from at least two counties and participants from the local business community. Eligible organizations include, but are not limited to, local governments, economic development councils, chambers of commerce, federally recognized Indian tribes, work force development councils, and educational institutions.~~

~~(iii) Applications must evidence financial participation of the partner organizations.~~

~~(iv) Priority shall be given to applicants which will use the grant funds to build linkages and joint projects, to develop common resources and common training, and to develop common research and development projects or facilities.~~

~~(v) The maximum amount of a grant is one hundred thousand dollars.~~

~~(vi) A maximum of one hundred thousand dollars total can go to King, Pierce, Kitsap, and Snohomish counties combined.~~

~~(vii) No more than ten percent of funds received for the grant program may be used by the department for administrative costs.~~

~~(6) As used in subsection (5) of this section, "industry cluster" means a geographic concentration of interdependent competitive firms that do business with each other. "Industry cluster" also includes firms that sell inside and outside of the geographic region as well as support firms that supply raw materials, components, and business services.~~

Passed by the House March 4, 2006.

Passed by the Senate March 1, 2006.

Approved by the Governor March 17, 2006.

Filed in Office of Secretary of State March 17, 2006.

CHAPTER 106

[Engrossed Substitute House Bill 2475]

COLLECTIVE BARGAINING—INDIVIDUAL PROVIDERS

AN ACT Relating to collective bargaining regarding hours of work for individual providers; amending RCW 74.39A.270; and declaring an emergency.

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

Sec. 1. RCW 74.39A.270 and 2004 c 3 s 1 are each amended to read as follows:

(1) Solely for the purposes of collective bargaining and as expressly limited under subsections (2) and (3) of this section, the governor is the public employer, as defined in chapter 41.56 RCW, of individual providers, who, solely for the purposes of collective bargaining, are public employees as defined in chapter 41.56 RCW. To accommodate the role of the state as payor for the community-based services provided under this chapter and to ensure coordination with state employee collective bargaining under chapter 41.80 RCW and the coordination necessary to implement RCW 74.39A.300, the public employer shall be represented for bargaining purposes by the governor or the governor's designee appointed under chapter 41.80 RCW. The governor or governor's designee shall periodically consult with the authority during the collective bargaining process to allow the authority to communicate issues relating to the long-term in-home care services received by consumers. The governor or the governor's designee shall consult the authority on all issues for which the exclusive bargaining representative requests to engage in collective bargaining under subsection (6) of this section. The authority shall work with the developmental disabilities council, the governor's committee on disability issues and employment, the state council on aging, and other consumer advocacy organizations to obtain informed input from consumers on their interests, including impacts on consumer choice, for all issues proposed for collective bargaining under subsection (6) of this section.

(2) Chapter 41.56 RCW governs the collective bargaining relationship between the governor and individual providers, except as otherwise expressly provided in this chapter and except as follows:

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

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

(c) The mediation and interest arbitration provisions of RCW 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

(i) With respect to commencement of negotiations between the governor and the bargaining representative of individual providers, negotiations shall be commenced by May 1st of any year prior to the year in which an existing collective bargaining agreement expires;

(ii) With respect to factors to be taken into consideration by an interest arbitration panel, the panel shall consider the financial ability of the state to pay

for the compensation and fringe benefit provisions of a collective bargaining agreement; and

(iii) The decision of the arbitration panel is not binding on the legislature and, if the legislature does not approve the request for funds necessary to implement the compensation and fringe benefit provisions of the arbitrated collective bargaining agreement, is not binding on the authority or the state;

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

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

(3) Individual providers who are public employees solely for the purposes of collective bargaining under subsection (1) of this section are not, for that reason, employees of the state, its political subdivisions, or an area agency on aging for any purpose. Chapter 41.56 RCW applies only to the governance of the collective bargaining relationship between the employer and individual providers as provided in subsections (1) and (2) of this section.

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

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

(6) Except as expressly limited in this section and RCW 74.39A.300, the wages, hours, and working conditions of individual providers are determined solely through collective bargaining as provided in this chapter. No agency or department of the state (~~(, other than the authority,)~~) may establish policies or rules governing the wages or hours of individual providers. However, this subsection does not modify:

(a) The department's authority to establish a plan of care for each consumer ((and to determine the hours)) or its core responsibility to manage long-term in-home care services under this chapter, including determination of the level of care that each consumer is eligible to receive. However, at the request of the exclusive bargaining representative, the governor or the governor's designee appointed under chapter 41.80 RCW shall engage in collective bargaining, as defined in RCW 41.56.030(4), with the exclusive bargaining representative over how the department's core responsibility affects hours of work for individual providers. This subsection shall not be interpreted to require collective bargaining over an individual consumer's plan of care;

(b) The department's authority to terminate its contracts with individual providers who are not adequately meeting the needs of a particular consumer, or to deny a contract under RCW 74.39A.095(8);

(c) The consumer's right to assign hours to one or more individual providers selected by the consumer within the maximum hours determined by his or her plan of care;

(d) The consumer's right to select, hire, terminate, supervise the work of, and determine the conditions of employment for each individual provider providing services to the consumer under this chapter;

(e) The department's obligation to comply with the federal medicaid statute and regulations and the terms of any community-based waiver granted by the federal department of health and human services and to ensure federal financial participation in the provision of the services; and

(f) The legislature's right to make programmatic modifications to the delivery of state services under this title, including standards of eligibility of consumers and individual providers participating in the programs under this title, and the nature of services provided. The governor shall not enter into, extend, or renew any agreement under this chapter that does not expressly reserve the legislative rights described in this subsection (6)(f).

(7)(a) The state, the department, the authority, the area agencies on aging, or their contractors under this chapter may not be held vicariously or jointly liable for the action or inaction of any individual provider or prospective individual provider, whether or not that individual provider or prospective individual provider was included on the authority's referral registry or referred to a consumer or prospective consumer. The existence of a collective bargaining agreement, the placement of an individual provider on the referral registry, or the development or approval of a plan of care for a consumer who chooses to use the services of an individual provider and the provision of case management services to that consumer, by the department or an area agency on aging, does not constitute a special relationship with the consumer.

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

(8) Nothing in this section affects the state's responsibility with respect to unemployment insurance for individual providers. However, individual providers are not to be considered, as a result of the state assuming this responsibility, employees of the state.

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

Passed by the House March 7, 2006.

Passed by the Senate March 7, 2006.

Approved by the Governor March 17, 2006.

Filed in Office of Secretary of State March 17, 2006.

CHAPTER 107

[Substitute House Bill 2394]

WORKFIRST PARTICIPANTS—FINANCIAL LITERACY

AN ACT Relating to financial literacy; amending RCW 74.08A.250 and 74.08A.260; creating a new section; and providing an effective date.

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

NEW SECTION. Sec. 1. The legislature finds that for a variety of reasons, many citizens may lack the basic financial knowledge necessary to spend their money wisely, save for the future, and manage money challenges, such as a job loss, financing a college education, or a catastrophic injury. The legislature also finds that financial literacy is an essential element in achieving financial stability and self-sufficiency. The legislature intends to encourage participation in

financial literacy training by WorkFirst participants, in order to promote their ability to make financial decisions that will contribute to their long-term financial well-being.

Sec. 2. RCW 74.08A.250 and 2000 c 10 s 1 are each amended to read as follows:

Unless the context clearly requires otherwise, as used in this chapter, "work activity" means:

- (1) Unsubsidized paid employment in the private or public sector;
- (2) Subsidized paid employment in the private or public sector, including employment through the state or federal work-study program for a period not to exceed twenty-four months;
- (3) Work experience, including:
 - (a) An internship or practicum, that is paid or unpaid and is required to complete a course of vocational training or to obtain a license or certificate in a high demand field, as determined by the employment security department. No internship or practicum shall exceed twelve months; or
 - (b) Work associated with the refurbishing of publicly assisted housing, if sufficient paid employment is not available;
- (4) On-the-job training;
- (5) Job search and job readiness assistance;
- (6) Community service programs;
- (7) Vocational educational training, not to exceed twelve months with respect to any individual;
- (8) Job skills training directly related to employment;
- (9) Education directly related to employment, in the case of a recipient who has not received a high school diploma or a GED;
- (10) Satisfactory attendance at secondary school or in a course of study leading to a GED, in the case of a recipient who has not completed secondary school or received such a certificate;
- (11) The provision of child care services to an individual who is participating in a community service program;
- (12) Internships, that shall be paid or unpaid work experience performed by an intern in a business, industry, or government or nongovernmental agency setting;
- (13) Practicums, which include any educational program in which a student is working under the close supervision of a professional in an agency, clinic, or other professional practice setting for purposes of advancing their skills and knowledge; ~~((and))~~
- (14) Services required by the recipient under RCW 74.08.025(3) and 74.08A.010(3) to become employable; and
- (15) Financial literacy activities designed to be effective in assisting a recipient in becoming self-sufficient and financially stable.

Sec. 3. RCW 74.08A.260 and 2003 c 383 s 1 are each amended to read as follows:

(1) Each recipient shall be assessed after determination of program eligibility and before referral to job search. Assessments shall be based upon factors that are critical to obtaining employment, including but not limited to education, availability of child care, history of family violence, history of

substance abuse, and other factors that affect the ability to obtain employment. Assessments may be performed by the department or by a contracted entity. The assessment shall be based on a uniform, consistent, transferable format that will be accepted by all agencies and organizations serving the recipient. Based on the assessment, an individual responsibility plan shall be prepared that: (a) Sets forth an employment goal and a plan for moving the recipient immediately into employment; (b) contains the obligation of the recipient to become and remain employed; (c) moves the recipient into whatever employment the recipient is capable of handling as quickly as possible; and (d) describes the services available to the recipient to enable the recipient to obtain and keep employment.

(2) Recipients who are not engaged in work and work activities, and do not qualify for a good cause exemption under RCW 74.08A.270, shall engage in self-directed service as provided in RCW 74.08A.330.

(3) If a recipient refuses to engage in work and work activities required by the department, the family's grant shall be reduced by the recipient's share, and may, if the department determines it appropriate, be terminated.

(4) The department may waive the penalties required under subsection (3) of this section, subject to a finding that the recipient refused to engage in work for good cause provided in RCW 74.08A.270.

(5) In implementing this section, the department shall assign the highest priority to the most employable clients, including adults in two-parent families and parents in single-parent families that include older preschool or school-age children to be engaged in work activities.

(6) In consultation with the recipient, the department or contractor shall place the recipient into a work activity that is available in the local area where the recipient resides.

(7) Assessments conducted under this section shall include a consideration of the potential benefit to the recipient of engaging in financial literacy activities. The department shall consider the options for financial literacy activities available in the community, including information and resources available through the financial literacy public-private partnership created under RCW 28A.300.450. The department may authorize up to ten hours of financial literacy activities as a core activity or an optional activity under WorkFirst.

NEW SECTION. Sec. 4. This act takes effect January 1, 2007.

Passed by the House February 8, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 17, 2006.

Filed in Office of Secretary of State March 17, 2006.

CHAPTER 108

[Second Substitute House Bill 2342]

HEALTH CARE DECLARATIONS REGISTRY

AN ACT Relating to establishing a health care declarations registry; amending RCW 70.122.040, 71.32.080, and 70.122.051; adding new sections to chapter 70.122 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that effective communication between patients, their families, and their care givers regarding their wishes if they become incapacitated results in health care decisions that are more respectful of patients' desires. Whether the communication is for end-of-life planning or incapacity resulting from mental illness, the state must respect those wishes and support efforts to facilitate such communications and to make that information available when it is needed.

It is the intent of the legislature to establish an electronic registry to improve access to health care decision-making documents. The registry would support, not supplant, the current systems for advance directives and mental health advance directives by improving access to these documents. It is the legislature's intent that the registry would be consulted by health care providers in every instance where there may be a question about the patient's wishes for periods of incapacity and the existence of a document that may clarify a patient's intentions unless the circumstances are such that consulting the registry would compromise the emergency care of the patient.

NEW SECTION. Sec. 2. A new section is added to chapter 70.122 RCW to read as follows:

(1) The department of health shall establish and maintain a statewide health care declarations registry containing the health care declarations identified in subsection (2) of this section as submitted by residents of Washington. The department shall digitally reproduce and store health care declarations in the registry. The department may establish standards for individuals to submit digitally reproduced health care declarations directly to the registry, but is not required to review the health care declarations that it receives to ensure they comply with the particular statutory requirements applicable to the document. The department may contract with an organization that meets the standards identified in this section.

(2)(a) An individual may submit any of the following health care declarations to the department of health to be digitally reproduced and stored in the registry:

(i) A directive, as defined by this chapter;

(ii) A durable power of attorney for health care, as authorized in chapter 11.94 RCW;

(iii) A mental health advance directive, as defined by chapter 71.32 RCW;
or

(iv) A form adopted pursuant to the department of health's authority in RCW 43.70.480.

(b) Failure to submit a health care declaration to the department of health does not affect the validity of the declaration.

(c) Failure to notify the department of health of a valid revocation of a health care declaration does not affect the validity of the revocation.

(d) The entry of a health care directive in the registry under this section does not:

(i) Affect the validity of the document;

(ii) Take the place of any requirements in law necessary to make the submitted document legal; or

(iii) Create a presumption regarding the validity of the document.

(3) The department of health shall prescribe a procedure for an individual to revoke a health care declaration contained in the registry.

(4) The registry must:

(a) Be maintained in a secure data base that is accessible through a web site maintained by the department of health;

(b) Send annual electronic messages to individuals that have submitted health care declarations to request that they review the registry materials to ensure that it is current;

(c) Provide individuals who have submitted one or more health care declarations with access to their documents and the ability to revoke their documents at all times; and

(d) Provide the personal representatives of individuals who have submitted one or more health care declarations to the registry, attending physicians, advanced registered nurse practitioners, health care providers licensed by a disciplining authority identified in RCW 18.130.040 who is acting under the direction of a physician or an advanced registered nurse practitioner, and health care facilities, as defined in this chapter or in chapter 71.32 RCW, access to the registry at all times.

(5) In designing the registry and web site, the department of health shall ensure compliance with state and federal requirements related to patient confidentiality.

(6) The department shall provide information to health care providers and health care facilities on the registry web site regarding the different federal and Washington state requirements to ascertain and document whether a patient has an advance directive.

(7) The department of health may accept donations, grants, gifts, or other forms of voluntary contributions to support activities related to the creation and maintenance of the health care declarations registry and statewide public education campaigns related to the existence of the registry. All funds received shall be transferred to the health care declarations registry account, created in section 3 of this act.

(8) The department of health may adopt rules as necessary to implement this act.

(9) By December 1, 2008, the department shall report to the house and senate committees on health care the following information:

(a) Number of participants in the registry;

(b) Number of health care declarations submitted by type of declaration as defined in this section;

(c) Number of health care declarations revoked and the method of revocation;

(d) Number of providers and facilities, by type, that have been provided access to the registry;

(e) Actual costs of operation of the registry;

(f) Donations received by the department for deposit into the health care declarations registry account, created in section 3 of this act by type of donor.

NEW SECTION. Sec. 3. A new section is added to chapter 70.122 RCW to read as follows:

The health care declarations registry account is created in the state treasury. All receipts from donations made under section 2 of this act, and other

contributions and appropriations specifically made for the purposes of creating and maintaining the registry established by section 2 of this act and statewide public education campaigns related to the existence of the registry, shall be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for purposes of the health care declarations registry.

Sec. 4. RCW 70.122.040 and 1979 c 112 s 5 are each amended to read as follows:

(1) A directive may be revoked at any time by the declarer, without regard to the declarer's mental state or competency, by any of the following methods:

(a) By being canceled, defaced, obliterated, burned, torn, or otherwise destroyed by the declarer or by some person in the declarer's presence and by the declarer's direction.

(b) By a written revocation of the declarer expressing ~~((declarer's))~~ his or her intent to revoke, signed, and dated by the declarer. Such revocation shall become effective only upon communication to the attending physician by the declarer or by a person acting on behalf of the declarer. The attending physician shall record in the patient's medical record the time and date when ~~((said))~~ the physician received notification of the written revocation.

(c) By a verbal expression by the declarer of ~~((declarer's))~~ his or her intent to revoke the directive. Such revocation shall become effective only upon communication to the attending physician by the declarer or by a person acting on behalf of the declarer. The attending physician shall record in the patient's medical record the time, date, and place of the revocation and the time, date, and place, if different, of when ~~((said))~~ the physician received notification of the revocation.

(d) In the case of a directive that is stored in the health care declarations registry under section 2 of this act, by an online method established by the department of health. Failure to use this method of revocation for a directive that is stored in the registry does not invalidate a revocation that is made by another method described under this section.

(2) There shall be no criminal or civil liability on the part of any person for failure to act upon a revocation made pursuant to this section unless that person has actual or constructive knowledge of the revocation except as provided in RCW 70.122.051(4).

(3) If the declarer becomes comatose or is rendered incapable of communicating with the attending physician, the directive shall remain in effect for the duration of the comatose condition or until such time as the declarer's condition renders the declarer able to communicate with the attending physician.

Sec. 5. RCW 71.32.080 and 2003 c 283 s 8 are each amended to read as follows:

(1)(a) A principal with capacity may, by written statement by the principal or at the principal's direction in the principal's presence, revoke a directive in whole or in part.

(b) An incapacitated principal may revoke a directive only if he or she elected at the time of executing the directive to be able to revoke when incapacitated.

(2) The revocation need not follow any specific form so long as it is written and the intent of the principal can be discerned. In the case of a directive that is stored in the health care declarations registry created by section 2 of this act, the revocation may be by an online method established by the department of health. Failure to use the online method of revocation for a directive that is stored in the registry does not invalidate a revocation that is made by another method described under this section.

(3) The principal shall provide a copy of his or her written statement of revocation to his or her agent, if any, and to each health care provider, professional person, or health care facility that received a copy of the directive from the principal.

(4) The written statement of revocation is effective:

(a) As to a health care provider, professional person, or health care facility, upon receipt. The professional person, health care provider, or health care facility, or persons acting under their direction shall make the statement of revocation part of the principal's medical record; and

(b) As to the principal's agent, upon receipt. The principal's agent shall notify the principal's health care provider, professional person, or health care facility of the revocation and provide them with a copy of the written statement of revocation.

(5) A directive also may:

(a) Be revoked, in whole or in part, expressly or to the extent of any inconsistency, by a subsequent directive; or

(b) Be superseded or revoked by a court order, including any order entered in a criminal matter. A directive may be superseded by a court order regardless of whether the order contains an explicit reference to the directive. To the extent a directive is not in conflict with a court order, the directive remains effective, subject to the provisions of RCW 71.32.150. A directive shall not be interpreted in a manner that interferes with: (i) Incarceration or detention by the department of corrections, in a city or county jail, or by the department of social and health services; or (ii) treatment of a principal who is subject to involuntary treatment pursuant to chapter 10.77, 70.96A, 71.05, 71.09, or 71.34 RCW.

(6) A directive that would have otherwise expired but is effective because the principal is incapacitated remains effective until the principal is no longer incapacitated unless the principal has elected to be able to revoke while incapacitated and has revoked the directive.

(7) When a principal with capacity consents to treatment that differs from, or refuses treatment consented to in, the provisions of his or her directive, the consent or refusal constitutes a waiver of that provision and does not constitute a revocation of the provision or directive unless the principal also revokes the directive or provision.

Sec. 6. RCW 70.122.051 and 1992 c 98 s 5 are each amended to read as follows:

(1) For the purposes of this section, "provider" means a physician, advanced registered nurse practitioner, health care provider acting under the direction of a physician or an advanced registered nurse practitioner, or health care facility, as defined in this chapter or in chapter 71.32 RCW, and its personnel.

(2) Any ((physician, health care provider acting under the direction of a physician, or health facility and its personnel)) provider who participates in good

faith in the withholding or withdrawal of life-sustaining treatment from a qualified patient in accordance with the requirements of this chapter, shall be immune from legal liability, including civil, criminal, or professional conduct sanctions, unless otherwise negligent.

(3) The establishment of a health care declarations registry does not create any new or distinct obligation for a provider to determine whether a patient has a health care declaration.

(4) A provider is not subject to civil or criminal liability or sanctions for unprofessional conduct under the uniform disciplinary act, chapter 18.130 RCW, when in good faith and without negligence:

(a) The provider provides, does not provide, withdraws, or withholds treatment to a patient in the absence of actual knowledge of the existence of a health care declaration stored in the health care declarations registry established in section 2 of this act;

(b) The provider provides, does not provide, withdraws, or withholds treatment pursuant to a health care declaration stored in the health care declarations registry established in section 2 of this act in the absence of actual knowledge of the revocation of the declaration;

(c) The provider provides, does not provide, withdraws, or withholds treatment according to a health care declaration stored in the health care declarations registry established in section 2 of this act in good faith reliance upon the validity of the health care declaration and the declaration is subsequently found to be invalid; or

(d) The provider provides, does not provide, withdraws, or withholds treatment according to the patient's health care declaration stored in the health care declarations registry established in section 2 of this act.

(5) Except for acts of gross negligence, willful misconduct, or intentional wrongdoing, the department of health is not subject to civil liability for any claims or demands arising out of the administration or operation of the health care declarations registry established in section 2 of this act.

Passed by the House February 8, 2006.

Passed by the Senate March 3, 2006.

Approved by the Governor March 17, 2006.

Filed in Office of Secretary of State March 17, 2006.

CHAPTER 109

[House Bill 2328]

INSANITY DEFENSE

AN ACT Relating to the insanity defense; amending RCW 10.77.020; and creating a new section.

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

Sec. 1. RCW 10.77.020 and 1998 c 297 s 30 are each amended to read as follows:

(1) At any and all stages of the proceedings pursuant to this chapter, any person subject to the provisions of this chapter shall be entitled to the assistance of counsel, and if the person is indigent the court shall appoint counsel to assist him or her. A person may waive his or her right to counsel; but such waiver shall

only be effective if a court makes a specific finding that he or she is or was competent to so waive. In making such findings, the court shall be guided but not limited by the following standards: Whether the person attempting to waive the assistance of counsel, does so understanding:

- (a) The nature of the charges;
 - (b) The statutory offense included within them;
 - (c) The range of allowable punishments thereunder;
 - (d) Possible defenses to the charges and circumstances in mitigation thereof;
- and
- (e) All other facts essential to a broad understanding of the whole matter.

(2) Whenever any person is subjected to an examination pursuant to any provision of this chapter, he or she may retain an expert or professional person to perform an examination in his or her behalf. In the case of a person who is indigent, the court shall upon his or her request assist the person in obtaining an expert or professional person to perform an examination or participate in the hearing on his or her behalf. An expert or professional person obtained by an indigent person pursuant to the provisions of this chapter shall be compensated for his or her services out of funds of the department, in an amount determined by the secretary to be fair and reasonable.

(3) Any time the defendant is being examined by court appointed experts or professional persons pursuant to the provisions of this chapter, the defendant shall be entitled to have his or her attorney present.

(4) In a competency evaluation conducted under this chapter, the defendant may refuse to answer any question if he or she believes his or her answers may tend to incriminate him or her or form links leading to evidence of an incriminating nature.

(5) In a sanity evaluation conducted under this chapter, if a defendant refuses to answer questions or to participate in an examination conducted in response to the defendant's assertion of an insanity defense, the court shall exclude from evidence at trial any testimony or evidence from any expert or professional person obtained or retained by the defendant.

NEW SECTION. Sec. 2. This act applies to all examinations performed on or after the effective date of this act.

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

Passed by the House February 8, 2006.

Passed by the Senate March 1, 2006.

Approved by the Governor March 17, 2006.

Filed in Office of Secretary of State March 17, 2006.

CHAPTER 110

[Substitute House Bill 1257]

MOTORCYCLE INSURANCE

AN ACT Relating to motorcycle or motor-driven cycle insurance coverage; and amending RCW 48.22.030.

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

Sec. 1. RCW 48.22.030 and 2004 c 90 s 1 are each amended to read as follows:

(1) "Underinsured motor vehicle" means a motor vehicle with respect to the ownership, maintenance, or use of which either no bodily injury or property damage liability bond or insurance policy applies at the time of an accident, or with respect to which the sum of the limits of liability under all bodily injury or property damage liability bonds and insurance policies applicable to a covered person after an accident is less than the applicable damages which the covered person is legally entitled to recover.

(2) No new policy or renewal of an existing policy insuring against loss resulting from liability imposed by law for bodily injury, death, or property damage, suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall be issued with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of underinsured motor vehicles, hit-and-run motor vehicles, and phantom vehicles because of bodily injury, death, or property damage, resulting therefrom, except while operating or occupying a motorcycle or motor-driven cycle, and except while operating or occupying a motor vehicle owned or available for the regular use by the named insured or any family member, and which is not insured under the liability coverage of the policy. The coverage required to be offered under this chapter is not applicable to general liability policies, commonly known as umbrella policies, or other policies which apply only as excess to the insurance directly applicable to the vehicle insured.

(3) Except as to property damage, coverage required under subsection (2) of this section shall be in the same amount as the insured's third party liability coverage unless the insured rejects all or part of the coverage as provided in subsection (4) of this section. Coverage for property damage need only be issued in conjunction with coverage for bodily injury or death. Property damage coverage required under subsection (2) of this section shall mean physical damage to the insured motor vehicle unless the policy specifically provides coverage for the contents thereof or other forms of property damage.

(4) A named insured or spouse may reject, in writing, underinsured coverage for bodily injury or death, or property damage, and the requirements of subsections (2) and (3) of this section shall not apply. If a named insured or spouse has rejected underinsured coverage, such coverage shall not be included in any supplemental or renewal policy unless a named insured or spouse subsequently requests such coverage in writing. The requirement of a written rejection under this subsection shall apply only to the original issuance of policies issued after July 24, 1983, and not to any renewal or replacement policy.

(5) The limit of liability under the policy coverage may be defined as the maximum limits of liability for all damages resulting from any one accident regardless of the number of covered persons, claims made, or vehicles or premiums shown on the policy, or premiums paid, or vehicles involved in an accident.

(6) The policy may provide that if an injured person has other similar insurance available to him under other policies, the total limits of liability of all

coverages shall not exceed the higher of the applicable limits of the respective coverages.

(7)(a) The policy may provide for a deductible of not more than three hundred dollars for payment for property damage when the damage is caused by a hit-and-run driver or a phantom vehicle.

(b) In all other cases of underinsured property damage coverage, the policy may provide for a deductible of not more than one hundred dollars.

(8) For the purposes of this chapter, a "phantom vehicle" shall mean a motor vehicle which causes bodily injury, death, or property damage to an insured and has no physical contact with the insured or the vehicle which the insured is occupying at the time of the accident if:

(a) The facts of the accident can be corroborated by competent evidence other than the testimony of the insured or any person having an underinsured motorist claim resulting from the accident; and

(b) The accident has been reported to the appropriate law enforcement agency within seventy-two hours of the accident.

(9) An insurer who elects to write motorcycle or motor-driven cycle insurance in this state must provide information to prospective insureds about the coverage.

(10) An insurer who elects to write motorcycle or motor-driven cycle insurance in this state must provide an opportunity for named insureds, who have purchased liability coverage for a motorcycle or motor-driven cycle, to reject underinsured coverage for that motorcycle or motor-driven cycle in writing.

Passed by the House March 4, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 17, 2006.

Filed in Office of Secretary of State March 17, 2006.

CHAPTER 111

[Substitute House Bill 2670]

HOSPITAL BENEFIT ZONES

AN ACT Relating to financing for hospital benefit zones; adding new sections to chapter 82.14 RCW; adding a new section to chapter 82.32 RCW; adding a new chapter to Title 39 RCW; and providing an effective date.

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

NEW SECTION. Sec. 1. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Benefit zone" means the geographic zone from which taxes are to be appropriated to finance public improvements authorized under this chapter and in which a hospital that has received a certificate of need is to be constructed.

(2) "Department" means the department of revenue.

(3) "Local government" means any city, town, county, or any combination thereof.

(4) "Ordinance" means any appropriate method of taking legislative action by a local government.

(5) "Participating taxing authority" means a taxing authority that has entered into a written agreement with a local government for the use of hospital benefit

zone financing to the extent of allocating excess excise taxes to the local government for the purpose of financing all or a portion of the costs of designated public improvements.

(6) "Public improvements" means infrastructure improvements within the benefit zone that include:

- (a) Street and road construction and maintenance;
- (b) Water and sewer system construction and improvements;
- (c) Sidewalks and streetlights;
- (d) Parking, terminal, and dock facilities;
- (e) Park and ride facilities of a transit authority;
- (f) Park facilities and recreational areas; and
- (g) Storm water and drainage management systems.

(7) "Public improvement costs" means the costs of: (a) Design, planning, acquisition including land acquisition, site preparation including land clearing, construction, reconstruction, rehabilitation, improvement, and installation of public improvements; (b) demolishing, relocating, maintaining, and operating property pending construction of public improvements; (c) relocating utilities as a result of public improvements; and (d) financing public improvements, including interest during construction, legal and other professional services, taxes, insurance, principal and interest costs on indebtedness issued to finance public improvements, and any necessary reserves for indebtedness; and administrative expenses and feasibility studies reasonably necessary and related to these costs, including related costs that may have been incurred before adoption of the ordinance authorizing the public improvements and the use of hospital benefit zone financing to fund the costs of the public improvements.

(8) "Tax allocation revenues" means those tax revenues derived from the receipt of excess excise taxes under section 5 of this act and distributed to finance public improvements.

(9) "Taxing authority" means a governmental entity that imposes a sales or use tax under chapter 82.14 RCW upon the occurrence of any taxable event within a proposed or approved benefit zone.

NEW SECTION. Sec. 2. A local government may finance public improvements using hospital benefit zone financing subject to the following conditions:

(1) The local government adopts an ordinance designating a benefit zone within its boundaries and specifying the public improvements proposed to be financed in whole or in part with the use of hospital benefit zone financing;

(2) The public improvements proposed to be financed in whole or in part using hospital benefit zone financing are expected both to encourage private development within the benefit zone and to support the development of a hospital that has received a certificate of need;

(3) Private development that is anticipated to occur within the benefit zone, as a result of the public improvements, will be consistent with the county-wide planning policy adopted by the county under RCW 36.70A.210 and the local government's comprehensive plan and development regulations adopted under chapter 36.70A RCW; and

(4) The governing body of the local government finds that the public improvements proposed to be financed in whole or in part using hospital benefit zone financing are reasonably likely to:

- (a) Increase private investment within the benefit zone;
- (b) Increase employment within the benefit zone; and
- (c) Generate, over the period of time that the local sales and use tax will be imposed under section 7 of this act, state and local sales and use tax revenues that are equal to or greater than the respective state and local contributions made under this chapter.

NEW SECTION. Sec. 3. (1) Before adopting an ordinance creating the benefit zone, a local government must:

(a) Obtain written agreement for the use of hospital benefit zone financing to finance all or a portion of the costs of the designated public improvements from any taxing authority that imposes a sales or use tax under chapter 82.14 RCW within the benefit zone if the taxing authority chooses to participate in the public improvements to the extent of providing limited funding under hospital benefit zone financing authorized under this chapter. The agreement must be authorized by the governing body of such participating taxing authorities; and

(b) Hold a public hearing on the proposed financing of the public improvement in whole or in part with hospital benefit zone financing.

(i) Notice of the public hearing must be published in a legal newspaper of general circulation within the proposed benefit zone at least ten days before the public hearing and posted in at least six conspicuous public places located in the proposed benefit zone.

(ii) Notices must describe the contemplated public improvements, estimate the costs of the public improvements, describe the portion of the costs of the public improvements to be borne by hospital benefit zone financing, describe any other sources of revenue to finance the public improvements, describe the boundaries of the proposed benefit zone, and estimate the period during which hospital benefit zone financing is contemplated to be used. The public hearing may be held by either the governing body of the local government, or a committee of the governing body that includes at least a majority of the whole governing body.

(2) In order to create a benefit zone, a local government must adopt an ordinance establishing the benefit zone that:

(a) Describes the public improvements;

(b) Describes the boundaries of the benefit zone;

(c) Estimates the cost of the public improvements and the portion of these costs to be financed by hospital benefit zone financing;

(d) Estimates the time during which excess excise taxes are to be used to finance public improvement costs associated with the public improvements financed in whole or in part by hospital benefit zone financing;

(e) Estimates the average amount of tax revenue to be received in all fiscal years through the imposition of a sales and use tax under section 7 of this act;

(f) Provides the date when the use of excess excise taxes will commence; and

(g) Finds that the conditions of section 2 of this act are met.

(3) For purposes of this section, "fiscal year" means the year beginning July 1st and ending the following June 30th.

NEW SECTION. Sec. 4. A local government that adopts an ordinance creating a benefit zone under this chapter shall, within ninety days of adopting the ordinance:

(1) Publish notice in a legal newspaper of general circulation within the benefit zone that describes the public improvement, describes the boundaries of the benefit zone, and identifies the location and times where the ordinance and other public information concerning the public improvement may be inspected; and

(2) Deliver a certified copy of the ordinance to the county treasurer, the county assessor, the department of revenue, and the governing body of each participating taxing authority within which the benefit zone is located.

NEW SECTION. Sec. 5. (1) A local government that creates a benefit zone and has received approval from the department under section 9 of this act to impose the local option sales and use tax authorized in section 7 of this act may use annually any excess excise taxes received by it from taxable activity within the benefit zone to finance public improvement costs associated with the public improvements financed in whole or in part by hospital benefit zone financing. The use of excess excise taxes must cease when tax allocation revenues are no longer necessary or obligated to pay the costs of the public improvements. Any participating taxing authority is authorized to allocate excess excise taxes to the local government as long as the local government has received approval from the department under section 9 of this act to impose the local option sales and use tax authorized in section 7 of this act. The legislature declares that it is a proper purpose of a local government or participating taxing authority to allocate excess excise taxes for purposes of financing public improvements under this chapter.

(2) A local government shall provide the department accurate information describing the geographical boundaries of the benefit zone at least seventy-five days before the effective date of the ordinance creating the benefit zone. The local government shall ensure that the boundary information provided to the department is kept current.

(3) The department shall provide the necessary information to calculate excess excise taxes to each local government that has provided boundary information to the department as provided in this section and that has received approval from the department under section 9 of this act to impose the local option sales and use tax authorized in section 7 of this act.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Base year" means the calendar year immediately following the creation of a benefit zone.

(b) "Excess excise taxes" means the amount of excise taxes received by the local government during the measurement year from taxable activity within the benefit zone over and above the amount of excise taxes received by the local government during the base year from taxable activity within the benefit zone. However, if a local government creates the benefit zone and reasonably determines that no activity subject to tax under chapters 82.08 and 82.12 RCW occurred in the twelve months immediately preceding the creation of the benefit zone within the boundaries of the area that became the benefit zone, "excess excise taxes" means the entire amount of excise taxes received by the local

government during a calendar year period beginning with the calendar year immediately following the creation of the benefit zone and continuing with each measurement year thereafter.

(c) "Excise taxes" means local retail sales and use taxes authorized in RCW 82.14.030.

(d) "Measurement year" means a calendar year, beginning with the calendar year following the base year and each calendar year thereafter, that is used annually to measure the amount of excess excise taxes required to be used to finance public improvement costs associated with public improvements financed in whole or in part by hospital benefit zone financing.

NEW SECTION. Sec. 6. (1) A local government may issue revenue bonds to fund public improvements, or portions of public improvements, that are located within a benefit zone and that it is authorized to provide or operate. Whenever revenue bonds are to be issued, the legislative authority of the local government shall create or have created a special fund or funds from which, along with any reserves created pursuant to RCW 39.44.140, the principal and interest on these revenue bonds shall exclusively be payable. The legislative authority of the local government may obligate the local government to set aside and pay into the special fund or funds a fixed proportion or a fixed amount of the revenues obtained from within the benefit zone of the development, construction, operation, and maintenance of businesses supported by the public improvements that are funded by the revenue bonds. This amount or proportion is a lien and charge against these revenues, subject only to operating and maintenance expenses. The local government shall have due regard for the cost of operation and maintenance of the public improvements that are funded by the revenue bonds, and shall not set aside into the special fund or funds a greater amount or proportion of the revenues that in its judgment will be available over and above the cost of maintenance and operation and the amount or proportion, if any, of the revenue previously pledged. The local government may also provide that revenue bonds payable out of the same source or sources of revenue may later be issued on a parity with any revenue bonds being issued and sold.

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

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

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

NEW SECTION. Sec. 7. A new section is added to chapter 82.14 RCW to read as follows:

(1) A city, town, or county that creates a benefit zone and finances public improvements pursuant to chapter 39.— RCW (sections 1 through 6 of this act) may impose a sales and use tax in accordance with the terms of this chapter and subject to the criteria set forth in this section. Except as provided in this section, the tax is in addition to other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the taxing jurisdiction of the city, town, or county. The rate of tax shall not exceed the rate provided in RCW 82.08.020(1) in the case of a sales tax or the rate provided in RCW 82.12.020(5) in the case of a use tax, less the aggregate rates of any other taxes imposed on the same events that are credited against the state taxes imposed under chapters 82.08 and 82.12 RCW.

(2) The tax imposed under subsection (1) of this section shall be deducted from the amount of tax otherwise required to be collected or paid over to the department under chapter 82.08 or 82.12 RCW. The department shall perform the collection of such taxes on behalf of the city, town, or county at no cost to the city, town, or county.

(3) No tax may be imposed under this section before July 1, 2007. Before imposing a tax under this section, the city, town, or county shall first have received tax allocation revenues derived from excess excise taxes during the preceding calendar year. The tax imposed under this section shall expire when the bonds issued under the authority of chapter 39.— RCW (sections 1 through 6 of this act) are retired, but not more than thirty years after the tax is first imposed.

(4) An ordinance adopted by the legislative authority of a city, town, or county imposing a tax under this section shall provide that:

(a) The tax shall first be imposed on the first day of a fiscal year;

(b) The amount of tax received by the local government in any fiscal year shall not exceed the amount of the state contribution;

(c) The tax shall cease to be imposed for the remainder of any fiscal year in which either:

(i) The amount of tax receipts totals the amount of the state contribution;

(ii) The amount of tax receipts totals the amount of "local public sources," as that term is used in section 8 of this act, dedicated in the previous calendar year to finance public improvements authorized under chapter 39.— RCW (sections 1 through 6 of this act); or

(iii) The amount of revenue from taxes imposed under this section by all cities, towns, and counties totals the annual state credit limit as provided in section 9(3) of this act;

(d) The tax shall be reimposed, should it cease to be imposed for any of the reasons provided in (c) of this subsection, at the beginning of the next fiscal year, subject to the restrictions in this section; and

(e) Any revenue generated by the tax in excess of the amounts specified in (a), (b), and (c) of this subsection shall belong to the state of Washington.

(5) If both a county and a city or town impose a tax under this section, the tax imposed by the city, town, or county shall be credited as follows:

(a) If the county has created a benefit zone before the city or town, the tax imposed by the county shall be credited against the tax imposed by the city or town, the purpose of such credit is to give priority to the county tax; and

(b) If the city or town has created a benefit zone before the county, the tax imposed by the city or town shall be credited against the tax imposed by the county, the purpose of such credit is to give priority to the city or town tax.

(6) The department shall determine the amount of tax receipts attributable to each city, town, and county imposing a sales and use tax under this section and shall advise a city, town, or county when it must cease imposing the tax for the remainder of the fiscal year as provided in subsection (4)(c) of this section. Determinations by the department of the amount of taxes attributable to a city, town, or county are final and shall not be used to challenge the validity of any tax imposed under this section. The department shall remit any tax receipts in excess of the amounts specified in subsection (4)(a), (b), and (c) of this section to the state treasurer who shall deposit the moneys in the general fund.

(7) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Base year" means the calendar year immediately following the creation of a benefit zone.

(b) "Benefit zone" has the same meaning as provided in section 1 of this act.

(c) "Excess excise taxes" has the same meaning as provided in section 5 of this act.

(d) "Excess state excise taxes" means the amount of excise taxes received by the state during the measurement year from taxable activity within the benefit zone over and above the amount of excise taxes received by the state during the base year from taxable activity within the benefit zone. However, if a local government creates the benefit zone and reasonably determines that no activity subject to tax under chapters 82.08 and 82.12 RCW occurred in the twelve months immediately preceding the creation of the benefit zone within the boundaries of the area that became the benefit zone, "excess state excise taxes" means the entire amount of excise taxes received by the state during a calendar year period beginning with the calendar year immediately following the creation of the benefit zone and continuing with each measurement year thereafter.

(e) "Excise taxes" means the state retail sales and use taxes imposed under chapters 82.08 and 82.12 RCW.

(f) "Fiscal year" has the same meaning as provided in section 3 of this act.

(g) "Measurement year" means a calendar year, beginning with the calendar year following the base year and each calendar year thereafter, that is used annually to measure the amount of excess excise taxes required to be used to finance public improvement costs associated with public improvements financed in whole or in part by hospital benefit zone financing.

(h) "State contribution" means the lesser of two million dollars or an amount equal to excess state excise taxes received by the state during the preceding calendar year.

(i) "Tax allocation revenues" has the same meaning as provided in section 1 of this act.

NEW SECTION. Sec. 8. A new section is added to chapter 82.14 RCW to read as follows:

(1) Moneys collected from the taxes imposed under section 7 of this act shall be used only for the purpose of principal and interest payments on bonds issued under the authority of section 6 of this act and must be matched with an amount from local public sources dedicated through December 31st of the previous calendar year to finance public improvements authorized under chapter 39.— RCW (sections 1 through 6 of this act). Such local public sources include but are not limited to private monetary contributions and tax allocation revenues. Local public sources are dedicated to finance public improvements if they are actually expended to pay public improvement costs or are required by law or an agreement to be used exclusively to pay public improvement costs.

(2) A local government shall inform the department by the first day of March of the amount of local public sources dedicated in the preceding calendar year to finance public improvements authorized under chapter 39.— RCW (sections 1 through 6 of this act).

(3) If a local government fails to comply with subsection (2) of this section, no tax may be imposed under section 7 of this act in the subsequent fiscal year.

(4) A local government shall provide a report to the department by March 1st of each year. The report shall contain the following information:

(a) The amount of tax allocation revenues, taxes under section 7 of this act, and local public sources received by the local government during the preceding calendar year, and a summary of how these revenues were expended;

(b) The names of any businesses locating within the benefit zone as a result of the public improvements undertaken by the local government and financed in whole or in part with hospital benefit zone financing;

(c) The total number of permanent jobs created as a result of the public improvements undertaken by the local government and financed in whole or in part with hospital benefit zone financing; and

(d) The average wages and benefits received by all employees of businesses locating within the benefit zone as a result of the public improvements undertaken by the local government and financed in whole or in part with hospital benefit zone financing.

(5) The department shall make a report available to the public and the legislature by June 1st of each year. The report shall include a list of public improvements undertaken by local governments and financed in whole or in part with hospital benefit zone financing, and it shall also include a summary of the information provided to the department by local governments under subsection (4) of this section.

(6) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Public improvement costs" has the same meaning as in section 1 of this act.

(b) "Tax allocation revenues" has the same meaning as provided in section 1 of this act.

NEW SECTION. Sec. 9. A new section is added to chapter 82.32 RCW to read as follows:

(1) As a condition to imposing a sales and use tax under section 7 of this act, a city, town, or county must apply to the department at least seventy-five days

before the effective date of any such tax. The application shall be in a form and manner prescribed by the department and shall include but is not limited to information establishing that the applicant is eligible to impose such a tax, the anticipated effective date for imposing the tax, the estimated number of years that the tax will be imposed, and the estimated amount of tax revenue to be received in each fiscal year that the tax will be imposed. For purposes of this section, "fiscal year" means the year beginning July 1st and ending the following June 30th. The department shall make available forms to be used for this purpose. As part of the application, a city, town, or county must provide to the department a copy of the ordinance creating the benefit zone as required in section 4 of this act. The department shall rule on completed applications within sixty days of receipt. The department may begin accepting and approving applications August 1, 2006. No new applications shall be considered by the department after the thirtieth day of September of the third year following the year in which the first application was received by the department.

(2) The authority to impose the local option sales and use taxes under section 7 of this act is on a first-come basis. Priority for collecting the taxes authorized under section 7 of this act among approved applicants shall be based on the date that the approved application was received by the department. As a part of the approval of applications under this section, the department shall approve the amount of tax under section 7 of this act that an applicant may impose. The amount of tax approved by the department shall not exceed the lesser of two million dollars or the average amount of tax revenue that the applicant estimates that it will receive in all fiscal years through the imposition of a sales and use tax under section 7 of this act. A city, town, or county shall not receive, in any fiscal year, more revenues from taxes imposed under section 7 of this act than the amount approved by the department. The department shall not approve the receipt of more credit against the state sales and use tax than is authorized under subsection (3) of this section.

(3) No more than two million dollars of credit against the state sales and use tax may be received by all cities, towns, and counties imposing a tax under section 7 of this act.

(4) The credit against the state sales and use tax shall be available to any city, town, or county imposing a tax under section 7 of this act only as long as the city, town, or county has outstanding indebtedness under section 7 of this act.

(5) The department may adopt any rules under chapter 34.05 RCW it considers necessary for the administration of chapter 39.— RCW (sections 1 through 6 of this act).

NEW SECTION. Sec. 10. Sections 1 through 6 of this act constitute a new chapter in Title 39 RCW.

NEW SECTION. Sec. 11. This act takes effect July 1, 2006.

Passed by the House February 11, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 17, 2006.

Filed in Office of Secretary of State March 17, 2006.

CHAPTER 112

[Second Substitute Senate Bill 6326]

CUSTOMIZED EMPLOYMENT TRAINING

AN ACT Relating to providing a source of funding for customized work force training; amending RCW 82.32.590; adding new sections to chapter 82.04 RCW; adding a new section to chapter 28B.50 RCW; adding a new chapter to Title 28B RCW; and providing an expiration date.

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

NEW SECTION. Sec. 1. The legislature finds that the provision of customized training is critical to attracting and retaining businesses, and that the growth of many businesses is limited by an unmet need for customized training. The legislature also finds that work force training not only helps business, it also improves the quality of life for workers and communities. Because of the statewide public benefit to be gained from instituting a customized training program, the legislature intends to create a new program to fund work force training in a manner that reduces the up-front costs of training to new and expanding firms.

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

(1) "Board" means the state board for community and technical colleges.

(2) "Costs of training" and "training costs" means the direct costs experienced under a contract with a qualified training institution for formal technical or skill training, including basic skills. "Costs of training" includes amounts in the contract for costs of instruction, materials, equipment, rental of class space, marketing, and overhead. "Costs of training" does not include employee tuition reimbursements unless the tuition reimbursement is specifically included in a contract.

(3) "Participant" means a private employer that, under this chapter, undertakes a training program with a qualified training institution.

(4) "Qualified training institution" means a public community or technical college or a private vocational school licensed by either the work force training and education coordinating board or the higher education coordinating board.

(5) "Training allowance" and "allowance" means a voucher, credit, or payment from the board to a participant to cover training costs.

(6) "Training program" means a program funded under this chapter at a qualified training institution.

NEW SECTION. Sec. 3. (1) The Washington customized employment training program is hereby created to provide training assistance to employers locating or expanding in the state.

(2)(a) Application to receive funding under this program shall be made to the board in a form and manner as specified by the board. Successful applicants shall receive a training allowance from the board to cover the costs of training at a qualified training institution. Employers may not receive an allowance for training costs which exceed the maximum annual training cost per employee, as established by the board, and are not eligible to receive an allowance or allowances of over five hundred thousand dollars per calendar year.

(b) Allowances shall be granted for applicants who meet the following criteria:

(i) The employer must have entered into an agreement with a qualified training institution to engage in customized training and the employer must agree to: (A) Upon completion of the training, make a payment to the employment training finance account created in section 8 of this act in an amount equal to one-quarter of the amount of the training allowance; and (B) over the subsequent eighteen months, make monthly or quarterly payments, as specified in the agreement, to the employment training finance account created in section 8 of this act in an amount equal to three-quarters of the amount of the training allowance. The payments into the employment training finance account provided for in this section do not constitute payment to the institution.

(ii) The employer must ensure that the number of employees an employer has in the state during the calendar year following the completion of the training program will equal the number of employees the employer had in the state in the calendar year preceding the start of the training program plus seventy-five percent of the number of trainees. The agreement with the qualified training institution provided for in (b)(i) of this subsection shall specify terms for reimbursement or additional payment to the employment training finance account by the employer if the employment criterion of this subsection is not met.

(iii) The training grant may not be used to train workers who have been hired as a result of a strike or lockout.

(c) Preference shall be given to employers with fewer than fifty employees.

(3) Qualified training institutions may enter into agreements with four-year institutions of higher education, as defined in RCW 28B.10.016, in accordance with the interlocal cooperation act, chapter 39.34 RCW.

(4) The board and qualified training institutions may solicit and receive gifts, grants, funds, fees, and endowments, in trust or otherwise, from tribal, local, federal, or other governmental entities, as well as private sources, for the purpose of providing training allowances under this act. All revenue thus solicited and received shall be deposited into the employment training finance account created in section 8 of this act.

(5) The board may adopt rules to implement this section.

NEW SECTION. Sec. 4. This chapter, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect its purposes. Insofar as the provisions of this chapter are inconsistent with the provisions of any general or special law, or parts thereof, the provisions of this chapter shall be controlling.

NEW SECTION. Sec. 5. A new section is added to chapter 82.04 RCW to read as follows:

In computing the tax imposed under this chapter, a credit is allowed for participants in the Washington customized employment training program created in section 3 of this act. The credit allowed under this section is equal to fifty percent of the value of a participant's payments to the employment training finance account created in section 8 of this act. If a participant in the program does not meet the qualifications in section 3(2)(b)(ii) of this act, the participant must remit to the department the value of any credits taken plus interest. The credit earned by a participant in one calendar year may be carried over to be credited against taxes incurred in a subsequent calendar year. No credit may be

allowed for repayment of training allowances received from the Washington customized employment training program on or after July 1, 2016.

NEW SECTION. Sec. 6. A new section is added to chapter 82.04 RCW to read as follows:

(1) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how a tax incentive is used.

(2) Each person claiming a tax credit under section 5 of this act shall report information to the department by filing a complete annual survey. The survey is due by March 31st of the year following any calendar year in which a tax credit under section 5 of this act is taken. The department may extend the due date for timely filing of annual surveys under this section as provided in RCW 82.32.590. The survey shall include the amount of tax credit taken. The survey shall also include the following information for employment positions in Washington:

(a) The number of total employment positions;

(b) Full-time, part-time, and temporary employment positions as a percent of total employment;

(c) The number of employment positions according to the following wage bands: Less than thirty thousand dollars; thirty thousand dollars or greater, but less than sixty thousand dollars; and sixty thousand dollars or greater. A wage band containing fewer than three individuals may be combined with another wage band; and

(d) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands.

The first survey filed under this subsection shall also include information for the twelve-month period immediately before first use of a tax incentive.

(3) The department may request additional information necessary to measure the results of the credit program, to be submitted at the same time as the survey.

(4) All information collected under this section, except the amount of the tax credit taken, is deemed taxpayer information under RCW 82.32.330. Information on the amount of tax credit taken is not subject to the confidentiality provisions of RCW 82.32.330.

(5) If a person fails to submit an annual survey under subsection (2) of this section by the due date of the report or any extension under RCW 82.32.590, the department shall declare the amount of taxes credited for the previous calendar year to be immediately due and payable. The department shall assess interest, but not penalties, on the amounts due under this section. The interest shall be assessed at the rate provided for delinquent taxes under this chapter, retroactively to the date the credit was claimed, and shall accrue until the taxes for which the credit was claimed are repaid. This information is not subject to the confidentiality provisions of RCW 82.32.330.

(6) The department shall use the information from this section to prepare summary descriptive statistics by category. No fewer than three taxpayers shall be included in any category. The department shall report these statistics to the legislature each year by September 1st.

(7) The department shall study the tax credit authorized in section 5 of this act. The department shall submit a report to the finance committee of the house of representatives and the ways and means committee of the senate by December 1, 2011. The report shall measure the effect of the credit on job creation, job retention, company growth, the movement of firms or the consolidation of firms' operations into the state, and such other factors as the department selects.

Sec. 7. RCW 82.32.590 and 2005 c 514 s 1001 are each amended to read as follows:

(1) If the department finds that the failure of a taxpayer to file an annual survey under RCW 82.04.4452 or section 6 of this act by the due date was the result of circumstances beyond the control of the taxpayer, the department shall extend the time for filing the survey. Such extension shall be for a period of thirty days from the date the department issues its written notification to the taxpayer that it qualifies for an extension under this section. The department may grant additional extensions as it deems proper.

(2) In making a determination whether the failure of a taxpayer to file an annual survey by the due date was the result of circumstances beyond the control of the taxpayer, the department shall be guided by rules adopted by the department for the waiver or cancellation of penalties when the underpayment or untimely payment of any tax was due to circumstances beyond the control of the taxpayer.

NEW SECTION. Sec. 8. A new section is added to chapter 28B.50 RCW to read as follows:

(1) All payments received from a participant in the Washington customized employment training program created in section 3 of this act shall be deposited into the employment training finance account, which is hereby created in the custody of the state treasurer. Only the state board for community and technical colleges may authorize expenditures from the account and no appropriation is required for expenditures. The money in the account must be used solely for training allowances under the Washington customized employment training program created in section 3 of this act. The deposit of payments under this section from a participant shall cease when the board specifies that the participant has met the monetary obligations of the program.

(2) All revenue solicited and received under the provisions of section 3(4) of this act shall be deposited into the employment training finance account to provide training allowances.

(3) The definitions in section 2 of this act apply to this section.

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

NEW SECTION. Sec. 10. Sections 1 through 4 of this act constitute a new chapter in Title 28B RCW.

NEW SECTION. Sec. 11. Sections 1 through 4 and 8 of this act expire July 1, 2012.

Passed by the Senate March 7, 2006.

Passed by the House March 4, 2006.

Approved by the Governor March 20, 2006.
Filed in Office of Secretary of State March 20, 2006.

CHAPTER 113

[Engrossed House Bill 2579]

EDUCATION—CIVICS ASSESSMENTS

AN ACT Relating to educational assessments; amending RCW 28A.230.095; creating new sections; and making an appropriation.

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

NEW SECTION. Sec. 1. The legislature finds that instruction in social studies, arts, health, and fitness is important to ensure a well-rounded and complete education. In particular, the civic mission of schools is strengthened and enhanced by comprehensive civics education and assessments. The legislature finds that effective and accountable democratic government depends upon an informed and engaged citizenry, and therefore, students should learn their rights and responsibilities as citizens, where those rights and responsibilities come from, and how to exercise them.

Sec. 2. RCW 28A.230.095 and 2004 c 19 s 203 are each amended to read as follows:

(1) By the end of the 2008-09 school year, school districts shall have in place in elementary schools, middle schools, and high schools assessments or other strategies to assure that students have an opportunity to learn the essential academic learning requirements in social studies, the arts, and health and fitness. Social studies includes history, geography, civics, economics, and social studies skills. Beginning with the 2008-09 school year, school districts shall annually submit an implementation verification report to the office of the superintendent of public instruction.

(2) Beginning with the 2008-09 school year, school districts shall require students in the fourth or fifth grades, the seventh or eighth grades, and the eleventh or twelfth grades to each complete at least one classroom-based assessment in civics. The civics assessment may be selected from a list of classroom-based assessments approved by the office of the superintendent of public instruction. Beginning with the 2008-09 school year, school districts shall annually submit implementation verification reports to the office of the superintendent of public instruction documenting the use of the classroom-based assessments in civics.

NEW SECTION. Sec. 3. (1) The legislature finds that the complexity of modern political life has created a demand for informed citizens who are willing not only to vote, but also to participate in the elections process.

(2) The purpose of this section is to create a pilot project to help graduate students who are better voters, better citizens, and who are ready to take an informed and responsible place in society.

(3) The office of the superintendent of public instruction shall work with selected county auditors' offices to develop an interactive high school civics curriculum to help students learn how to become informed citizens. The curriculum shall meet the requirements for the office of the superintendent of public instruction's classroom-based assessments. Staff from the office of the

superintendent of public instruction shall work directly in the curriculum development.

(4) Counties shall apply to, and be selected by, the office of the superintendent of public instruction to participate in the pilot project under this section. A maximum of fifteen counties may participate.

(5) The curriculum shall include, but not be limited to:

(a) Local government organization;

(b) A discussion of ballot measures, initiatives, and referenda;

(c) The role of the precinct in defining ballots, candidates, and political activities;

(d) The roles and responsibilities of taxing jurisdictions in establishing ballot measures; and

(e) The work of conducting elections.

(6) The study may include in the curriculum civics essential academic learning requirements relating to examining representative government and citizen participation and analyzing the purposes and organization of government and laws.

(7) A curriculum guide shall be developed that will help teachers and students maximize the learning of key issues in civics, and shall include strategies for helping students develop voters' guide information for ballot issues and candidates who appear on the ballot. This guide should incorporate ideas from other Washington state civics education programs, such as "We the People" and "Project Citizen." The guide should also present ideas for sharing the results of an election with the larger community and with local government officials in productive, meaningful ways.

(8) In addition to the required components of the pilot project under this section, other activities may be included in the project, such as:

(a) Conducting mock county elections at schools; and

(b) Preparing an advisory issue on which the school would vote, including issue preparation, conducting the election, and preparing a presentation to a local government official on the results of the advisory issue.

(9) The pilot project shall operate for the 2006-07 and 2007-08 school years.

(10) Funds for the pilot project shall be made available to the office of the superintendent of public instruction for a contract position in civics curriculum and for support costs for soliciting and implementing volunteer participation.

(11) The office of the superintendent of public instruction shall adopt rules to implement this section, including rules specifying selection criteria for counties that wish to participate.

(12) The superintendent of public instruction shall provide an interim report to appropriate committees of the legislature by December 1, 2008, and a final report by December 1, 2009, detailing the results of the project and budget recommendations for expansion, if appropriate.

(13) This section expires January 31, 2010.

NEW SECTION. Sec. 4. The sum of twenty-five thousand dollars, or as much thereof as may be necessary, is appropriated for the fiscal year ending June 30, 2007, from the general fund to the superintendent of public instruction. The superintendent shall use the funds to provide competitive grants to school districts for curriculum alignment, development of innovative civics projects, and other activities that support the civics assessment under this act. As a

condition of grant receipt, districts shall make the products developed under the grant widely available as examples of best practices.

Passed by the House March 4, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 114

[Substitute House Bill 2973]

CAREER AND TECHNICAL HIGH SCHOOL GRADUATION OPTION

AN ACT Relating to creating a career and technical high school graduation option for students meeting state standards in fundamental academic content areas; amending RCW 28A.230.090 and 28A.230.100; adding a new section to chapter 28A.230 RCW; adding a new section to chapter 28C.04 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. (1) The legislature finds that Washington's performance-based education system should seek to provide fundamental academic knowledge and skills for all students, and to provide the opportunity for students to acquire knowledge and skills likely to contribute to their own economic well-being and that of their families and communities.

(2) The legislature recognizes that career and technical options are available for students.

(3) High schools or school districts should take advantage of their opportunity to offer course credits, including credits toward graduation requirements, for knowledge and skills in fundamental academic content areas that students gain in career and technical education courses.

(4) Therefore the legislature intends to create a rigorous and high quality career and technical high school alternative assessment that assures students meet state standards, and also reflects nationally recognized standards for the knowledge and skills needed to pursue employment and careers in technical fields.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.230 RCW to read as follows:

(1) Each high school or school district board of directors shall adopt course equivalencies for career and technical high school courses offered to students at the high school. A career and technical course equivalency may be for whole or partial credit. Each school district board of directors shall develop a course equivalency approval procedure.

(2) Career and technical courses determined to be equivalent to academic core courses, in full or in part, by the high school or school district shall be accepted as meeting core requirements, including graduation requirements, if the courses are recorded on the student's transcript using the equivalent academic high school department designation and title. Full or partial credit shall be recorded as appropriate.

Sec. 3. RCW 28A.230.090 and 2005 c 205 s 3 are each amended to read as follows:

(1) The state board of education shall establish high school graduation requirements or equivalencies for students, except those equivalencies established by local high schools or school districts under section 2 of this act.

(a) Any course in Washington state history and government used to fulfill high school graduation requirements shall consider including information on the culture, history, and government of the American Indian peoples who were the first inhabitants of the state.

(b) The certificate of academic achievement requirements under RCW 28A.655.061 or the certificate of individual achievement requirements under RCW 28A.155.045 are required for graduation from a public high school but are not the only requirements for graduation.

(c) Any decision on whether a student has met the state board's high school graduation requirements for a high school and beyond plan shall remain at the local level.

(2) In recognition of the statutory authority of the state board of education to establish and enforce minimum high school graduation requirements, the state board shall periodically reevaluate the graduation requirements and shall report such findings to the legislature in a timely manner as determined by the state board. The state board shall reevaluate the graduation requirements for students enrolled in vocationally intensive and rigorous career and technical education programs, particularly those programs that lead to a certificate or credential that is state or nationally recognized. The purpose of the evaluation is to ensure that students enrolled in these programs have sufficient opportunity to earn a certificate of academic achievement, complete the program and earn the program's certificate or credential, and complete other state and local graduation requirements. The board shall reports its findings and recommendations for additional flexibility in graduation requirements, if necessary, to the legislature by December 1, 2007.

(3) Pursuant to any requirement for instruction in languages other than English established by the state board of education or a local school district, or both, for purposes of high school graduation, students who receive instruction in American sign language or one or more American Indian languages shall be considered to have satisfied the state or local school district graduation requirement for instruction in one or more languages other than English.

(4) If requested by the student and his or her family, a student who has completed high school courses before attending high school shall be given high school credit which shall be applied to fulfilling high school graduation requirements if:

(a) The course was taken with high school students, if the academic level of the course exceeds the requirements for seventh and eighth grade classes, and the student has successfully passed by completing the same course requirements and examinations as the high school students enrolled in the class; or

(b) The academic level of the course exceeds the requirements for seventh and eighth grade classes and the course would qualify for high school credit, because the course is similar or equivalent to a course offered at a high school in the district as determined by the school district board of directors.

(5) Students who have taken and successfully completed high school courses under the circumstances in subsection (4) of this section shall not be

required to take an additional competency examination or perform any other additional assignment to receive credit.

(6) At the college or university level, five quarter or three semester hours equals one high school credit.

Sec. 4. RCW 28A.230.100 and 1991 c 116 s 8 are each amended to read as follows:

The state board of education shall adopt rules pursuant to chapter 34.05 RCW, to implement the course requirements set forth in RCW 28A.230.090. The rules shall include, as the state board deems necessary, granting equivalencies for and temporary exemptions from the course requirements in RCW 28A.230.090 and special alterations of the course requirements in RCW 28A.230.090. In developing such rules the state board shall recognize the relevance of vocational and applied courses and allow such courses to fulfill in whole or in part the courses required for graduation in RCW 28A.230.090, as determined by the high school or school district in accordance with section 2 of this act. The rules may include provisions for competency testing in lieu of such courses required for graduation in RCW 28A.230.090 or demonstration of specific skill proficiency or understanding of concepts through work or experience.

***NEW SECTION. Sec. 5.** *A new section is added to chapter 28C.04 RCW to read as follows:*

(1) The superintendent of public instruction shall develop an objective alternative assessment for career and technical education programs. The objective alternative assessment shall be comparable in rigor to the skills and knowledge that the student must demonstrate on the Washington assessment of student learning.

(2) The alternative assessment shall include an evaluation of a collection of work samples prepared and submitted by an applicant who is enrolled in a career and technical education program. The superintendent of public instruction shall develop guidelines for the collection of work samples that evidences that the collection:

- (a) Is relevant to the student's particular career and technical program;*
- (b) Focuses on the application of academic knowledge and skills within the program;*
- (c) Includes completed activities or projects where demonstration of academic knowledge is inferred; and*
- (d) Is related to the essential academic learning requirements and state standards that students must meet to earn a certificate of academic achievement or certificate of individual achievement, but also represents the knowledge and skills that successful individuals in the career and technical field of the approved program are expected to possess.*

(3) In developing the work samples for subsection (2) of this section, the superintendent shall consult with community and technical colleges, employers, the work force training and education coordinating board, apprenticeship programs, and other regional and national experts in career and technical education to create an appropriate collection of work samples and other evidence of a career and technical student's knowledge and skills on the state academic standards.

*Sec. 5 was vetoed. See message at end of chapter.

Passed by the House March 4, 2006.

Passed by the Senate March 1, 2006.

Approved by the Governor March 20, 2006, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 20, 2006.

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

"I am returning, without my approval as to Section 5, Substitute House Bill No. 2973 entitled:

"AN ACT Relating to creating a career and technical high school graduation option for students meeting state standards in fundamental academic content areas."

This bill authorizes local school boards to develop approval processes for high school course equivalencies. Requirements are established for students in career and technical education programs who may earn whole or partial academic credits. Further, the State Board of Education is directed to reevaluate the graduation requirements for students enrolled in vocational and technical education courses. Topics of the evaluation are enumerated. Findings and any recommendations are to be reported by December 1, 2007.

I have vetoed Section 5, which provides for the development of objective alternative assessments for career and technical education programs. The provisions and language of this Section are duplicative of provisions for alternative assessments for career and technical education programs found in SB 6475.

For this reason, I have vetoed Section 5 of Substitute House Bill 2973.

With the exception of Section 5, Substitute House Bill No. 2973 is approved."

CHAPTER 115

[Engrossed Substitute Senate Bill 6475]

WASL—ALTERNATIVE ASSESSMENTS

AN ACT Relating to authorizing alternative methods of assessment and appeal processes for the certificate of academic achievement; amending RCW 28A.655.061 and 28A.305.220; adding new sections to chapter 28A.655 RCW; adding a new section to chapter 28C.04 RCW; and creating new sections.

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

NEW SECTION. Sec. 1. A new section is added to chapter 28A.655 RCW to read as follows:

(1) The legislature has made a commitment to rigorous academic standards for receipt of a high school diploma. The primary way that students will demonstrate that they meet the standards in reading, writing, mathematics, and science is through the Washington assessment of student learning. Only objective assessments that are comparable in rigor to the state assessment are authorized as an alternative assessment. Before seeking an alternative assessment, the legislature expects students to make a genuine effort to meet state standards, through retaking the Washington assessment of student learning; regular and consistent attendance at school; and participation in extended learning and other assistance programs.

(2) Under RCW 28A.655.061, beginning in the 2006-07 school year, the superintendent of public instruction shall implement objective alternative assessment methods as provided in this section for students to demonstrate achievement of the state standards in content areas in which the student has not yet met the standard on the high school Washington assessment of student

learning. A student may access an alternative if the student meets applicable eligibility criteria in RCW 28A.655.061 and other eligibility criteria established by the superintendent of public instruction, including but not limited to attendance criteria and participation in the remediation or supplemental instruction contained in the student learning plan developed under RCW 28A.655.061. A school district may waive attendance and/or remediation criteria for special, unavoidable circumstances.

(3) For the purposes of this section, "applicant" means a student seeking to use one of the alternative assessment methods in this section.

(4) One alternative assessment method shall be a combination of the applicant's grades in applicable courses and the applicant's highest score on the high school Washington assessment of student learning, as provided in this subsection. The superintendent of public instruction shall determine which high school courses are applicable to the alternative assessment method and shall issue guidelines to school districts.

(a) Using guidelines prepared by the superintendent of public instruction, a school district shall identify the group of students in the same school as the applicant who took the same high school courses as the applicant in the applicable content area. From the group of students identified in this manner, the district shall select the comparison cohort that shall be those students who met or slightly exceeded the state standard on the Washington assessment of student learning.

(b) The district shall compare the applicant's grades in high school courses in the applicable content area to the grades of students in the comparison cohort for the same high school courses. If the applicant's grades are equal to or above the mean grades of the comparison cohort, the applicant shall be deemed to have met the state standard on the alternative assessment.

(c) An applicant may not use the alternative assessment under this subsection (4) if there are fewer than six students in the comparison cohort.

(5) The superintendent of public instruction shall develop an alternative assessment method that shall be an evaluation of a collection of work samples prepared and submitted by the applicant, as provided in this subsection and, for career and technical applicants, the additional requirements of subsection (6) of this section.

(a) The superintendent of public instruction shall develop guidelines for the types and number of work samples in each content area that may be submitted as a collection of evidence that the applicant has met the state standard in that content area. Work samples may be collected from academic, career and technical, or remedial courses and may include performance tasks as well as written products. The superintendent shall submit the guidelines for approval by the state board of education.

(b) The superintendent shall develop protocols for submission of the collection of work samples that include affidavits from the applicant's teachers and school district that the samples are the work of the applicant and a requirement that a portion of the samples be prepared under the direct supervision of a classroom teacher. The superintendent shall submit the protocols for approval by the state board of education.

(c) The superintendent shall develop uniform scoring criteria for evaluating the collection of work samples and submit the scoring criteria for approval by

the state board of education. Collections shall be scored at the state level or regionally by a panel of educators selected and trained by the superintendent to ensure objectivity, reliability, and rigor in the evaluation. An educator may not score work samples submitted by applicants from the educator's school district. If the panel awards an applicant's collection of work samples the minimum required score, the applicant shall be deemed to have met the state standard on the alternative assessment.

(d) Using an open and public process that includes consultation with district superintendents, school principals, and other educators, the state board of education shall consider the guidelines, protocols, scoring criteria, and other information regarding the collection of work samples submitted by the superintendent of public instruction. The collection of work samples may be implemented as an alternative assessment after the state board of education has approved the guidelines, protocols, and scoring criteria and determined that the collection of work samples: (i) Will meet professionally accepted standards for a valid and reliable measure of the grade level expectations and the essential academic learning requirements; and (ii) is comparable to or exceeds the rigor of the skills and knowledge that a student must demonstrate on the Washington assessment of student learning in the applicable content area. The state board shall make an approval decision and determination no later than December 1, 2006, and thereafter may increase the required rigor of the collection of work samples.

(e) By September of 2006, the superintendent of public instruction shall develop informational materials for parents, teachers, and students regarding the collection of work samples and the status of its development as an alternative assessment method. The materials shall provide specific guidance regarding the type and number of work samples likely to be required, include examples of work that meets the state learning standards, and describe the scoring criteria and process for the collection. The materials shall also encourage students in the graduating class of 2008 to begin creating a collection if they believe they may seek to use the collection once it is implemented as an alternative assessment.

(6)(a) For students enrolled in a career and technical education program approved under section 2 of this act, the superintendent of public instruction shall develop additional guidelines for a collection of work samples that evidences that the collection:

- (i) Is relevant to the student's particular career and technical program;
- (ii) Focuses on the application of academic knowledge and skills within the program;
- (iii) Includes completed activities or projects where demonstration of academic knowledge is inferred; and
- (iv) Is related to the essential academic learning requirements and state standards that students must meet to earn a certificate of academic achievement or certificate of individual achievement, but also represents the knowledge and skills that successful individuals in the career and technical field of the approved program are expected to possess.

(b) To meet the state standard on the alternative assessment under this subsection (6), an applicant must also attain the state or nationally recognized certificate or credential associated with the approved career and technical program.

(c) The superintendent shall consult with community and technical colleges, employers, the work force training and education coordinating board, apprenticeship programs, and other regional and national experts in career and technical education to create an appropriate collection of work samples and other evidence of a career and technical student's knowledge and skills on the state academic standards.

(7) The superintendent of public instruction shall study the feasibility of using existing mathematics assessments in languages other than English as an additional alternative assessment option. The study shall include an estimation of the cost of translating the tenth grade mathematics assessment into other languages and scoring the assessments should they be implemented.

(8) The superintendent of public instruction shall implement:

(a) By June 1, 2006, a process for students to appeal the score they received on the high school assessments; and

(b) By January 1, 2007, guidelines and appeal processes for waiving specific requirements in RCW 28A.655.061 pertaining to the certificate of academic achievement and to the certificate of individual achievement for students who: (i) Transfer to a Washington public school in their junior or senior year with the intent of obtaining a public high school diploma, or (ii) have special, unavoidable circumstances.

(9) The superintendent of public instruction may adopt rules to implement this section.

NEW SECTION. Sec. 2. A new section is added to chapter 28C.04 RCW to read as follows:

The superintendent of public instruction shall develop a list of approved career and technical education programs that qualify for the objective alternative assessment for career and technical students developed under section 1 of this act. Programs on the list must meet the following minimum criteria:

(1) Lead to a certificate or credential that is state or nationally recognized by trades, industries, or other professional associations as necessary for employment or advancement in that field;

(2) Require a sequenced progression of multiple courses, both exploratory and preparatory, that are vocationally intensive and rigorous; and

(3) Have a high potential for providing the program completer with gainful employment or entry into a postsecondary work force training program.

NEW SECTION. Sec. 3. (1) By September 10, 2006, the superintendent of public instruction shall report the following, in detail, to the education committees of the legislature:

(a) Results of the pilot testing of the alternative assessments authorized under section 1 of this act, particularly the pilot testing of the collection of work samples or collection of evidence;

(b) The proposed guidelines, protocols, and procedures to be used by the superintendent in implementing the alternative assessments, particularly the collection of evidence;

(c) The proposed criteria, rubrics, and methodology for scoring the collection of evidence;

(d) A description of the training to be provided for school districts, educators serving on scoring panels, and teachers assisting students with collections of evidence;

(e) Preliminary results of the feasibility study in section 1(7) of this act; and

(f) Updated estimates of the number of students likely to be eligible or apply for an alternative assessment method.

(2) By December 1, 2006, and again by February 1, 2007, the superintendent of public instruction shall provide the education committees of the legislature with an update on the number of students eligible for or participating in an alternative assessment method.

(3) The Washington state institute for public policy shall conduct an independent and objective evaluation of the reliability, validity, and rigor of the alternative assessment methods authorized under section 1 of this act, including an examination of a representative sample of the collections of work samples submitted by the graduating classes of 2008 and 2009. The institute shall submit its findings to the education committees of the legislature by September 1, 2009, to enable the legislature to develop and consider statutory changes to the alternative assessment during the 2010 legislative session.

Sec. 4. RCW 28A.655.061 and 2004 c 19 s 101 are each amended to read as follows:

(1) The high school assessment system shall include but need not be limited to the Washington assessment of student learning, opportunities for a student to retake the content areas of the assessment in which the student was not successful, and if approved by the legislature pursuant to subsection ~~((4+))~~ (10) of this section, one or more objective alternative assessments for a student to demonstrate achievement of state academic standards. The objective alternative assessments for each content area shall be comparable in rigor to the skills and knowledge that the student must demonstrate on the Washington assessment of student learning for each content area.

(2) Subject to the conditions in this section, a certificate of academic achievement shall be obtained by most students at about the age of sixteen, and is evidence that the students have successfully met the state standard in the content areas included in the certificate. With the exception of students satisfying the provisions of RCW 28A.155.045, acquisition of the certificate is required for graduation from a public high school but is not the only requirement for graduation.

(3) Beginning with the graduating class of 2008, with the exception of students satisfying the provisions of RCW 28A.155.045, a student who meets the state standards on the reading, writing, and mathematics content areas of the high school Washington assessment of student learning shall earn a certificate of academic achievement. If a student does not successfully meet the state standards in one or more content areas required for the certificate of academic achievement, then the student may retake the assessment in the content area up to four times at no cost to the student. If the student successfully meets the state standards on a retake of the assessment then the student shall earn a certificate of academic achievement. Once objective alternative assessments are authorized pursuant to subsection ~~((4+))~~ (10) of this section, a student may use the objective alternative assessments to demonstrate that the student successfully meets the state standards for that content area if the student has retaken the

Washington assessment of student learning at least once. If the student successfully meets the state standards on the objective alternative assessments then the student shall earn a certificate of academic achievement. ~~((The student's transcript shall note whether the certificate of academic achievement was acquired by means of the Washington assessment of student learning or by an alternative assessment.))~~

(4) Beginning with the graduating class of 2010, a student must meet the state standards in science in addition to the other content areas required under subsection (3) of this section on the Washington assessment of student learning or the objective alternative assessments in order to earn a certificate of academic achievement.

(5) The state board of education may not require the acquisition of the certificate of academic achievement for students in home-based instruction under chapter 28A.200 RCW, for students enrolled in private schools under chapter 28A.195 RCW, or for students satisfying the provisions of RCW 28A.155.045.

(6) A student may retain and use the highest result from each successfully completed content area of the high school assessment.

~~(7) ((Beginning with the graduating class of 2006, the highest scale score and level achieved in each content area on the high school Washington assessment of student learning shall be displayed on a student's transcript. In addition, beginning with the graduating class of 2008, each student shall receive a scholar's designation on his or her transcript for each content area in which the student achieves level four the first time the student takes that content area assessment.~~

~~(8))~~ (8) Beginning in 2006, school districts must make available to students the following options:

(a) To retake the Washington assessment of student learning up to four times in the content areas in which the student did not meet the state standards if the student is enrolled in a public school; or

(b) To retake the Washington assessment of student learning up to four times in the content areas in which the student did not meet the state standards if the student is enrolled in a high school completion program at a community or technical college. The superintendent of public instruction and the state board for community and technical colleges shall jointly identify means by which students in these programs can be assessed.

~~((9))~~ (8) Students who achieve the standard in a content area of the high school assessment but who wish to improve their results shall pay for retaking the assessment, using a uniform cost determined by the superintendent of public instruction.

~~((10))~~ (9) Subject to available funding, the superintendent shall pilot opportunities for retaking the high school assessment beginning in the 2004-05 school year. Beginning no later than September 2006, opportunities to retake the assessment at least twice a year shall be available to each school district.

~~((11))~~ (10)(a) The office of the superintendent of public instruction shall develop options for implementing objective alternative assessments, which may include an appeals process, for students to demonstrate achievement of the state academic standards. The objective alternative assessments shall be comparable in rigor to the skills and knowledge that the student must demonstrate on the

Washington assessment of student learning and be objective in its determination of student achievement of the state standards. Before any objective alternative assessments in addition to those authorized in section 1 of this act or (b) of this subsection are used by a student to demonstrate that the student has met the state standards in a content area required to obtain a certificate, the legislature shall formally approve the use of any objective alternative assessments through the omnibus appropriations act or by statute or concurrent resolution.

~~((12))~~ (b) A student's score on the mathematics portion of the preliminary scholastic assessment test (PSAT), the scholastic assessment test (SAT), or the American college test (ACT) may be used as an objective alternative assessment under this section for demonstrating that a student has met or exceeded the mathematics standards for the certificate of academic achievement. The state board of education shall identify the scores students must achieve on the mathematics portion of the PSAT, SAT, or ACT to meet or exceed the state standard for mathematics. The state board of education shall identify the first scores by December 1, 2006, and thereafter may increase but not decrease the scores required for students to meet or exceed the state standard for mathematics.

(11) By December 15, 2004, the house of representatives and senate education committees shall obtain information and conclusions from recognized, independent, national assessment experts regarding the validity and reliability of the high school Washington assessment of student learning for making individual student high school graduation determinations.

~~((13))~~ (12) To help assure continued progress in academic achievement as a foundation for high school graduation and to assure that students are on track for high school graduation, each school district shall prepare plans for students as provided in this subsection ~~((13))~~ (12).

(a) Student learning plans are required for eighth through twelfth grade students who were not successful on any or all of the content areas of the Washington assessment for student learning during the previous school year. The plan shall include the courses, competencies, and other steps needed to be taken by the student to meet state academic standards and stay on track for graduation. This requirement shall be phased in as follows:

(i) Beginning no later than the 2004-05 school year ninth grade students as described in this subsection ~~((13))~~ (12)(a) shall have a plan.

(ii) Beginning no later than the 2005-06 school year and every year thereafter eighth grade students as described in this subsection ~~((13))~~ (12)(a) shall have a plan.

(iii) The parent or guardian shall be notified, preferably through a parent conference, of the student's results on the Washington assessment of student learning, actions the school intends to take to improve the student's skills in any content area in which the student was unsuccessful, strategies to help them improve their student's skills, and the content of the student's plan.

(iv) Progress made on the student plan shall be reported to the student's parents or guardian at least annually and adjustments to the plan made as necessary.

(b) Beginning with the 2005-06 school year and every year thereafter, all fifth grade students who were not successful in one or more of the content areas

of the fourth grade Washington assessment of student learning shall have a student learning plan.

(i) The parent or guardian of a student described in this subsection (~~((13))~~) (12)(b) shall be notified, preferably through a parent conference, of the student's results on the Washington assessment of student learning, actions the school intends to take to improve the student's skills in any content area in which the student was unsuccessful, and provide strategies to help them improve their student's skills.

(ii) Progress made on the student plan shall be reported to the student's parents or guardian at least annually and adjustments to the plan made as necessary.

NEW SECTION. Sec. 5. A new section is added to chapter 28A.655 RCW to read as follows:

Subject to the availability of funds appropriated for this purpose, school districts shall reimburse students for the cost of taking the tests in RCW 28A.655.061(10)(b) when the students take the tests for the purpose of using the mathematics results as an objective alternative assessment.

Sec. 6. RCW 28A.305.220 and 2004 c 19 s 108 are each amended to read as follows:

(1) The state board of education shall develop for use by all public school districts a standardized high school transcript. The state board of education shall establish clear definitions for the terms "credits" and "hours" so that school programs operating on the quarter, semester, or trimester system can be compared.

(2) The standardized high school transcript shall include (~~the following information:~~

~~(a) The highest scale score and level achieved in each content area on the high school Washington assessment of student learning or other high school measures successfully completed by the student as provided by RCW 28A.655.061 and 28A.155.045;~~

~~(b) All scholar designations as provided by RCW 28A.655.061;~~

~~(c)) a notation of whether the student has earned a certificate of individual achievement or a certificate of academic achievement ((by means of the Washington assessment of student learning or by an alternative assessment)).~~

(3) Transcripts are important documents to students who will apply for admission to postsecondary institutions of higher education. Transcripts are also important to students who will seek employment upon or prior to graduation from high school. It is recognized that student transcripts may be the only record available to employers in their decision-making processes regarding prospective employees. The superintendent of public instruction shall require school districts to inform annually all high school students that prospective employers may request to see transcripts and that the prospective employee's decision to release transcripts can be an important part of the process of applying for employment.

NEW SECTION. Sec. 7. If specific funding for the purposes of this act and section 5 of this act, referencing this act and section 5 of this act by bill or chapter number and section number, is not provided by June 30, 2006, in the omnibus appropriations act, section 5 of this act is null and void.

Passed by the Senate March 6, 2006.
Passed by the House March 3, 2006.
Approved by the Governor March 20, 2006.
Filed in Office of Secretary of State March 20, 2006.

CHAPTER 116

[Engrossed Substitute House Bill 3127]

CENTER FOR THE IMPROVEMENT OF STUDENT LEARNING

AN ACT Relating to education; amending RCW 28A.300.130; adding a new chapter to Title 43 RCW; and creating new sections.

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

NEW SECTION. Sec. 1. The legislature finds that expanding activity in educational research, educational restructuring, and educational improvement initiatives has produced and continues to produce much valuable information. The legislature finds that such information should be shared with the citizens and educational community of the state as widely as possible. The legislature further finds that students and schools benefit from increased parental, guardian, and community involvement in education and increased knowledge of and input regarding the delivery of public education. The legislature further finds that increased community involvement with, knowledge of, and input regarding the public education system is particularly needed in low-income and ethnic minority communities.

The legislature finds that the center for the improvement of student learning, created by the legislature in 1993 under the auspices of the superintendent of public instruction, has not been allocated funding since the 2001-2003 biennium, and in effect no longer exists. It is the intent of the legislature to reactivate the center for the improvement of student learning, and to create an educational ombudsman to increase parent, guardian, and community involvement in public education and to serve as a resource for parents and students and as an advocate for students in the public education system.

Sec. 2. RCW 28A.300.130 and 1999 c 388 s 401 are each amended to read as follows:

(1) (~~Expanding activity in educational research, educational restructuring, and educational improvement initiatives has produced and continues to produce much valuable information. The legislature finds that such information should be shared with the citizens and educational community of the state as widely as possible.~~) To facilitate access to information and materials on educational improvement and research, the superintendent of public instruction, to the extent funds are appropriated, shall establish the center for the improvement of student learning. (~~The primary purpose of the center is to provide assistance and advice to parents, school board members, educators, and the public regarding strategies for assisting students in learning the essential academic learning requirements pursuant to RCW 28A.630.885.~~) The center shall work in conjunction with (~~the academic achievement and accountability commission~~) parents, educational service districts, institutions of higher education, and education, parent, community, and business organizations.

(2) The center, in conjunction with other staff in the office of the superintendent of public instruction, shall:

~~(a) ((Serve as a clearinghouse for the completed work and activities of the academic achievement and accountability commission;~~

~~(b))~~ (b)) Serve as a clearinghouse for information regarding successful educational improvement and parental involvement programs in schools and districts, and information about efforts within institutions of higher education in the state to support educational improvement initiatives in Washington schools and districts;

~~((e))~~ (b) Provide best practices research ~~((and advice))~~ that can be used to help schools develop and implement: Programs and practices to improve instruction ~~((of the essential academic learning requirements under section 701 of this act));~~ systems to analyze student assessment data, with an emphasis on systems that will combine the use of state and local data to monitor the academic progress of each and every student in the school district; comprehensive, school-wide improvement plans; school-based shared decision-making models; programs to promote lifelong learning and community involvement in education; school-to-work transition programs; programs to meet the needs of highly capable students; programs and practices to meet the diverse needs of students based on gender, racial, ethnic, economic, and special needs status; research, information, and technology systems; and other programs and practices that will assist educators in helping students learn the essential academic learning requirements;

~~((d) Develop and distribute, in conjunction with the academic achievement and accountability commission, parental involvement materials, including instructional guides developed to inform parents of the essential academic learning requirements. The instructional guides also shall contain actions parents may take to assist their children in meeting the requirements, and should focus on reaching parents who have not previously been involved with their children's education;~~

~~(e) Identify obstacles to greater parent and community involvement in school shared decision-making processes and recommend strategies for helping parents and community members to participate effectively in school shared decision-making processes, including understanding and respecting the roles of school building administrators and staff;~~

~~(f))~~ (c) Develop and maintain an internet web site to increase the availability of information, research, and other materials;

~~((g) Take other actions to increase public awareness of the importance of parental and community involvement in education;~~

~~(h))~~ (d) Work with appropriate organizations to inform teachers, district and school administrators, and school directors about the waivers available and the broadened school board powers under RCW 28A.320.015;

~~((i))~~ (e) Provide training and consultation services, including conducting regional summer institutes;

~~((j) Address methods for improving the success rates of certain ethnic and racial student groups))~~ (f) Identify strategies for improving the success rates of ethnic and racial student groups with disproportionate academic achievement;

(g) Work with parents, teachers, and school districts in establishing a model absentee notification procedure that will properly notify parents when their

student has not attended a class or has missed a school day. The office of the superintendent of public instruction shall consider various types of communication with parents including, but not limited to, electronic mail, phone, and postal mail; and

~~((h))~~ (h) Perform other functions consistent with the purpose of the center as prescribed in subsection (1) of this section.

(3) The superintendent of public instruction ~~(, after consultation with the academic achievement and accountability commission,)~~ shall select and employ a director for the center.

(4) The superintendent may enter into contracts with individuals or organizations including but not limited to: School districts; educational service districts; educational organizations; teachers; higher education faculty; institutions of higher education; state agencies; business or community-based organizations; and other individuals and organizations to accomplish the duties and responsibilities of the center. In carrying out the duties and responsibilities of the center, the superintendent, whenever possible, shall use practitioners to assist agency staff as well as assist educators and others in schools and districts.

(5) The office of the superintendent of public instruction shall report to the legislature by September 1, 2007, and thereafter biennially, regarding the effectiveness of the center for improvement of student learning, how the services provided by the center for improvement of student learning have been used and by whom, and recommendations to improve the accessibility and application of knowledge and information that leads to improved student learning and greater family and community involvement in the public education system.

NEW SECTION. Sec. 3. (1) There is hereby created the office of the education ombudsman within the office of the governor for the purposes of providing information to parents, students, and others regarding their rights and responsibilities with respect to the state's public elementary and secondary education system, and advocating on behalf of elementary and secondary students.

(2)(a) The governor shall appoint an ombudsman who shall be a person of recognized judgment, independence, objectivity, and integrity and shall be qualified by training or experience or both in the following areas:

- (i) Public education law and policy in this state;
- (ii) Dispute resolution or problem resolution techniques, including mediation and negotiation; and
- (iii) Community outreach.

(b) The education ombudsman may not be an employee of any school district, the office of the superintendent of public instruction, or the state board of education while serving as an education ombudsman.

(3) Before the appointment of the education ombudsman, the governor shall share information regarding the appointment to a six-person legislative committee appointed and comprised as follows:

(a) The committee shall consist of three senators and three members of the house of representatives from the legislature.

(b) The senate members of the committee shall be appointed by the president of the senate. Two members shall represent the majority caucus and one member the minority caucus.

(c) The house of representatives members of the committee shall be appointed by the speaker of the house of representatives. Two members shall represent the majority caucus and one member the minority caucus.

(4) If sufficient appropriations are provided, the education ombudsman shall delegate and certify regional education ombudsmen. The education ombudsman shall ensure that the regional ombudsmen selected are appropriate to the community in which they serve and hold the same qualifications as in subsection (2)(a) of this section. The education ombudsman may not contract with the superintendent of public instruction, or any school, school district, or current employee of a school, school district, or the office of the superintendent of public instruction for the provision of regional ombudsman services.

NEW SECTION. Sec. 4. The education ombudsman shall have the following powers and duties:

(1) To develop parental involvement materials, including instructional guides developed to inform parents of the essential academic learning requirements required by the superintendent of public instruction. The instructional guides also shall contain actions parents may take to assist their children in meeting the requirements, and should focus on reaching parents who have not previously been involved with their children's education;

(2) To provide information to students, parents, and interested members of the public regarding this state's public elementary and secondary education system;

(3) To identify obstacles to greater parent and community involvement in school shared decision-making processes and recommend strategies for helping parents and community members to participate effectively in school shared decision-making processes, including understanding and respecting the roles of school building administrators and staff;

(4) To identify and recommend strategies for improving the success rates of ethnic and racial student groups with disproportionate academic achievement;

(5) To refer complainants and others to appropriate resources, agencies, or departments;

(6) To facilitate the resolution of complaints made by parents and students with regard to the state's public elementary and secondary education system;

(7) To perform such other functions consistent with the purpose of the education ombudsman; and

(8) To consult with representatives of the following organizations and groups regarding the work of the office of the education ombudsman, including but not limited to:

- (a) The state parent teacher association;
- (b) Certificated and classified school employees;
- (c) School and school district administrators;
- (d) Parents of special education students;
- (e) Parents of English language learners;
- (f) The Washington state commission on Hispanic affairs;
- (g) The Washington state commission on African-American affairs;
- (h) The Washington state commission on Asian Pacific American affairs;

and

- (i) The governor's office of Indian affairs.

NEW SECTION. Sec. 5. (1) Neither the education ombudsman nor any regional educational ombudsmen are liable for good faith performance of responsibilities under this chapter.

(2) No discriminatory, disciplinary, or retaliatory action may be taken against any student or employee of any school district, the office of the superintendent of public education, or the state board of education, for any communication made, or information given or disclosed, to aid the education ombudsman in carrying out his or her duties and responsibilities, unless the same was done without good faith or maliciously. This subsection is not intended to infringe upon the rights of a school district to supervise, discipline, or terminate an employee for other reasons or to discipline a student for other reasons.

(3) All communications by the education ombudsman or the ombudsman's staff or designee, if reasonably related to the education ombudsman's duties and responsibilities and done in good faith, are privileged and that privilege shall serve as a defense to any action in libel or slander.

NEW SECTION. Sec. 6. The education ombudsman shall treat all matters, including the identities of students, complainants, and individuals from whom information is acquired, as confidential, except as necessary to enable the education ombudsman to perform the duties of the office. Upon receipt of information that by law is confidential or privileged, the ombudsman shall maintain the confidentiality of such information and shall not further disclose or disseminate the information except as provided by applicable state or federal law.

NEW SECTION. Sec. 7. The education ombudsman shall report on the work and accomplishment of the office and advise and make recommendations to the governor, the legislature, and the state board of education annually. The initial report to the governor, the legislature, and the state board of education shall be made by September 1, 2007, and there shall be annual reports by September 1st each year thereafter. The annual reports shall provide at least the following information:

- (1) How the education ombudsman's services have been used and by whom;
- (2) Methods for the education ombudsman to increase and enhance family and community involvement in public education;
- (3) Recommendations to eliminate barriers and obstacles to meaningful family and community involvement in public education; and
- (4) Strategies to improve the educational opportunities for all students in the state, including recommendations from organizations and groups provided in section 4(8) of this act.

NEW SECTION. Sec. 8. Sections 3 through 7 of this act constitute a new chapter in Title 43 RCW.

***NEW SECTION. Sec. 9.** *If specific funding for the purposes of this act and section 2 of this act, referencing this act and section 2 of this act by bill or chapter number and section number, is not provided by June 30, 2006, in the omnibus appropriations act, section 2 of this act is null and void.*

*Sec. 9 was vetoed. See message at end of chapter.

Passed by the House March 8, 2006.

Passed by the Senate March 8, 2006.

Approved by the Governor March 20, 2006, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 20, 2006.

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

"I am returning, without my approval as to Section 9, Engrossed Substitute House Bill No. 3127 entitled:

"AN ACT Relating to education."

Section 9 is a standard null and void clause. It is unnecessary in this instance as the Supplemental Budget included appropriations for this Act.

For these reasons, I have vetoed Section 9, of Engrossed Substitute House Bill No. 3127.

With the exception of Section 9, Engrossed Substitute House Bill No. 3127 is approved."

CHAPTER 117

[Engrossed Substitute Senate Bill 6255]

EDUCATION—GUIDANCE AND PLANNING PROGRAMS

AN ACT Relating to improving student performance through student-centered planning; amending RCW 28A.655.200; adding a new section to chapter 28A.600 RCW; creating new sections; and providing an expiration date.

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

NEW SECTION. Sec. 1. The legislature recognizes that there are specific skills and a body of knowledge that each student needs to chart a course through middle school, high school, and post-high school options. Each student needs active involvement from parents and at least one supportive adult in the school who knows the student well and cares about the student's progress and future. Students, parents, and teachers also need the benefit of immediate feedback and accurate diagnosis of students' academic strengths and weaknesses to inform the students' short-term and long-term plans. To empower and motivate all students and parents to take a greater role in charting the students' own educational experiences, the legislature intends to strengthen schools' guidance and planning programs.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.600 RCW to read as follows:

(1) The legislature encourages each middle school, junior high school, and high school to implement a comprehensive guidance and planning program for all students. The purpose of the program is to support students as they navigate their education and plan their future; encourage an ongoing and personal relationship between each student and an adult in the school; and involve parents in students' educational decisions and plans.

(2) A comprehensive guidance and planning program is a program that contains at least the following components:

(a) A curriculum intended to provide the skills and knowledge students need to select courses, explore options, plan for their future, and take steps to implement their plans. The curriculum may include such topics as analysis of students' test results; diagnostic assessments of students' academic strengths and weaknesses; use of assessment results in developing students' short-term and long-term plans; assessments of student interests and aptitude; goal-setting

skills; planning for high school course selection; independent living skills; and postsecondary options and how to access them;

(b) Regular meetings between each student and a teacher who serves as an advisor throughout the student's enrollment at the school;

(c) Student-led conferences with the student's parents, guardians, or family members and the student's advisor for the purpose of demonstrating the student's accomplishments; identifying weaknesses; planning and selecting courses; and setting long-term goals; and

(d) Data collection that allows schools to monitor students' progress.

NEW SECTION. Sec. 3. (1) Subject to the availability of funds appropriated for this purpose, the superintendent of public instruction shall:

(a) Develop and disseminate the curriculum for the comprehensive guidance and planning program under section 2 of this act to all school districts no later than the beginning of the 2006-07 school year;

(b) Develop and disseminate electronic student planning tools and a software package to analyze the impact of the implementation of the program on student performance;

(c) Develop and disseminate information about options for diagnostic assessments to improve student learning and student planning as provided under RCW 28A.655.200;

(d) Develop and conduct regional training seminars for teachers on the curriculum and on guidance and mentoring skills;

(e) Monitor and evaluate implementation of the program during the fall of 2006 in order to revise and improve the curriculum by the spring of 2007; and

(f) Allocate grants to selected schools for the purpose of implementing the program. The superintendent shall develop and publish the grant selection criteria, number of awards, and award amounts. The first round of at least twenty-five grant recipients shall be selected and notified by September 2006. The second round of at least seventy-five grant recipients shall be selected and notified by January 2007. The purpose of the grants is to provide time for school staff to plan and integrate the comprehensive program into their schools. To the extent possible, the superintendent shall include representation from school districts of varying sizes and from different geographic regions of the state in the grant allocation.

(2) By January 1, 2009, the superintendent of public instruction shall report to the education committees of the legislature regarding the impact of comprehensive guidance and planning programs on student performance.

Sec. 4. RCW 28A.655.200 and 2005 c 217 s 2 are each amended to read as follows:

(1) (~~The legislature finds that the mandatory norm-referenced student assessments eliminated under chapter 217, Laws of 2005 provide information that teachers and parents use to improve student learning.~~) In the absence of mandatory, statewide, norm-referenced assessments, the legislature intends to permit school districts to offer norm-referenced assessments (at the districts' own expense and), make diagnostic tools available (that provide information that is at least as valuable as the information eliminated under chapter 217, Laws of 2005), and provide funding for diagnostic assessments to enhance guidance

and planning for students and to provide early intervention before the high school Washington assessment of student learning.

(2) In addition to the diagnostic assessments provided under subsection (5) of this section, school districts may, at their own expense, administer norm-referenced assessments to students.

(3) By September 1, 2005, subject to available funds, the office of the superintendent of public instruction shall post on its web site for voluntary use by school districts, a guide of diagnostic assessments. The assessments in the guide, to the extent possible, shall include the characteristics listed in subsection (4)~~((a) through (e))~~ of this section.

(4) ~~((By September 1, 2006, subject to the availability of amounts appropriated for this specific purpose))~~ Beginning September 1, 2007, the office of the superintendent of public instruction shall make available to school districts diagnostic assessments that help improve student learning. To the greatest extent possible, the assessments shall be:

(a) Aligned to the state's grade level expectations;
 (b) Individualized to each student's performance level;
 (c) Administered efficiently to provide results either immediately or within two weeks;

(d) Capable of measuring individual student growth over time and allowing student progress to be compared to other students across the country; ~~((and))~~

(e) Readily available to parents; and

(f) Cost-effective.

(5) Beginning with the 2006-07 school year, the superintendent of public instruction shall reimburse school districts for administration of diagnostic assessments in grade nine for the purpose of identifying academic weaknesses, enhancing student planning and guidance, and developing targeted instructional strategies to assist students before the high school Washington assessment of student learning.

~~(6)~~ The office of the superintendent of public instruction is encouraged to offer at ~~((their))~~ statewide and regional staff development activities training opportunities that would assist practitioners in:

(a) The interpretation of diagnostic assessments; and
 (b) Application of instructional strategies that will increase student learning based on diagnostic assessment data.

NEW SECTION. Sec. 5. If specific funding for the purposes of this act and section 4 of this act, referencing this act and section 4 of this act by bill or chapter number and section number, is not provided by June 30, 2006, in the omnibus appropriations act, section 4 of this act is null and void.

Passed by the Senate March 6, 2006.

Passed by the House March 3, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 118

[Second Substitute Senate Bill 5717]

EDUCATION—SKILL CENTERS—STUDY

AN ACT Relating to K-12 skill centers; and creating new sections.

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

NEW SECTION. Sec. 1. The legislature finds that skill centers provide students with high quality educational opportunities through programs that combine academics with career and technical education. The legislature also finds that skill centers provide extremely valuable support to local businesses seeking skilled entry-level employees and to communities attempting to enhance local economic development opportunities. Through skill center programs, students learn the technical knowledge and skills necessary either to pursue additional education through apprenticeships, technical schools, or institutions of higher education, or go directly into entry-level employment and begin careers. The legislature finds that skill centers permit a number of school districts to cooperatively offer programs that the school districts cannot provide individually.

NEW SECTION. Sec. 2. (1) The work force training and education coordinating board, in collaboration with the office of the superintendent of public instruction, shall conduct a study and report back to the 2007 legislature regarding how best to provide increased opportunities for students living in areas of the state that are currently not adequately served by a skill center. If plausible, the work force training and education coordinating board, in collaboration with the office of the superintendent of public instruction, shall provide preliminary recommendations to Washington Learns by June 2006.

(2) The study shall be focused on these primary issues:

(a) A report on current skill center geographic coverage and what geographic gaps in service area currently exist;

(b) Recommendations on how best to provide students in rural and remote areas increased access to a skill center program as well as how best to address the difficulties in providing adequate services to high density areas of the state. In making these recommendations, the work force board shall, at a minimum, explore the feasibility of creating satellite sites, creating joint programs between high schools and community colleges, using the K-20 network, and offering additional evening and summer programs. The report shall provide analysis on any additional funding needs or different funding methods necessary to implement the recommendations;

(c) Recommendations on how best to integrate core academic content into skill center programs and how to determine and report skill center course equivalencies for the purpose of meeting high school graduation requirements; and

(d) Recommendations on the role that skills centers can play as a promising dropout prevention/retrieval program by increasing student engagement through meaningful curriculum and effective instruction, providing opportunities for students to apply their learning in relevant, real world situations, and helping students see the connections to their own futures.

Passed by the Senate February 13, 2006.

Passed by the House February 28, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 119

[Substitute House Bill 2812]

SCHOOL DISTRICT LEVIES

AN ACT Relating to school district levies; amending RCW 28A.500.030 and 84.52.0531; and amending 2004 c 21 s 3 (uncodified).

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

Sec. 1. RCW 28A.500.030 and 2005 c 518 s 914 are each amended to read as follows:

Allocation of state matching funds to eligible districts for local effort assistance shall be determined as follows:

(1) Funds raised by the district through maintenance and operation levies shall be matched with state funds using the following ratio of state funds to levy funds:

(a) The difference between the district's twelve percent levy rate and the statewide average twelve percent levy rate; to

(b) The statewide average twelve percent levy rate.

(2) The maximum amount of state matching funds for districts eligible for local effort assistance shall be the district's twelve percent levy amount, multiplied by the following percentage:

(a) The difference between the district's twelve percent levy rate and the statewide average twelve percent levy rate; divided by

(b) The district's twelve percent levy rate.

(3) Calendar year 2003 allocations and maximum eligibility under this chapter shall be multiplied by 0.99.

(4) From January 1, 2004, to December 31, 2005, allocations and maximum eligibility under this chapter shall be multiplied by 0.937.

(5) From January 1, 2006, to ~~((June 30, 2007))~~ December 31, 2006, allocations and maximum eligibility under this chapter shall be multiplied by 0.9563. Beginning with calendar year 2007, allocations and maximum eligibility under this chapter shall be fully funded at one hundred percent and shall not be reduced.

Sec. 2. RCW 84.52.0531 and 2004 c 21 s 2 are each amended to read as follows:

The maximum dollar amount which may be levied by or for any school district for maintenance and operation support under the provisions of RCW 84.52.053 shall be determined as follows:

(1) For excess levies for collection in calendar year 1997, the maximum dollar amount shall be calculated pursuant to the laws and rules in effect in November 1996.

(2) For excess levies for collection in calendar year 1998 and thereafter, the maximum dollar amount shall be the sum of (a) plus or minus (b) and (c) of this subsection minus (d) of this subsection:

(a) The district's levy base as defined in subsections (3) and (4) of this section multiplied by the district's maximum levy percentage as defined in subsection (5) of this section;

(b) For districts in a high/nonhigh relationship, the high school district's maximum levy amount shall be reduced and the nonhigh school district's maximum levy amount shall be increased by an amount equal to the estimated

amount of the nonhigh payment due to the high school district under RCW 28A.545.030(3) and 28A.545.050 for the school year commencing the year of the levy;

(c) For districts in an interdistrict cooperative agreement, the nonresident school district's maximum levy amount shall be reduced and the resident school district's maximum levy amount shall be increased by an amount equal to the per pupil basic education allocation included in the nonresident district's levy base under subsection (3) of this section multiplied by:

(i) The number of full-time equivalent students served from the resident district in the prior school year; multiplied by:

(ii) The serving district's maximum levy percentage determined under subsection (5) of this section; increased by:

(iii) The percent increase per full-time equivalent student as stated in the state basic education appropriation section of the biennial budget between the prior school year and the current school year divided by fifty-five percent;

(d) The district's maximum levy amount shall be reduced by the maximum amount of state matching funds for which the district is eligible under RCW 28A.500.010.

(3) For excess levies for collection in calendar year 2005 and thereafter, a district's levy base shall be the sum of allocations in (a) through (c) of this subsection received by the district for the prior school year and the amounts determined under subsection (4) of this section, including allocations for compensation increases, plus the sum of such allocations multiplied by the percent increase per full time equivalent student as stated in the state basic education appropriation section of the biennial budget between the prior school year and the current school year and divided by fifty-five percent. A district's levy base shall not include local school district property tax levies or other local revenues, or state and federal allocations not identified in (a) through (c) of this subsection.

(a) The district's basic education allocation as determined pursuant to RCW 28A.150.250, 28A.150.260, and 28A.150.350;

(b) State and federal categorical allocations for the following programs:

(i) Pupil transportation;

(ii) Special education;

(iii) Education of highly capable students;

(iv) Compensatory education, including but not limited to learning assistance, migrant education, Indian education, refugee programs, and bilingual education;

(v) Food services; and

(vi) Statewide block grant programs; and

(c) Any other federal allocations for elementary and secondary school programs, including direct grants, other than federal impact aid funds and allocations in lieu of taxes.

(4) For levy collections in calendar years 2005 through ~~((2007))~~ 2011, in addition to the allocations included under subsection (3)(a) through (c) of this section, a district's levy base shall also include the following:

(a) The difference between the allocation the district would have received in the current school year had RCW 84.52.068 not been amended by chapter 19, Laws of 2003 1st sp. sess. and the allocation the district received in the current

school year pursuant to RCW 84.52.068. The office of the superintendent of public instruction shall offset the amount added to a district's levy base pursuant to this subsection (4)(a) by any additional per student allocations included in a district's levy base pursuant to the enactment of an initiative to the people subsequent to June 10, 2004; and

(b) The difference between the allocations the district would have received the prior school year had RCW 28A.400.205 not been amended by chapter 20, Laws of 2003 1st sp. sess. and the allocations the district actually received the prior school year pursuant to RCW 28A.400.205. The office of the superintendent of public instruction shall offset the amount added to a district's levy base pursuant to this subsection (4)(b) by any additional salary increase allocations included in a district's levy base pursuant to the enactment of an initiative to the people subsequent to June 10, 2004.

(5) A district's maximum levy percentage shall be twenty-two percent in 1998 and twenty-four percent in 1999 and every year thereafter; plus, for qualifying districts, the grandfathered percentage determined as follows:

(a) For 1997, the difference between the district's 1993 maximum levy percentage and twenty percent; and

(b) For 1998 and thereafter, the percentage calculated as follows:

(i) Multiply the grandfathered percentage for the prior year times the district's levy base determined under subsection (3) of this section;

(ii) Reduce the result of (b)(i) of this subsection by any levy reduction funds as defined in subsection (6) of this section that are to be allocated to the district for the current school year;

(iii) Divide the result of (b)(ii) of this subsection by the district's levy base; and

(iv) Take the greater of zero or the percentage calculated in (b)(iii) of this subsection.

(6) "Levy reduction funds" shall mean increases in state funds from the prior school year for programs included under subsections (3) and (4) of this section: (a) That are not attributable to enrollment changes, compensation increases, or inflationary adjustments; and (b) that are or were specifically identified as levy reduction funds in the appropriations act. If levy reduction funds are dependent on formula factors which would not be finalized until after the start of the current school year, the superintendent of public instruction shall estimate the total amount of levy reduction funds by using prior school year data in place of current school year data. Levy reduction funds shall not include moneys received by school districts from cities or counties.

(7) For the purposes of this section, "prior school year" means the most recent school year completed prior to the year in which the levies are to be collected.

(8) For the purposes of this section, "current school year" means the year immediately following the prior school year.

(9) Funds collected from transportation vehicle fund tax levies shall not be subject to the levy limitations in this section.

(10) The superintendent of public instruction shall develop rules and regulations and inform school districts of the pertinent data necessary to carry out the provisions of this section.

Sec. 3. 2004 c 21 s 3 (uncodified) is amended to read as follows:

This act expires January 1, (~~2008~~) 2012.

Passed by the House March 6, 2006.

Passed by the Senate March 3, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 120

[Substitute House Bill 2836]

READING ACHIEVEMENT ACCOUNT

AN ACT Relating to funding for reading achievement; reenacting and amending RCW 43.79A.040; and adding a new section to chapter 43.79 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 43.79 RCW to read as follows:

(1) The reading achievement account is created in the custody of the state treasurer. The purposes of the account are to establish a depository for state and other funds made available for reading achievement, and to ensure that unspent amounts appropriated for reading achievement continue to be available for that purpose in future biennia.

(2) The director of early learning shall deposit in the account all appropriations to the department and nonstate moneys received by the department for reading achievement, including reading foundations and implementation of research-based reading models.

Moneys deposited in the account do not lapse at the close of the fiscal period for which they were appropriated. Both during and after the fiscal period in which moneys were deposited in the account, the director may expend moneys in the account only for the purposes for which they were appropriated, and the expenditures are subject to any other conditions or limitations placed on the appropriations.

(3) Expenditures from the account may be used only for reading achievement, including reading foundations, implementation of research-based reading models, and grants to school districts.

(4) Only the director of early learning or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

Sec. 2. RCW 43.79A.040 and 2005 c 424 s 18, 2005 c 402 s 8, 2005 c 215 s 10, and 2005 c 16 s 2 are each reenacted and amended to read as follows:

(1) Money in the treasurer's trust fund may be deposited, invested, and reinvested by the state treasurer in accordance with RCW 43.84.080 in the same manner and to the same extent as if the money were in the state treasury.

(2) All income received from investment of the treasurer's trust fund shall be set aside in an account in the treasury trust fund to be known as the investment income account.

(3) The investment income account may be utilized for the payment of purchased banking services on behalf of treasurer's trust funds including, but not limited to, depository, safekeeping, and disbursement functions for the state

treasurer or affected state agencies. The investment income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4)(a) Monthly, the state treasurer shall distribute the earnings credited to the investment income account to the state general fund except under (b) and (c) of this subsection.

(b) The following accounts and funds shall receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The Washington promise scholarship account, the college savings program account, the Washington advanced college tuition payment program account, the agricultural local fund, the American Indian scholarship endowment fund, the foster care scholarship endowment fund, the foster care endowed scholarship trust fund, the students with dependents grant account, the basic health plan self-insurance reserve account, the contract harvesting revolving account, the Washington state combined fund drive account, the commemorative works account, the Washington international exchange scholarship endowment fund, the developmental disabilities endowment trust fund, the energy account, the fair fund, the fruit and vegetable inspection account, the future teachers conditional scholarship account, the game farm alternative account, the grain inspection revolving fund, the juvenile accountability incentive account, the law enforcement officers' and fire fighters' plan 2 expense fund, the local tourism promotion account, the produce railcar pool account, the rural rehabilitation account, the stadium and exhibition center account, the youth athletic facility account, the self-insurance revolving fund, the sulfur dioxide abatement account, the children's trust fund, the Washington horse racing commission Washington bred owners' bonus fund account, the Washington horse racing commission class C purse fund account, the individual development account program account, the Washington horse racing commission operating account (earnings from the Washington horse racing commission operating account must be credited to the Washington horse racing commission class C purse fund account), ~~((and))~~ the life sciences discovery fund, and the reading achievement account. However, the earnings to be distributed shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(c) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The advanced right of way revolving fund, the advanced environmental mitigation revolving account, the city and county advance right-of-way revolving fund, the federal narcotics asset forfeitures account, the high occupancy vehicle account, the local rail service assistance account, and the miscellaneous transportation programs account.

(5) In conformance with Article II, section 37 of the state Constitution, no trust accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

Passed by the House March 6, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 121

[Substitute House Bill 2446]

SUBSTITUTE TEACHER CONTRACTS

AN ACT Relating to school district substitute teacher and substitute educational aide contracts; and amending RCW 42.23.030.

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

Sec. 1. RCW 42.23.030 and 2005 c 114 s 1 are each amended to read as follows:

No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein. This section shall not apply in the following cases:

(1) The furnishing of electrical, water or other utility services by a municipality engaged in the business of furnishing such services, at the same rates and on the same terms as are available to the public generally;

(2) The designation of public depositaries for municipal funds;

(3) The publication of legal notices required by law to be published by any municipality, upon competitive bidding or at rates not higher than prescribed by law for members of the general public;

(4) The designation of a school director as clerk or as both clerk and purchasing agent of a school district;

(5) The employment of any person by a municipality for unskilled day labor at wages not exceeding two hundred dollars in any calendar month. The exception provided in this subsection does not apply to a county with a population of one hundred twenty-five thousand or more, a city with a population of more than one thousand five hundred, an irrigation district encompassing more than fifty thousand acres, or a first class school district;

(6)(a) The letting of any other contract in which the total amount received under the contract or contracts by the municipal officer or the municipal officer's business does not exceed one thousand five hundred dollars in any calendar month.

(b) However, in the case of a particular officer of a second class city or town, or a noncharter optional code city, or a member of any county fair board in a county which has not established a county purchasing department pursuant to RCW 36.32.240, the total amount of such contract or contracts authorized in this subsection (6) may exceed one thousand five hundred dollars in any calendar month but shall not exceed eighteen thousand dollars in any calendar year.

(c)(i) In the case of a particular officer of a rural public hospital district, as defined in RCW 70.44.460, the total amount of such contract or contracts authorized in this subsection (6) may exceed one thousand five hundred dollars in any calendar month, but shall not exceed twenty-four thousand dollars in any calendar year.

(ii) At the beginning of each calendar year, beginning with the 2006 calendar year, the legislative authority of the rural public hospital district shall increase the calendar year limitation described in this subsection (6)(c) by an amount equal to the dollar amount for the previous calendar year multiplied by

the change in the consumer price index as of the close of the twelve-month period ending December 31st of that previous calendar year. If the new dollar amount established under this subsection is not a multiple of ten dollars, the increase shall be rounded to the next lowest multiple of ten dollars. As used in this subsection, "consumer price index" means the consumer price index compiled by the bureau of labor statistics, United States department of labor for the state of Washington. If the bureau of labor statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used.

(d) The exceptions provided in this subsection (6) do not apply to a sale or lease by the municipality as the seller or lessor. The exceptions provided in this subsection (6) also do not apply to the letting of any contract by a county with a population of one hundred twenty-five thousand or more, a city with a population of ten thousand or more, or an irrigation district encompassing more than fifty thousand acres.

(e) The municipality shall maintain a list of all contracts that are awarded under this subsection (6). The list must be made available for public inspection and copying;

(7) The leasing by a port district as lessor of port district property to a municipal officer or to a contracting party in which a municipal officer may be beneficially interested, if in addition to all other legal requirements, a board of three disinterested appraisers and the superior court in the county where the property is situated finds that all terms and conditions of such lease are fair to the port district and are in the public interest. The appraisers must be appointed from members of the American Institute of Real Estate Appraisers by the presiding judge of the superior court;

(8) The letting of any employment contract for the driving of a school bus in a second class school district if the terms of such contract are commensurate with the pay plan or collective bargaining agreement operating in the district;

(9) The letting of an employment contract as a substitute teacher or substitute educational aide to an officer of a second class school district that has two hundred or fewer full-time equivalent students, if the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the district and the board of directors has found, consistent with the written policy under RCW 28A.330.240, that there is a shortage of substitute teachers in the school district;

(10) The letting of any employment contract to the spouse of an officer of a school district, when such contract is solely for employment as a substitute teacher for the school district. This exception applies only if the terms of the contract are commensurate with the pay plan or collective bargaining agreement applicable to all district employees and the board of directors has found, consistent with the written policy under RCW 28A.330.240, that there is a shortage of substitute teachers in the school district;

~~((+0))~~ (11) The letting of any employment contract to the spouse of an officer of a school district if the spouse was under contract as a certificated or classified employee with the school district before the date in which the officer assumes office and the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the district. However, in a

second class school district that has less than two hundred full-time equivalent students enrolled at the start of the school year as defined in RCW 28A.150.040, the spouse is not required to be under contract as a certificated or classified employee before the date on which the officer assumes office;

~~((41))~~ (12) The authorization, approval, or ratification of any employment contract with the spouse of a public hospital district commissioner if: (a) The spouse was employed by the public hospital district before the date the commissioner was initially elected; (b) the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the district for similar employees; (c) the interest of the commissioner is disclosed to the board of commissioners and noted in the official minutes or similar records of the public hospital district prior to the letting or continuation of the contract; and (d) the commissioner does not vote on the authorization, approval, or ratification of the contract or any conditions in the contract.

A municipal officer may not vote in the authorization, approval, or ratification of a contract in which he or she is beneficially interested even though one of the exemptions allowing the awarding of such a contract applies. The interest of the municipal officer must be disclosed to the governing body of the municipality and noted in the official minutes or similar records of the municipality before the formation of the contract.

Passed by the House February 14, 2006.

Passed by the Senate March 3, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 122

[House Bill 3277]

SEX OFFENSES

AN ACT Relating to authorizing special verdicts that would result in more severe punishment for certain sex offenses against children and vulnerable adults by increasing the minimum sentences to twenty-five years or the maximum of the standard sentence range, whichever is greater, for rape of a child in the first degree, rape of a child in the second degree, and child molestation in the first degree, when a special allegation that the offense was predatory has been made and proven beyond a reasonable doubt, by increasing the minimum sentences to twenty-five years or the maximum of the standard sentence range, whichever is greater, for rape in the first degree, rape in the second degree, indecent liberties by forcible compulsion, and kidnapping in the first degree with sexual motivation, when a special allegation that the victim was under age fifteen at the time of the crime has been made and proven beyond a reasonable doubt, and by increasing the minimum sentences to twenty-five years or the maximum of the standard sentence range, whichever is greater, for rape in the first degree, rape in the second degree by forcible compulsion, indecent liberties by forcible compulsion, and kidnapping in the first degree with sexual motivation, when a special allegation that the victim was, at the time of the crime, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult, has been made and proven beyond a reasonable doubt, without making any change to the sentencing grid, RCW 9.94A.510, or the seriousness level table, RCW 9.94A.515; amending RCW 9.94A.712, 9.94A.712, 9.94A.030, and 9.94A.030; adding new sections to chapter 9.94A RCW; prescribing penalties; providing an effective date; providing an expiration date; and declaring an emergency.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 9.94A RCW to read as follows:

(1) In a prosecution for rape of a child in the first degree, rape of a child in the second degree, or child molestation in the first degree, the prosecuting attorney shall file a special allegation that the offense was predatory whenever sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding by a reasonable and objective fact-finder that the offense was predatory, unless the prosecuting attorney determines, after consulting with a victim, that filing a special allegation under this section is likely to interfere with the ability to obtain a conviction.

(2) Once a special allegation has been made under this section, the state has the burden to prove beyond a reasonable doubt that the offense was predatory. If a jury is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether the offense was predatory. If no jury is had, the court shall make a finding of fact as to whether the offense was predatory.

(3) The prosecuting attorney shall not withdraw a special allegation filed under this section without the approval of the court through an order of dismissal of the allegation. The court may not dismiss the special allegation unless it finds that the order is necessary to correct an error in the initial charging decision or that there are evidentiary problems that make proving the special allegation doubtful.

NEW SECTION. Sec. 2. A new section is added to chapter 9.94A RCW to read as follows:

(1) In a prosecution for rape in the first degree, rape in the second degree, indecent liberties by forcible compulsion, or kidnapping in the first degree with sexual motivation, the prosecuting attorney shall file a special allegation that the victim of the offense was under fifteen years of age at the time of the offense whenever sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding by a reasonable and objective fact-finder that the victim was under fifteen years of age at the time of the offense, unless the prosecuting attorney determines, after consulting with a victim, that filing a special allegation under this section is likely to interfere with the ability to obtain a conviction.

(2) Once a special allegation has been made under this section, the state has the burden to prove beyond a reasonable doubt that the victim was under fifteen years of age at the time of the offense. If a jury is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether the victim was under the age of fifteen at the time of the offense. If no jury is had, the court shall make a finding of fact as to whether the victim was under the age of fifteen at the time of the offense.

(3) The prosecuting attorney shall not withdraw a special allegation filed under this section without the approval of the court through an order of dismissal of the allegation. The court may not dismiss the special allegation unless it finds that the order is necessary to correct an error in the initial charging decision or that there are evidentiary problems that make proving the special allegation doubtful.

NEW SECTION. Sec. 3. A new section is added to chapter 9.94A RCW to read as follows:

(1) In a prosecution for rape in the first degree, rape in the second degree with forcible compulsion, indecent liberties with forcible compulsion, or kidnapping in the first degree with sexual motivation, the prosecuting attorney shall file a special allegation that the victim of the offense was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult, whenever sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding by a reasonable and objective fact-finder that the victim was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult, unless the prosecuting attorney determines, after consulting with a victim, that filing a special allegation under this section is likely to interfere with the ability to obtain a conviction.

(2) Once a special allegation has been made under this section, the state has the burden to prove beyond a reasonable doubt that the victim was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult. If a jury is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether the victim was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult. If no jury is had, the court shall make a finding of fact as to whether the victim was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult.

(3) The prosecuting attorney shall not withdraw a special allegation filed under this section without the approval of the court through an order of dismissal of the allegation. The court may not dismiss the special allegation unless it finds that the order is necessary to correct an error in the initial charging decision or that there are evidentiary problems that make proving the special allegation doubtful.

(4) For purposes of this section, "developmentally disabled," "mentally disordered," and "frail elder or vulnerable adult" have the same meaning as in RCW 9A.44.010.

Sec. 4. RCW 9.94A.712 and 2005 c 436 s 2 are each amended to read as follows:

(1) An offender who is not a persistent offender shall be sentenced under this section if the offender:

(a) Is convicted of:

(i) Rape in the first degree, rape in the second degree, rape of a child in the first degree, child molestation in the first degree, rape of a child in the second degree, or indecent liberties by forcible compulsion;

(ii) Any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree; or

(iii) An attempt to commit any crime listed in this subsection (1)(a); committed on or after September 1, 2001; or

(b) Has a prior conviction for an offense listed in RCW 9.94A.030(33)(b), and is convicted of any sex offense which was committed after September 1, 2001.

For purposes of this subsection (1)(b), failure to register is not a sex offense.

(2) An offender convicted of rape of a child in the first or second degree or child molestation in the first degree who was seventeen years of age or younger at the time of the offense shall not be sentenced under this section.

(3)(a) Upon a finding that the offender is subject to sentencing under this section, the court shall impose a sentence to a maximum term (~~consisting of the statutory maximum sentence for the offense~~) and a minimum term (~~either within the standard sentence range for the offense, or outside the standard sentence range pursuant to RCW 9.94A.535, if the offender is otherwise eligible for such a sentence~~).

(b) The maximum term shall consist of the statutory maximum sentence for the offense.

(c)(i) Except as provided in (c)(ii) of this subsection, the minimum term shall be either within the standard sentence range for the offense, or outside the standard sentence range pursuant to RCW 9.94A.535, if the offender is otherwise eligible for such a sentence.

(ii) If the offense that caused the offender to be sentenced under this section was rape of a child in the first degree, rape of a child in the second degree, or child molestation in the first degree, and there has been a finding that the offense was predatory under section 1 of this act, the minimum term shall be either the maximum of the standard sentence range for the offense or twenty-five years, whichever is greater. If the offense that caused the offender to be sentenced under this section was rape in the first degree, rape in the second degree, indecent liberties by forcible compulsion, or kidnapping in the first degree with sexual motivation, and there has been a finding that the victim was under the age of fifteen at the time of the offense under section 2 of this act, the minimum term shall be either the maximum of the standard sentence range for the offense or twenty-five years, whichever is greater. If the offense that caused the offender to be sentenced under this section is rape in the first degree, rape in the second degree with forcible compulsion, indecent liberties with forcible compulsion, or kidnapping in the first degree with sexual motivation, and there has been a finding under section 3 of this act that the victim was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult, the minimum sentence shall be either the maximum of the standard sentence range for the offense or twenty-five years, whichever is greater.

(d) The minimum terms in (c)(ii) of this subsection do not apply to a juvenile tried as an adult pursuant to RCW 13.04.030(1)(e)(i) or (v). The minimum term for such a juvenile shall be imposed under (c)(i) of this subsection.

(4) A person sentenced under subsection (3) of this section shall serve the sentence in a facility or institution operated, or utilized under contract, by the state.

(5) When a court sentences a person to the custody of the department under this section, the court shall, in addition to the other terms of the sentence, sentence the offender to community custody under the supervision of the department and the authority of the board for any period of time the person is released from total confinement before the expiration of the maximum sentence.

(6)(a)(i) Unless a condition is waived by the court, the conditions of community custody shall include those provided for in RCW 9.94A.700(4). The

conditions may also include those provided for in RCW 9.94A.700(5). The court may also order the offender to participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community, and the department and the board shall enforce such conditions pursuant to RCW 9.94A.713, 9.95.425, and 9.95.430.

(ii) If the offense that caused the offender to be sentenced under this section was an offense listed in subsection (1)(a) of this section and the victim of the offense was under eighteen years of age at the time of the offense, the court shall, as a condition of community custody, prohibit the offender from residing in a community protection zone.

(b) As part of any sentence under this section, the court shall also require the offender to comply with any conditions imposed by the board under RCW 9.94A.713 and 9.95.420 through 9.95.435.

Sec. 5. RCW 9.94A.712 and 2004 c 176 s 3 are each amended to read as follows:

(1) An offender who is not a persistent offender shall be sentenced under this section if the offender:

(a) Is convicted of:

(i) Rape in the first degree, rape in the second degree, rape of a child in the first degree, child molestation in the first degree, rape of a child in the second degree, or indecent liberties by forcible compulsion;

(ii) Any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree; or

(iii) An attempt to commit any crime listed in this subsection (1)(a); committed on or after September 1, 2001; or

(b) Has a prior conviction for an offense listed in RCW 9.94A.030(32)(b), and is convicted of any sex offense which was committed after September 1, 2001.

For purposes of this subsection (1)(b), failure to register is not a sex offense.

(2) An offender convicted of rape of a child in the first or second degree or child molestation in the first degree who was seventeen years of age or younger at the time of the offense shall not be sentenced under this section.

~~(3)(a) Upon a finding that the offender is subject to sentencing under this section, the court shall impose a sentence to a maximum term ((consisting of the statutory maximum sentence for the offense)) and a minimum term ((either within the standard sentence range for the offense, or outside the standard sentence range pursuant to RCW 9.94A.535, if the offender is otherwise eligible for such a sentence)).~~

(b) The maximum term shall consist of the statutory maximum sentence for the offense.

(c)(i) Except as provided in (c)(ii) of this subsection, the minimum term shall be either within the standard sentence range for the offense, or outside the standard sentence range pursuant to RCW 9.94A.535, if the offender is otherwise eligible for such a sentence.

(ii) If the offense that caused the offender to be sentenced under this section was rape of a child in the first degree, rape of a child in the second degree, or child molestation in the first degree, and there has been a finding that the offense was predatory under section 1 of this act, the minimum term shall be either the maximum of the standard sentence range for the offense or twenty-five years, whichever is greater. If the offense that caused the offender to be sentenced under this section was rape in the first degree, rape in the second degree, indecent liberties by forcible compulsion, or kidnapping in the first degree with sexual motivation, and there has been a finding that the victim was under the age of fifteen at the time of the offense under section 2 of this act, the minimum term shall be either the maximum of the standard sentence range for the offense or twenty-five years, whichever is greater. If the offense that caused the offender to be sentenced under this section is rape in the first degree, rape in the second degree with forcible compulsion, indecent liberties with forcible compulsion, or kidnapping in the first degree with sexual motivation, and there has been a finding under section 3 of this act that the victim was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult, the minimum sentence shall be either the maximum of the standard sentence range for the offense or twenty-five years, whichever is greater.

(d) The minimum terms in (c)(ii) of this subsection do not apply to a juvenile tried as an adult pursuant to RCW 13.04.030(1)(e)(i) or (v). The minimum term for such a juvenile shall be imposed under (c)(i) of this subsection.

(4) A person sentenced under subsection (3) of this section shall serve the sentence in a facility or institution operated, or utilized under contract, by the state.

(5) When a court sentences a person to the custody of the department under this section, the court shall, in addition to the other terms of the sentence, sentence the offender to community custody under the supervision of the department and the authority of the board for any period of time the person is released from total confinement before the expiration of the maximum sentence.

(6)(a) Unless a condition is waived by the court, the conditions of community custody shall include those provided for in RCW 9.94A.700(4). The conditions may also include those provided for in RCW 9.94A.700(5). The court may also order the offender to participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community, and the department and the board shall enforce such conditions pursuant to RCW 9.94A.713, 9.95.425, and 9.95.430.

(b) As part of any sentence under this section, the court shall also require the offender to comply with any conditions imposed by the board under RCW 9.94A.713 and 9.95.420 through 9.95.435.

Sec. 6. RCW 9.94A.030 and 2005 c 436 s 1 are each amended to read as follows:

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

(1) "Board" means the indeterminate sentence review board created under chapter 9.95 RCW.

(2) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department, means that the department, either directly or through a collection agreement authorized by RCW 9.94A.760, is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(3) "Commission" means the sentencing guidelines commission.

(4) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(5) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670, 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the community subject to controls placed on the offender's movement and activities by the department. For offenders placed on community custody for crimes committed on or after July 1, 2000, the department shall assess the offender's risk of reoffense and may establish and modify conditions of community custody, in addition to those imposed by the court, based upon the risk to community safety.

(6) "Community custody range" means the minimum and maximum period of community custody included as part of a sentence under RCW 9.94A.715, as established by the commission or the legislature under RCW 9.94A.850, for crimes committed on or after July 1, 2000.

(7) "Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

(8) "Community protection zone" means the area within eight hundred eighty feet of the facilities and grounds of a public or private school.

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

(10) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed by a court pursuant to this chapter or RCW 16.52.200(6) or 46.61.524. Where the court finds that any offender has a chemical dependency that has contributed to his or her offense, the conditions of supervision may, subject to available resources, include treatment. For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

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

(12) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(13) "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.

(14) "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.

(15) "Day fine" means a fine imposed by the sentencing court that equals the difference between the offender's net daily income and the reasonable obligations that the offender has for the support of the offender and any dependents.

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

(17) "Department" means the department of corrections.

(18) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, 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) "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) "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) "Earned release" means earned release from confinement as provided in RCW 9.94A.728.

(23) "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) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-and-run injury-accident (RCW 46.52.020(4)); or

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

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

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

(b) Assault in the second degree;

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

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

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

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Robbery in the second degree;

(p) Sexual exploitation;

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

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

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

(t) Any other felony with a deadly weapon verdict under RCW 9.94A.602;

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

(v)(i) A prior conviction for indecent liberties under RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997.

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

(31) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court

pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(32) "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) "Persistent offender" is an offender who:

(a)(i) Has been convicted in this state of any felony considered a most serious offense; and

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.525; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree; or (C) an attempt to commit any crime listed in this subsection (33)(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.

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

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

~~((36))~~ (37) "Public school" has the same meaning as in RCW 28A.150.010.

~~((37))~~ (38) "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.

~~((38))~~ (39) "Risk assessment" means the application of an objective instrument supported by research and adopted by the department for the purpose of assessing an offender's risk of reoffense, taking into consideration the nature of the harm done by the offender, place and circumstances of the offender related to risk, the offender's relationship to any victim, and any information provided to the department by victims. The results of a risk assessment shall not be based on unconfirmed or unconfirmable allegations.

~~((39))~~ (40) "Serious traffic offense" means:

(a) Driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

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

~~((40))~~ (41) "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.

~~((41))~~ (42) "Sex offense" means:

(a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.130(11);

(ii) A violation of RCW 9A.64.020;

(iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.070 or 9.68A.080; or

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

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

(c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or

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

~~((42))~~ (43) "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.

~~((43))~~ (44) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

~~((44))~~ (45) "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.

~~((45))~~ (46) "Stranger" means that the victim did not know the offender twenty-four hours before the offense.

(47) "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.

~~((46))~~ (48) "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.

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

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

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

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

~~((51))~~ (53) "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. 7. RCW 9.94A.030 and 2003 c 53 s 55 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 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670, 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the community subject to controls placed on the offender's movement and activities by the department. For offenders placed on community custody for crimes committed on or after July 1, 2000, the department shall assess the offender's risk of reoffense and may establish and

modify conditions of community custody, in addition to those imposed by the court, based upon the risk to community safety.

(6) "Community custody range" means the minimum and maximum period of community custody included as part of a sentence under RCW 9.94A.715, as established by the commission or the legislature under RCW 9.94A.850, for crimes committed on or after July 1, 2000.

(7) "Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

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

(9) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed by a court pursuant to this chapter or RCW 16.52.200(6) or 46.61.524. Where the court finds that any offender has a chemical dependency that has contributed to his or her offense, the conditions of supervision may, subject to available resources, include treatment. For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

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

(11) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(12) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

(13) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere.

(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.

(14) "Day fine" means a fine imposed by the sentencing court that equals the difference between the offender's net daily income and the reasonable

obligations that the offender has for the support of the offender and any dependents.

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

(16) "Department" means the department of corrections.

(17) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community restitution work, or dollars or terms of a legal financial obligation. The fact that an offender through earned release can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

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

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

(20) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.4013) 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.

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

(22) "Escape" means:

(a) Sexually violent predator escape (RCW 9A.76.115), escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

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

(23) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-and-run injury-accident (RCW 46.52.020(4)); or

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

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

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

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

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

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

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

(b) Assault in the second degree;

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

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

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

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Robbery in the second degree;

(p) Sexual exploitation;

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

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

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

(t) Any other felony with a deadly weapon verdict under RCW 9.94A.602;

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

(v)(i) A prior conviction for indecent liberties under RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997.

(29) "Nonviolent offense" means an offense which is not a violent offense.

(30) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

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

(32) "Persistent offender" is an offender who:

(a)(i) Has been convicted in this state of any felony considered a most serious offense; and

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.525; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion;

(B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree; or (C) an attempt to commit any crime listed in this subsection (32)(b)(i); and

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

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

(34) "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 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.

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

~~((35))~~ (36) "Risk assessment" means the application of an objective instrument supported by research and adopted by the department for the purpose of assessing an offender's risk of reoffense, taking into consideration the nature of the harm done by the offender, place and circumstances of the offender related to risk, the offender's relationship to any victim, and any information provided to the department by victims. The results of a risk assessment shall not be based on unconfirmed or unconfirmable allegations.

~~((36))~~ (37) "Serious traffic offense" means:

(a) Driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

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

~~((37))~~ (38) "Serious violent offense" is a subcategory of violent offense and means:

- (a)(i) Murder in the first degree;
- (ii) Homicide by abuse;
- (iii) Murder in the second degree;
- (iv) Manslaughter in the first degree;
- (v) Assault in the first degree;
- (vi) Kidnapping in the first degree;
- (vii) Rape in the first degree;
- (viii) Assault of a child in the first degree; or
- (ix) An attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

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

~~((38))~~ (39) "Sex offense" means:

- (a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.130(11);
- (ii) A violation of RCW 9A.64.020;
- (iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.070 or 9.68A.080; or
- (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;

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

(c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or

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

~~((39))~~ (40) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

~~((40))~~ (41) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

~~((41))~~ (42) "Statutory maximum sentence" means the maximum length of time for which an offender may be confined as punishment for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the crime, or other statute defining the maximum penalty for a crime.

~~((42))~~ (43) "Stranger" means that the victim did not know the offender twenty-four hours before the offense.

(44) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

~~((43))~~ (45) "Transition training" means written and verbal instructions and assistance provided by the department to the offender during the two weeks prior to the offender's successful completion of the work ethic camp program. The transition training shall include instructions in the offender's requirements and obligations during the offender's period of community custody.

~~((44))~~ (46) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

~~((45))~~ (47) "Violent offense" means:

(a) Any of the following felonies:

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

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

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;

(v) Indecent liberties if committed by forcible compulsion;

(vi) Kidnapping in the second degree;

(vii) Arson in the second degree;

(viii) Assault in the second degree;

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

(x) Extortion in the first degree;

(xi) Robbery in the second degree;

(xii) Drive-by shooting;

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

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

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

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

~~((46))~~ (48) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.725.

~~((47))~~ (49) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.690 designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

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

NEW SECTION. Sec. 8. Sections 4 and 6 of this act expire July 1, 2006.

NEW SECTION. Sec. 9. Sections 5 and 7 of this act take effect July 1, 2006.

NEW SECTION. Sec. 10. Sections 1 through 4 and 6 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately.

Passed by the House March 4, 2006.

Passed by the Senate March 1, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 123

[Second Substitute Senate Bill 6460]

CRIME—SEXUAL MOTIVATION ENHANCEMENT

AN ACT Relating to penalties for crimes committed with sexual motivation; amending RCW 9.94A.533 and 9.94A.835; prescribing penalties; creating a new section; and providing an effective date.

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

Sec. 1. RCW 9.94A.533 and 2003 c 53 s 58 are each amended to read as follows:

(1) The provisions of this section apply to the standard sentence ranges determined by RCW 9.94A.510 or 9.94A.517.

(2) For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the standard sentence range is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by seventy-five percent.

(3) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any firearm enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the firearm enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a firearm enhancement. If the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any firearm enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Five years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection;

(b) Three years for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

(c) Eighteen months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection;

(d) If the offender is being sentenced for any firearm enhancements under (a), (b), and/or (c) of this subsection and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (4)(a), (b), and/or (c) of this section, or both, all firearm enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all firearm enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(4);

(f) The firearm enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony;

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a firearm enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(4) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any deadly weapon enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the deadly weapon enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a deadly weapon enhancement. If the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any deadly weapon enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Two years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection;

(b) One year for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

(c) Six months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection;

(d) If the offender is being sentenced under (a), (b), and/or (c) of this subsection for any deadly weapon enhancements and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (3)(a), (b), and/or (c) of this section, or both, all deadly weapon enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all deadly weapon enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(4);

(f) The deadly weapon enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony;

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a deadly weapon enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(5) The following additional times shall be added to the standard sentence range if the offender or an accomplice committed the offense while in a county jail or state correctional facility and the offender is being sentenced for one of the crimes listed in this subsection. If the offender or an accomplice committed one of the crimes listed in this subsection while in a county jail or state correctional facility, and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section:

(a) Eighteen months for offenses committed under RCW 69.50.401(2) (a) or (b) or 69.50.410;

(b) Fifteen months for offenses committed under RCW 69.50.401(2) (c), (d), or (e);

(c) Twelve months for offenses committed under RCW 69.50.4013.

For the purposes of this subsection, all of the real property of a state correctional facility or county jail shall be deemed to be part of that facility or county jail.

(6) An additional twenty-four months shall be added to the standard sentence range for any ranked offense involving a violation of chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435 or 9.94A.605.

(7) An additional two years shall be added to the standard sentence range for vehicular homicide committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502 for each prior offense as defined in RCW 46.61.5055.

(8)(a) The following additional times shall be added to the standard sentence range for felony crimes committed on or after the effective date of this section, if the offense was committed with sexual motivation, as that term is defined in RCW 9.94A.030. If the offender is being sentenced for more than one offense, the sexual motivation enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to a sexual motivation enhancement. If the offender committed the offense with sexual motivation and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(i) Two years for any felony defined under the law as a class A felony or with a statutory maximum sentence of at least twenty years, or both;

(ii) Eighteen months for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both;

(iii) One year for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both;

(iv) If the offender is being sentenced for any sexual motivation enhancements under (i), (ii), and/or (iii) of this subsection and the offender has previously been sentenced for any sexual motivation enhancements on or after the effective date of this section, under (i), (ii), and/or (iii) of this subsection, all sexual motivation enhancements under this subsection shall be twice the amount of the enhancement listed;

(b) Notwithstanding any other provision of law, all sexual motivation enhancements under this subsection are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other sexual motivation enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(4);

(c) The sexual motivation enhancements in this subsection apply to all felony crimes;

(d) If the standard sentence range under this subsection exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a sexual motivation enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced;

(e) The portion of the total confinement sentence which the offender must serve under this subsection shall be calculated before any earned early release time is credited to the offender;

(f) Nothing in this subsection prevents a sentencing court from imposing a sentence outside the standard sentence range pursuant to RCW 9.94A.535.

Sec. 2. RCW 9.94A.835 and 1999 c 143 s 11 are each amended to read as follows:

(1) The prosecuting attorney shall file a special allegation of sexual motivation in every criminal case, felony, gross misdemeanor, or misdemeanor, other than sex offenses as defined in RCW 9.94A.030(~~((33))~~) (38) (a) or (c) when sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding of sexual motivation by a reasonable and objective fact-finder.

(2) In a criminal case wherein there has been a special allegation the state shall prove beyond a reasonable doubt that the accused committed the crime with a sexual motivation. The court shall make a finding of fact of whether or not a sexual motivation was present at the time of the commission of the crime, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether or not the defendant committed the crime with a sexual motivation. This finding shall not be applied to sex offenses as defined in RCW 9.94A.030(~~((33))~~) (38) (a) or (c).

(3) The prosecuting attorney shall not withdraw the special allegation of sexual motivation without approval of the court through an order of dismissal of the special allegation. The court shall not dismiss this special allegation unless it finds that such an order is necessary to correct an error in the initial charging decision or unless there are evidentiary problems which make proving the special allegation doubtful.

NEW SECTION. **Sec. 3.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2006, in the omnibus appropriations act, this act is null and void.

NEW SECTION. **Sec. 4.** This act takes effect July 1, 2006.

Passed by the Senate February 9, 2006.

Passed by the House March 3, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 124

[Substitute Senate Bill 6406]

ASSAULT OF A CHILD IN THE SECOND DEGREE

AN ACT Relating to assault of a child in the second degree; amending RCW 9.94A.030, 9.94A.712, and 9.94A.712; providing an effective date; and providing an expiration date.

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

Sec. 1. RCW 9.94A.030 and 2003 c 53 s 55 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 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670, 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the community subject to controls placed on the offender's movement and activities by the department. For offenders placed on community custody for crimes committed on or after July 1, 2000, the department shall assess the offender's risk of reoffense and may establish and modify conditions of community custody, in addition to those imposed by the court, based upon the risk to community safety.

(6) "Community custody range" means the minimum and maximum period of community custody included as part of a sentence under RCW 9.94A.715, as established by the commission or the legislature under RCW 9.94A.850, for crimes committed on or after July 1, 2000.

(7) "Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

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

(9) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed by a court pursuant to this chapter or RCW 16.52.200(6) or 46.61.524. Where the court finds that any offender has a chemical dependency that has contributed to his or her offense, the conditions of supervision may, subject to available resources, include treatment. For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

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

(11) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(12) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing

an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

(13) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere.

(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.

(14) "Day fine" means a fine imposed by the sentencing court that equals the difference between the offender's net daily income and the reasonable obligations that the offender has for the support of the offender and any dependents.

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

(16) "Department" means the department of corrections.

(17) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community restitution work, or dollars or terms of a legal financial obligation. The fact that an offender through earned release can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

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

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

(20) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.4013) 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.

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

(22) "Escape" means:

(a) Sexually violent predator escape (RCW 9A.76.115), escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

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

(23) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-and-run injury-accident (RCW 46.52.020(4)); or

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

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

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

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

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

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

- (a) Any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;
 - (b) Assault in the second degree;
 - (c) Assault of a child in the second degree;
 - (d) Child molestation in the second degree;
 - (e) Controlled substance homicide;
 - (f) Extortion in the first degree;
 - (g) Incest when committed against a child under age fourteen;
 - (h) Indecent liberties;
 - (i) Kidnapping in the second degree;
 - (j) Leading organized crime;
 - (k) Manslaughter in the first degree;
 - (l) Manslaughter in the second degree;
 - (m) Promoting prostitution in the first degree;
 - (n) Rape in the third degree;
 - (o) Robbery in the second degree;
 - (p) Sexual exploitation;
 - (q) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;
 - (r) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;
 - (s) Any other class B felony offense with a finding of sexual motivation;
 - (t) Any other felony with a deadly weapon verdict under RCW 9.94A.602;
 - (u) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;
 - (v)(i) A prior conviction for indecent liberties under RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
 - (ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997.
- (29) "Nonviolent offense" means an offense which is not a violent offense.
- (30) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

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

(32) "Persistent offender" is an offender who:

(a)(i) Has been convicted in this state of any felony considered a most serious offense; and

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.525; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, 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 (32)(b)(i); and

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

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

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

(35) "Risk assessment" means the application of an objective instrument supported by research and adopted by the department for the purpose of assessing an offender's risk of reoffense, taking into consideration the nature of the harm done by the offender, place and circumstances of the offender related to risk, the offender's relationship to any victim, and any information provided to the department by victims. The results of a risk assessment shall not be based on unconfirmed or unconfirmable allegations.

(36) "Serious traffic offense" means:

(a) Driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

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

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

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

(ii) Homicide by abuse;

(iii) Murder in the second degree;

(iv) Manslaughter in the first degree;

(v) Assault in the first degree;

(vi) Kidnapping in the first degree;

(vii) Rape in the first degree;

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

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

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

(38) "Sex offense" means:

(a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.130(11);

(ii) A violation of RCW 9A.64.020;

(iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.070 or 9.68A.080; or

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

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

(c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or

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

(39) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

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

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

(42) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

(43) "Transition training" means written and verbal instructions and assistance provided by the department to the offender during the two weeks prior to the offender's successful completion of the work ethic camp program. The transition training shall include instructions in the offender's requirements and obligations during the offender's period of community custody.

(44) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

(45) "Violent offense" means:

(a) Any of the following felonies:

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

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

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;

(v) Indecent liberties if committed by forcible compulsion;

(vi) Kidnapping in the second degree;

(vii) Arson in the second degree;

(viii) Assault in the second degree;

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

(x) Extortion in the first degree;

(xi) Robbery in the second degree;

(xii) Drive-by shooting;

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

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

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

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

(46) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.725.

(47) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.690 designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training,

life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

(48) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school.

Sec. 2. RCW 9.94A.712 and 2005 c 436 s 2 are each amended to read as follows:

(1) An offender who is not a persistent offender shall be sentenced under this section if the offender:

(a) Is convicted of:

(i) Rape in the first degree, rape in the second degree, rape of a child in the first degree, child molestation in the first degree, rape of a child in the second degree, or indecent liberties by forcible compulsion;

(ii) 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

(iii) An attempt to commit any crime listed in this subsection (1)(a); committed on or after September 1, 2001; or

(b) Has a prior conviction for an offense listed in RCW 9.94A.030(33)(b), and is convicted of any sex offense which was committed after September 1, 2001.

For purposes of this subsection (1)(b), failure to register is not a sex offense.

(2) An offender convicted of rape of a child in the first or second degree or child molestation in the first degree who was seventeen years of age or younger at the time of the offense shall not be sentenced under this section.

(3) Upon a finding that the offender is subject to sentencing under this section, the court shall impose a sentence to a maximum term consisting of the statutory maximum sentence for the offense and a minimum term either within the standard sentence range for the offense, or outside the standard sentence range pursuant to RCW 9.94A.535, if the offender is otherwise eligible for such a sentence.

(4) A person sentenced under subsection (3) of this section shall serve the sentence in a facility or institution operated, or utilized under contract, by the state.

(5) When a court sentences a person to the custody of the department under this section, the court shall, in addition to the other terms of the sentence, sentence the offender to community custody under the supervision of the department and the authority of the board for any period of time the person is released from total confinement before the expiration of the maximum sentence.

(6)(a)(i) Unless a condition is waived by the court, the conditions of community custody shall include those provided for in RCW 9.94A.700(4). The conditions may also include those provided for in RCW 9.94A.700(5). The court may also order the offender to participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community, and the department and the board shall enforce such conditions pursuant to RCW 9.94A.713, 9.95.425, and 9.95.430.

(ii) If the offense that caused the offender to be sentenced under this section was an offense listed in subsection (1)(a) of this section and the victim of the offense was under eighteen years of age at the time of the offense, the court shall, as a condition of community custody, prohibit the offender from residing in a community protection zone.

(b) As part of any sentence under this section, the court shall also require the offender to comply with any conditions imposed by the board under RCW 9.94A.713 and 9.95.420 through 9.95.435.

Sec. 3. RCW 9.94A.712 and 2004 c 176 s 3 are each amended to read as follows:

(1) An offender who is not a persistent offender shall be sentenced under this section if the offender:

(a) Is convicted of:

(i) Rape in the first degree, rape in the second degree, rape of a child in the first degree, child molestation in the first degree, rape of a child in the second degree, or indecent liberties by forcible compulsion;

(ii) 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

(iii) An attempt to commit any crime listed in this subsection (1)(a); committed on or after September 1, 2001; or

(b) Has a prior conviction for an offense listed in RCW 9.94A.030(32)(b), and is convicted of any sex offense which was committed after September 1, 2001.

For purposes of this subsection (1)(b), failure to register is not a sex offense.

(2) An offender convicted of rape of a child in the first or second degree or child molestation in the first degree who was seventeen years of age or younger at the time of the offense shall not be sentenced under this section.

(3) Upon a finding that the offender is subject to sentencing under this section, the court shall impose a sentence to a maximum term consisting of the statutory maximum sentence for the offense and a minimum term either within the standard sentence range for the offense, or outside the standard sentence range pursuant to RCW 9.94A.535, if the offender is otherwise eligible for such a sentence.

(4) A person sentenced under subsection (3) of this section shall serve the sentence in a facility or institution operated, or utilized under contract, by the state.

(5) When a court sentences a person to the custody of the department under this section, the court shall, in addition to the other terms of the sentence, sentence the offender to community custody under the supervision of the department and the authority of the board for any period of time the person is released from total confinement before the expiration of the maximum sentence.

(6)(a) Unless a condition is waived by the court, the conditions of community custody shall include those provided for in RCW 9.94A.700(4). The conditions may also include those provided for in RCW 9.94A.700(5). The court may also order the offender to participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances

of the offense, the offender's risk of reoffending, or the safety of the community, and the department and the board shall enforce such conditions pursuant to RCW 9.94A.713, 9.95.425, and 9.95.430.

(b) As part of any sentence under this section, the court shall also require the offender to comply with any conditions imposed by the board under RCW 9.94A.713 and 9.95.420 through 9.95.435.

NEW SECTION. Sec. 4. Section 2 of this act expires July 1, 2006.

NEW SECTION. Sec. 5. Except for section 2 of this act, this act takes effect July 1, 2006.

Passed by the Senate February 9, 2006.

Passed by the House March 1, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 125

[Substitute Senate Bill 6775]

CRIMINAL TRESPASS AGAINST CHILDREN

AN ACT Relating to criminal trespass against children by sex offenders; reenacting and amending RCW 9.94A.515; adding new sections to chapter 9A.44 RCW; creating a new section; prescribing penalties; and declaring an emergency.

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

NEW SECTION. Sec. 1. It is the intent of the legislature to give public and private entities that provide services to children the tools necessary to prevent convicted child sex offenders from contacting children when those children are within the legal boundaries of the covered public and private entities.

NEW SECTION. Sec. 2. A new section is added to chapter 9A.44 RCW to read as follows:

As used in this section and sections 3 and 4 of this act:

(1) "Covered entity" means any public facility or private facility whose primary purpose, at any time, is to provide for the education, care, or recreation of a child or children, including but not limited to community and recreational centers, playgrounds, schools, swimming pools, and state or municipal parks.

(2) "Child" means a person under the age of eighteen, unless the context clearly indicates that the term is otherwise defined in statute.

(3) "Public facility" means a facility operated by a unit of local or state government, or by a nonprofit organization.

(4) "Schools" means public and private schools, but does not include home-based instruction as defined in RCW 28A.225.010.

(5) "Covered offender" means a person who is eighteen years of age or older, who is not under the jurisdiction of the juvenile rehabilitation authority or currently serving a special sex offender disposition alternative, whose risk level classification has been assessed at a risk level II or a risk level III pursuant to RCW 72.09.345, and who, at any time, has been convicted of one or more of the following offenses:

(a) Rape of a child in the first, second, and third degree; child molestation in the first, second, and third degree; indecent liberties against a child under age fifteen; sexual misconduct with a minor in the first and second degree; incest in

the first and second degree; luring with sexual motivation; possession of depictions of minors engaged in sexually explicit conduct; dealing in depictions of minors engaged in sexually explicit conduct; bringing into the state depictions of minors engaged in sexually explicit conduct; sexual exploitation of a minor; communicating with a minor for immoral purposes; patronizing a juvenile prostitute;

(b) Any felony in effect at any time prior to the effective date of this act that is comparable to an offense listed in (a) of this subsection, including, but not limited to, statutory rape in the first and second degrees and carnal knowledge;

(c) Any felony offense for which:

(i) There was a finding that the offense was committed with sexual motivation; and

(ii) The victim of the offense was less than sixteen years of age at the time of the offense;

(d) An attempt, conspiracy, or solicitation to commit any of the offenses listed in (a) through (c) of this subsection;

(e) Any conviction from any other jurisdiction which is comparable to any of the offenses listed in (a) through (d) of this subsection.

NEW SECTION. Sec. 3. A new section is added to chapter 9A.44 RCW to read as follows:

(1) An owner, employee, or agent of a covered entity may order a covered offender from the legal premises of a covered entity as provided under this section. To do this, the owner, employee, or agent of a covered entity must first personally serve on the covered offender a written notice that informs the covered offender that:

(a) The covered offender must leave the legal premises of the covered entity and may not return without the written permission of the covered entity; and

(b) If the covered offender refuses to leave the legal boundaries of the covered entity, or thereafter returns and enters within the legal boundaries of the covered entity, the offender may be charged and prosecuted for a felony offense as provided in section 4 of this act.

(2) An owner, employee, or agent of a covered entity shall be immune from civil liability for damages arising from ejecting a covered offender from a covered entity or from failing to eject a covered offender from a covered entity.

NEW SECTION. Sec. 4. A new section is added to chapter 9A.44 RCW to read as follows:

(1) A person is guilty of the crime of criminal trespass against children if he or she:

(a) Is a covered offender as defined in section 2 of this act;

(b) Receives written notice that complies with the requirements of section 3 of this act that he or she is not permitted to remain upon or reenter the legal boundaries of the covered entity; and

(c) Remains upon or reenters the legal boundaries of the covered entity without the written permission of the covered entity.

(2) Criminal trespass against children is a class C felony.

Sec. 5. RCW 9.94A.515 and 2005 c 458 s 2 and 2005 c 183 s 9 are each reenacted and amended to read as follows:

TABLE 2
CRIMES INCLUDED WITHIN EACH
SERIOUSNESS LEVEL

- XVI Aggravated Murder 1 (RCW 10.95.020)
- XV Homicide by abuse (RCW 9A.32.055)
Malicious explosion 1 (RCW 70.74.280(1))
Murder 1 (RCW 9A.32.030)
- XIV Murder 2 (RCW 9A.32.050)
Trafficking 1 (RCW 9A.40.100(1))
- XIII Malicious explosion 2 (RCW 70.74.280(2))
Malicious placement of an explosive 1 (RCW 70.74.270(1))
- XII Assault 1 (RCW 9A.36.011)
Assault of a Child 1 (RCW 9A.36.120)
Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))
Rape 1 (RCW 9A.44.040)
Rape of a Child 1 (RCW 9A.44.073)
Trafficking 2 (RCW 9A.40.100(2))
- XI Manslaughter 1 (RCW 9A.32.060)
Rape 2 (RCW 9A.44.050)
Rape of a Child 2 (RCW 9A.44.076)
- X Child Molestation 1 (RCW 9A.44.083)
Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
Kidnapping 1 (RCW 9A.40.020)
Leading Organized Crime (RCW 9A.82.060(1)(a))
Malicious explosion 3 (RCW 70.74.280(3))
Sexually Violent Predator Escape (RCW 9A.76.115)
- IX Assault of a Child 2 (RCW 9A.36.130)
Explosive devices prohibited (RCW 70.74.180)

- Hit and Run—Death (RCW 46.52.020(4)(a))
- Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)
- Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
- Malicious placement of an explosive 2 (RCW 70.74.270(2))
- Robbery 1 (RCW 9A.56.200)
- Sexual Exploitation (RCW 9.68A.040)
- Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
- VIII Arson 1 (RCW 9A.48.020)
 - Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)
 - Manslaughter 2 (RCW 9A.32.070)
 - Promoting Prostitution 1 (RCW 9A.88.070)
 - Theft of Ammonia (RCW 69.55.010)
 - Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- VII Burglary 1 (RCW 9A.52.020)
 - Child Molestation 2 (RCW 9A.44.086)
 - Civil Disorder Training (RCW 9A.48.120)
 - Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)
 - Drive-by Shooting (RCW 9A.36.045)
 - Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050)

- Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))
- Introducing Contraband 1 (RCW 9A.76.140)
- Malicious placement of an explosive 3 (RCW 70.74.270(3))
- Negligently Causing Death By Use of a Signal Preemption Device (RCW 46.37.675)
- Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)
- Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1))
- Use of a Machine Gun in Commission of a Felony (RCW 9.41.225)
- Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- VI Bail Jumping with Murder 1 (RCW 9A.76.170(3)(a))
- Bribery (RCW 9A.68.010)
- Incest 1 (RCW 9A.64.020(1))
- Intimidating a Judge (RCW 9A.72.160)
- Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
- Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
- Rape of a Child 3 (RCW 9A.44.079)
- Theft of a Firearm (RCW 9A.56.300)
- Unlawful Storage of Ammonia (RCW 69.55.020)
- V Abandonment of dependent person 1 (RCW 9A.42.060)
- Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
- Bail Jumping with class A Felony (RCW 9A.76.170(3)(b))

- Child Molestation 3 (RCW 9A.44.089)
- Criminal Mistreatment 1 (RCW 9A.42.020)
- Custodial Sexual Misconduct 1 (RCW 9A.44.160)
- Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
- Extortion 1 (RCW 9A.56.120)
- Extortionate Extension of Credit (RCW 9A.82.020)
- Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
- Incest 2 (RCW 9A.64.020(2))
- Kidnapping 2 (RCW 9A.40.030)
- Perjury 1 (RCW 9A.72.020)
- Persistent prison misbehavior (RCW 9.94.070)
- Possession of a Stolen Firearm (RCW 9A.56.310)
- Rape 3 (RCW 9A.44.060)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)
- Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
- Sexually Violating Human Remains (RCW 9A.44.105)
- Stalking (RCW 9A.46.110)
- Taking Motor Vehicle Without Permission 1 (RCW 9A.56.070)
- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.021)
- Assault 3 (of a Peace Officer with a Projectile Stun Gun) (RCW 9A.36.031(1)(h))
- Assault by Watercraft (RCW 79A.60.060)

Bribing a Witness/Bribe Received by
Witness (RCW 9A.72.090,
9A.72.100)

Cheating 1 (RCW 9.46.1961)

Commercial Bribery (RCW
9A.68.060)

Counterfeiting (RCW 9.16.035(4))

Criminal Trespass Against Children
(second or subsequent offense)
(section 4 of this act)

Endangerment with a Controlled
Substance (RCW 9A.42.100)

Escape 1 (RCW 9A.76.110)

Hit and Run—Injury (RCW
46.52.020(4)(b))

Hit and Run with Vessel—Injury
Accident (RCW 79A.60.200(3))

Identity Theft 1 (RCW 9.35.020(2))

Indecent Exposure to Person Under
Age Fourteen (subsequent sex
offense) (RCW 9A.88.010)

Influencing Outcome of Sporting Event
(RCW 9A.82.070)

Malicious Harassment (RCW
9A.36.080)

Residential Burglary (RCW
9A.52.025)

Robbery 2 (RCW 9A.56.210)

Theft of Livestock 1 (RCW 9A.56.080)

Threats to Bomb (RCW 9.61.160)

Trafficking in Stolen Property 1 (RCW
9A.82.050)

Unlawful factoring of a credit card or
payment card transaction (RCW
9A.56.290(4)(b))

Unlawful transaction of health
coverage as a health care service
contractor (RCW 48.44.016(3))

- Unlawful transaction of health coverage as a health maintenance organization (RCW 48.46.033(3))
- Unlawful transaction of insurance business (RCW 48.15.023(3))
- Unlicensed practice as an insurance professional (RCW 48.17.063(3))
- Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
- Vehicular Assault, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (RCW 46.61.522)
- Willful Failure to Return from Furlough (RCW 72.66.060)
- III Abandonment of dependent person 2 (RCW 9A.42.070)
- Assault 3 (Except Assault 3 of a Peace Officer With a Projectile Stun Gun) (RCW 9A.36.031 except subsection (1)(h))
- Assault of a Child 3 (RCW 9A.36.140)
- Bail Jumping with class B or C Felony (RCW 9A.76.170(3)(c))
- Burglary 2 (RCW 9A.52.030)
- Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
- Criminal Gang Intimidation (RCW 9A.46.120)
- Criminal Mistreatment 2 (RCW 9A.42.030)
- Custodial Assault (RCW 9A.36.100)
- Cyberstalking (subsequent conviction or threat of death) (RCW 9.61.260(3))
- Escape 2 (RCW 9A.76.120)
- Extortion 2 (RCW 9A.56.130)
- Harassment (RCW 9A.46.020)

Intimidating a Public Servant (RCW
9A.76.180)

Introducing Contraband 2 (RCW
9A.76.150)

Malicious Injury to Railroad Property
(RCW 81.60.070)

Negligently Causing Substantial Bodily
Harm By Use of a Signal
Preemption Device (RCW
46.37.674)

Patronizing a Juvenile Prostitute (RCW
9.68A.100)

Perjury 2 (RCW 9A.72.030)

Possession of Incendiary Device (RCW
9.40.120)

Possession of Machine Gun or Short-
Barreled Shotgun or Rifle (RCW
9.41.190)

Promoting Prostitution 2 (RCW
9A.88.080)

Securities Act violation (RCW
21.20.400)

Tampering with a Witness (RCW
9A.72.120)

Telephone Harassment (subsequent
conviction or threat of death)
(RCW 9.61.230(2))

Theft of Livestock 2 (RCW 9A.56.083)

Trafficking in Stolen Property 2 (RCW
9A.82.055)

Unlawful Imprisonment (RCW
9A.40.040)

Unlawful possession of firearm in the
second degree (RCW 9.41.040(2))

Vehicular Assault, by the operation or
driving of a vehicle with disregard
for the safety of others (RCW
46.61.522)

Willful Failure to Return from Work
Release (RCW 72.65.070)

- II Computer Trespass 1 (RCW 9A.52.110)
- Counterfeiting (RCW 9.16.035(3))
- Escape from Community Custody (RCW 72.09.310)
- Health Care False Claims (RCW 48.80.030)
- Identity Theft 2 (RCW 9.35.020(3))
- Improperly Obtaining Financial Information (RCW 9.35.010)
- Malicious Mischief 1 (RCW 9A.48.070)
- Possession of Stolen Property 1 (RCW 9A.56.150)
- Theft 1 (RCW 9A.56.030)
- Theft of Rental, Leased, or Lease-purchased Property (valued at one thousand five hundred dollars or more) (RCW 9A.56.096(5)(a))
- Trafficking in Insurance Claims (RCW 48.30A.015)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(a))
- Unlawful Practice of Law (RCW 2.48.180)
- Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))
- I Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
- False Verification for Welfare (RCW 74.08.055)
- Forgery (RCW 9A.60.020)
- Fraudulent Creation or Revocation of a Mental Health Advance Directive (RCW 9A.60.060)
- Malicious Mischief 2 (RCW 9A.48.080)
- Mineral Trespass (RCW 78.44.330)

Possession of Stolen Property 2 (RCW 9A.56.160)
Reckless Burning 1 (RCW 9A.48.040)
Taking Motor Vehicle Without Permission 2 (RCW 9A.56.075)
Theft 2 (RCW 9A.56.040)
Theft of Rental, Leased, or Lease-purchased Property (valued at two hundred fifty dollars or more but less than one thousand five hundred dollars) (RCW 9A.56.096(5)(b))
Transaction of insurance business beyond the scope of licensure (RCW 48.17.063(4))
Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
Unlawful Possession of Fictitious Identification (RCW 9A.56.320)
Unlawful Possession of Instruments of Financial Fraud (RCW 9A.56.320)
Unlawful Possession of Payment Instruments (RCW 9A.56.320)
Unlawful Possession of a Personal Identification Device (RCW 9A.56.320)
Unlawful Production of Payment Instruments (RCW 9A.56.320)
Unlawful Trafficking in Food Stamps (RCW 9.91.142)
Unlawful Use of Food Stamps (RCW 9.91.144)
Vehicle Prowl 1 (RCW 9A.52.095)

NEW SECTION. Sec. 6. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 7. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate March 7, 2006.

Passed by the House March 3, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 126

[House Bill 2409]

SEX OFFENDERS

AN ACT Relating to regulating the conduct of registered sex offenders and kidnapping offenders; amending RCW 9A.44.130, 9A.44.—, 9A.44.—, and 9A.44.—; amending 2006 c ... s 1 (uncodified); reenacting and amending RCW 9A.44.130; creating a new section; repealing 2006 c ... s 5; providing an effective date; providing an expiration date; and declaring an emergency.

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

Sec. 1. RCW 9A.44.130 and 2003 c 215 s 1 and 2003 c 53 s 68 are each reenacted and amended to read as follows:

(1) Any adult or juvenile residing whether or not the person has a fixed residence, or who is a student, is employed, or carries on a vocation in this state who has been found to have committed or has been convicted of any sex offense or kidnapping offense, or who has been found not guilty by reason of insanity under chapter 10.77 RCW of committing any sex offense or kidnapping offense, shall register with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation, or as otherwise specified in this section. Where a person required to register under this section is in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility as a result of a sex offense or kidnapping offense, the person shall also register at the time of release from custody with an official designated by the agency that has jurisdiction over the person. In addition, any such adult or juvenile: (a) 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; (b) 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 (c) 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. Persons required to register under this section who are enrolled in a public or private institution of higher education on June 11, 1998, must notify the county sheriff immediately. The sheriff shall notify the institution's department of public safety and shall provide that department with the same information provided to a county sheriff under subsection (3) of this section.

(2) This section may not be construed to confer any powers pursuant to RCW ((4.24.500)) 4.24.550 upon the public safety department of any public or private institution of higher education.

(3)(a) The person shall provide the following information when registering: (i) Name; (ii) 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 (10) of this section.

When the agency with jurisdiction intends to release an offender with a duty to register under this section, and the agency has knowledge that the offender is eligible for developmental disability services from the department of social and health services, the agency shall notify the division of developmental disabilities of the release. Notice shall occur not more than thirty days before the offender is to be released. The agency and the division shall assist the offender in meeting the initial registration requirement under this section. Failure to provide such assistance shall not constitute a defense for any violation of this section.

(ii) OFFENDERS NOT IN CUSTODY BUT UNDER STATE OR LOCAL JURISDICTION. Sex offenders who, on July 28, 1991, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of correction's active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 28, 1991. Kidnapping offenders who, on July 27, 1997, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of correction's active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth

services, for kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A change in supervision status of a sex offender who was required to register under this subsection (4)(a)(ii) as of July 28, 1991, or a kidnapping offender required to register as of July 27, 1997, shall not relieve the offender of the duty to register or to reregister following a change in residence. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(iii) OFFENDERS UNDER FEDERAL JURISDICTION. Sex offenders who, on or after July 23, 1995, and kidnapping offenders who, on or after July 27, 1997, as a result of that offense are in the custody of the United States bureau of prisons or other federal or military correctional agency for sex offenses committed before, on, or after February 28, 1990, or kidnapping offenses committed on, before, or after July 27, 1997, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. Sex offenders who, on July 23, 1995, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 23, 1995. Kidnapping offenders who, on July 27, 1997, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A change in supervision status of a sex offender who was required to register under this subsection (4)(a)(iii) as of July 23, 1995, or a kidnapping offender required to register as of July 27, 1997 shall not relieve the offender of the duty to register or to reregister following a change in residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(iv) OFFENDERS WHO ARE CONVICTED BUT NOT CONFINED. Sex offenders who are convicted of a sex offense on or after July 28, 1991, for a sex offense that was committed on or after February 28, 1990, and kidnapping offenders who are convicted on or after July 27, 1997, for a kidnapping offense that was committed on or after July 27, 1997, but who are not sentenced to serve a term of confinement immediately upon sentencing, shall report to the county sheriff to register immediately upon completion of being sentenced.

(v) OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON RESIDENTS. Sex offenders and kidnapping offenders who move to Washington state from another state or a foreign country that are not under the jurisdiction of the state department of corrections, the indeterminate sentence review board, or the state department of social and health services at the time of moving to Washington, must register within ~~((thirty))~~ 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, or Washington state for offenses committed on or after February 28, 1990, and to kidnapping offenders convicted under the laws of

another state or a foreign country, federal or military statutes, or Washington state for offenses committed on or after July 27, 1997. Sex offenders and kidnapping offenders from other states or a foreign country who, when they move to Washington, are under the jurisdiction of the department of corrections, the indeterminate sentence review board, or the department of social and health services must register within twenty-four hours of moving to Washington. The agency that has jurisdiction over the offender shall notify the offender of the registration requirements before the offender moves to Washington.

(vi) **OFFENDERS FOUND NOT GUILTY BY REASON OF INSANITY.** Any adult or juvenile who has been found not guilty by reason of insanity under chapter 10.77 RCW of (A) committing a sex offense on, before, or after February 28, 1990, and who, on or after July 23, 1995, is in custody, as a result of that finding, of the state department of social and health services, or (B) committing a kidnapping offense on, before, or after July 27, 1997, and who on or after July 27, 1997, is in custody, as a result of that finding, of the state department of social and health services, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence. The state department of social and health services shall provide notice to the adult or juvenile in its custody of the duty to register. Any adult or juvenile who has been found not guilty by reason of insanity of committing a sex offense on, before, or after February 28, 1990, but who was released before July 23, 1995, or any adult or juvenile who has been found not guilty by reason of insanity of committing a kidnapping offense but who was released before July 27, 1997, shall be required to register within twenty-four hours of receiving notice of this registration requirement. The state department of social and health services shall make reasonable attempts within available resources to notify sex offenders who were released before July 23, 1995, and kidnapping offenders who were released before July 27, 1997. Failure to register within twenty-four hours of release, or of receiving notice, constitutes a violation of this section and is punishable as provided in subsection (10) of this section.

(vii) **OFFENDERS WHO LACK A FIXED RESIDENCE.** Any person who lacks a fixed residence and leaves the county in which he or she is registered and enters and remains within a new county for twenty-four hours is required to register with the county sheriff not more than twenty-four hours after entering the county and provide the information required in subsection (3)(b) of this section.

(viii) **OFFENDERS WHO LACK A FIXED RESIDENCE AND WHO ARE UNDER SUPERVISION.** Offenders who lack a fixed residence and who are under the supervision of the department shall register in the county of their supervision.

(ix) **OFFENDERS WHO MOVE TO, WORK, CARRY ON A VOCATION, OR ATTEND SCHOOL IN ANOTHER STATE.** Offenders required to register in Washington, who move to another state, or who work, carry on a vocation, or attend school in another state shall register a new address, fingerprints, and photograph with the new state within ten days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. The person must also send written notice within ten days of moving to the new state or to a foreign country to the county sheriff with whom the person last

registered in Washington state. The county sheriff shall promptly forward this information to the Washington state patrol.

(b) Failure to register within the time required under this section constitutes a per se violation of this section and is punishable as provided in subsection (10) of this section. The county sheriff shall not be required to determine whether the person is living within the county.

(c) An arrest on charges of failure to register, service of an information, or a complaint for a violation of this section, or arraignment on charges for a violation of this section, constitutes actual notice of the duty to register. Any person charged with the crime of failure to register under this section who asserts as a defense the lack of notice of the duty to register shall register immediately following actual notice of the duty through arrest, service, or arraignment. Failure to register as required under this subsection (4)(c) constitutes grounds for filing another charge of failing to register. Registering following arrest, service, or arraignment on charges shall not relieve the offender from criminal liability for failure to register prior to the filing of the original charge.

(d) The deadlines for the duty to register under this section do not relieve any sex offender of the duty to register under this section as it existed prior to July 28, 1991.

(5)(a) If any person required to register pursuant to this section changes his or her residence address within the same county, the person must send 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 lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

(c) If any person required to register pursuant to this section does not have a fixed residence, it is an affirmative defense to the charge of failure to register, that he or she provided written notice to the sheriff of the county where he or she last registered within forty-eight hours excluding weekends and holidays after ceasing to have a fixed residence and has subsequently complied with the requirements of subsections (4)(a)(vii) or (viii) and (6) of this section. To prevail, the person must prove the defense by a preponderance of the evidence.

(7) A sex offender subject to registration requirements under this section who applies to change his or her name under RCW 4.24.130 or any other law shall submit a copy of the application to the county sheriff of the county of the person's residence and to the state patrol not fewer than five days before the entry of an order granting the name change. No sex offender under the requirement to register under this section at the time of application shall be granted an order changing his or her name if the court finds that doing so will interfere with legitimate law enforcement interests, except that no order shall be denied when the name change is requested for religious or legitimate cultural reasons or in recognition of marriage or dissolution of marriage. A sex offender under the requirement to register under this section who receives an order changing his or her name shall submit a copy of the order to the county sheriff of the county of the person's residence and to the state patrol within five days of the entry of the order.

(8) The county sheriff shall obtain a photograph of the individual and shall obtain a copy of the individual's fingerprints.

(9) For the purpose of RCW 9A.44.130, 10.01.200, 43.43.540, 70.48.470, and 72.09.330:

(a) "Sex offense" means:

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

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

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

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

(v) Any gross misdemeanor that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex offense under RCW 9.94A.030 or this subsection.

(b) "Kidnapping offense" means: (i) The crimes of kidnapping in the first degree, kidnapping in the second degree, and unlawful imprisonment, as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the

minor's parent; (ii) any offense that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a kidnapping offense under this subsection (9)(b); and (iii) any federal or out-of-state conviction for an offense that under the laws of this state would be classified as a kidnapping offense under this subsection (9)(b).

(c) "Employed" or "carries on a vocation" means employment that is full-time or part-time for a period of time exceeding fourteen days, or for an aggregate period of time exceeding thirty days during any calendar year. A person is employed or carries on a vocation whether the person's employment is financially compensated, volunteered, or for the purpose of government or educational benefit.

(d) "Student" means a person who is enrolled, on a full-time or part-time basis, in any public or private educational institution. An educational institution includes any secondary school, trade or professional institution, or institution of higher education.

(10)(a) A person who knowingly fails to (~~register with the county sheriff or notify the county sheriff, or who changes his or her name without notifying the county sheriff and the state patrol, as required by~~) 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 sex offense as defined in subsection (9)(a) of this section or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony sex offense as defined in subsection (9)(a) of this section.

(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.

(11)(a) A person who knowingly fails to (~~register or who moves within the state without notifying the county sheriff as required by~~) 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 (9)(b) of this section or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony kidnapping offense as defined in subsection (9)(b) of this section.

(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.

Sec. 2. RCW 9A.44.130 and 2005 c 380 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 ((4.24.500)) 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 (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 (~~thirty~~) 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, or Washington state for offenses committed on or after February 28, 1990, and to kidnapping offenders convicted under the laws of another state or a foreign country, federal or military statutes, or Washington state for offenses committed on or after July 27, 1997. Sex offenders and kidnapping offenders from other states or a foreign country who, when they move to Washington, are under the jurisdiction of the department of corrections, the indeterminate sentence review board, or the department of social and health services must register within twenty-four hours of moving to Washington. The agency that has jurisdiction over the offender shall notify the offender of the registration requirements before the offender moves to Washington.

(vi) **OFFENDERS FOUND NOT GUILTY BY REASON OF INSANITY.** Any adult or juvenile who has been found not guilty by reason of insanity under chapter 10.77 RCW of (A) committing a sex offense on, before, or after February 28, 1990, and who, on or after July 23, 1995, is in custody, as a result of that finding, of the state department of social and health services, or (B) committing a kidnapping offense on, before, or after July 27, 1997, and who on or after July 27, 1997, is in custody, as a result of that finding, of the state department of social and health services, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence. The state department of social and health services shall provide notice to the adult or juvenile in its custody of the duty to register. Any adult or juvenile who has been found not guilty by reason of insanity of committing a sex offense on, before, or after February 28, 1990, but who was released before July 23, 1995, or any adult or juvenile who has been found not guilty by reason of insanity of committing a kidnapping offense but who was released before July 27, 1997, shall be required to register within twenty-four hours of receiving notice of this registration requirement. The state department of social and health services shall make reasonable attempts within available resources to notify sex offenders who were released before July 23, 1995, and kidnapping offenders who were released before July 27, 1997. Failure to register within twenty-four hours of release, or of receiving notice, constitutes a violation of this section and is punishable as provided in subsection (10) of this section.

(vii) **OFFENDERS WHO LACK A FIXED RESIDENCE.** Any person who lacks a fixed residence and leaves the county in which he or she is registered and enters and remains within a new county for twenty-four hours is required to register with the county sheriff not more than twenty-four hours after entering the county and provide the information required in subsection (3)(b) of this section.

(viii) **OFFENDERS WHO LACK A FIXED RESIDENCE AND WHO ARE UNDER SUPERVISION.** Offenders who lack a fixed residence and who are under the supervision of the department shall register in the county of their supervision.

(ix) **OFFENDERS WHO MOVE TO, WORK, CARRY ON A VOCATION, OR ATTEND SCHOOL IN ANOTHER STATE.** Offenders required to register in Washington, who move to another state, or who work, carry on a vocation, or attend school in another state shall register a new address, fingerprints, and

photograph with the new state within ten days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. The person must also send written notice within ten days of moving to the new state or to a foreign country to the county sheriff with whom the person last registered in Washington state. The county sheriff shall promptly forward this information to the Washington state patrol.

(b) Failure to register within the time required under this section constitutes a per se violation of this section and is punishable as provided in subsection (10) of this section. The county sheriff shall not be required to determine whether the person is living within the county.

(c) An arrest on charges of failure to register, service of an information, or a complaint for a violation of this section, or arraignment on charges for a violation of this section, constitutes actual notice of the duty to register. Any person charged with the crime of failure to register under this section who asserts as a defense the lack of notice of the duty to register shall register immediately following actual notice of the duty through arrest, service, or arraignment. Failure to register as required under this subsection (4)(c) constitutes grounds for filing another charge of failing to register. Registering following arrest, service, or arraignment on charges shall not relieve the offender from criminal liability for failure to register prior to the filing of the original charge.

(d) The deadlines for the duty to register under this section do not relieve any sex offender of the duty to register under this section as it existed prior to July 28, 1991.

(5)(a) If any person required to register pursuant to this section changes his or her residence address within the same county, the person must send 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 lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

(c) If any person required to register pursuant to this section does not have a fixed residence, it is an affirmative defense to the charge of failure to register, that he or she provided written notice to the sheriff of the county where he or she last registered within forty-eight hours excluding weekends and holidays after ceasing to have a fixed residence and has subsequently complied with the requirements of subsections (4)(a)(vii) or (viii) and (6) of this section. To prevail, the person must prove the defense by a preponderance of the evidence.

(7) A sex offender subject to registration requirements under this section who applies to change his or her name under RCW 4.24.130 or any other law shall submit a copy of the application to the county sheriff of the county of the person's residence and to the state patrol not fewer than five days before the entry of an order granting the name change. No sex offender under the requirement to register under this section at the time of application shall be granted an order changing his or her name if the court finds that doing so will interfere with legitimate law enforcement interests, except that no order shall be denied when the name change is requested for religious or legitimate cultural reasons or in recognition of marriage or dissolution of marriage. A sex offender under the requirement to register under this section who receives an order changing his or her name shall submit a copy of the order to the county sheriff of the county of the person's residence and to the state patrol within five days of the entry of the order.

(8) The county sheriff shall obtain a photograph of the individual and shall obtain a copy of the individual's fingerprints.

(9) For the purpose of RCW 9A.44.130, 10.01.200, 43.43.540, 70.48.470, and 72.09.330:

(a) "Sex offense" means:

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

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

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

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

(v) Any gross misdemeanor that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex offense under RCW 9.94A.030 or this subsection.

(b) "Kidnapping offense" means: (i) The crimes of kidnapping in the first degree, kidnapping in the second degree, and unlawful imprisonment, as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent; (ii) any offense that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a kidnapping offense under this subsection (9)(b); and (iii) any federal or out-of-state conviction for an offense that under the laws of this state would be classified as a kidnapping offense under this subsection (9)(b).

(c) "Employed" or "carries on a vocation" means employment that is full-time or part-time for a period of time exceeding fourteen days, or for an aggregate period of time exceeding thirty days during any calendar year. A person is employed or carries on a vocation whether the person's employment is financially compensated, volunteered, or for the purpose of government or educational benefit.

(d) "Student" means a person who is enrolled, on a full-time or part-time basis, in any public or private educational institution. An educational institution includes any secondary school, trade or professional institution, or institution of higher education.

(10)(a) A person who knowingly fails to (~~register with the county sheriff or notify the county sheriff, or who changes his or her name without notifying the county sheriff and the state patrol, as required by~~) 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 sex offense as defined in subsection (9)(a) of this section or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony sex offense as defined in subsection (9)(a) of this section.

(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.

(11)(a) A person who knowingly fails to (~~register or who moves within the state without notifying the county sheriff as required by~~) 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 (9)(b) of this section or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony kidnapping offense as defined in subsection (9)(b) of this section.

(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.

(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. 3. 2006 c ... (SSB 6775) s 1 (uncodified) is amended to read as follows:

It is the intent of the legislature to give public and private entities that provide services to children the tools necessary to prevent convicted child sex

offenders from contacting children when those children are within the legal ((boundaries)) premises of the covered public and private entities.

Sec. 4. RCW 9A.44.— and 2006 c ... (SSB 6775) s 2 are each amended to read as follows:

As used in this section and RCW 9A.44.— and 9A.44.— (sections 3 and 4, chapter ... (SSB 6775), Laws of 2006):

(1) "Covered entity" means any public facility or private facility whose primary purpose, at any time, is to provide for the education, care, or recreation of a child or children, including but not limited to community and recreational centers, playgrounds, schools, swimming pools, and state or municipal parks.

(2) "Child" means a person under the age of eighteen, unless the context clearly indicates that the term is otherwise defined in statute.

(3) "Public facility" means a facility operated by a unit of local or state government, or by a nonprofit organization.

(4) "Schools" means public and private schools, but does not include home-based instruction as defined in RCW 28A.225.010.

(5) "Covered offender" means a person required to register under RCW 9A.44.130 who is eighteen years of age or older, who is not under the jurisdiction of the juvenile rehabilitation authority or currently serving a special sex offender disposition alternative, whose risk level classification has been assessed at a risk level II or a risk level III pursuant to RCW 72.09.345, and who, at any time, has been convicted of one or more of the following offenses:

(a) Rape of a child in the first, second, and third degree; child molestation in the first, second, and third degree; indecent liberties against a child under age fifteen; sexual misconduct with a minor in the first and second degree; incest in the first and second degree; luring with sexual motivation; possession of depictions of minors engaged in sexually explicit conduct; dealing in depictions of minors engaged in sexually explicit conduct; bringing into the state depictions of minors engaged in sexually explicit conduct; sexual exploitation of a minor; communicating with a minor for immoral purposes; patronizing a juvenile prostitute;

(b) Any felony in effect at any time prior to the effective date of this act that is comparable to an offense listed in (a) of this subsection, including, but not limited to, statutory rape in the first and second degrees and carnal knowledge;

(c) Any felony offense for which:

(i) There was a finding that the offense was committed with sexual motivation; and

(ii) The victim of the offense was less than sixteen years of age at the time of the offense;

(d) An attempt, conspiracy, or solicitation to commit any of the offenses listed in (a) through (c) of this subsection;

(e) Any conviction from any other jurisdiction which is comparable to any of the offenses listed in (a) through (d) of this subsection.

Sec. 5. RCW 9A.44.— and 2006 c ... (SSB 6775) s 3 are each amended to read as follows:

(1) An owner, ((~~employee, or agent~~)) manager, or operator of a covered entity may order a covered offender from the legal premises of a covered entity as provided under this section. To do this, the owner, ((~~employee, or agent~~))

manager, or operator of a covered entity must first ~~((personally serve on))~~ provide the covered offender, or cause the covered offender to be provided, personal service of a written notice that informs the covered offender that:

(a) The covered offender must leave the legal premises of the covered entity and may not return without the written permission of the covered entity; and

(b) If the covered offender refuses to leave the legal ~~((boundaries))~~ premises of the covered entity, or thereafter returns and enters within the legal ~~((boundaries))~~ premises of the covered entity without written permission, the offender may be charged and prosecuted for a felony offense as provided in RCW 9A.44.— (section 4, chapter ... (SSB 6775), Laws of 2006).

(2) A covered entity may give written permission of entry and use to a covered offender to enter and remain on the legal premises of the covered entity at particular times and for lawful purposes, including, but not limited to, conducting business, voting, or participating in educational or recreational activities. Any written permission of entry and use of the legal premises of a covered entity must be clearly stated in a written document and must be personally served on the covered offender. If the covered offender violates the conditions of entry and use contained in a written document personally served on the offender by the covered entity, the covered offender may be charged and prosecuted for a felony offense as provided in RCW 9A.44.— (section 4, chapter ... (SSB 6775), Laws of 2006).

(3) An owner, employee, or agent of a covered entity shall be immune from civil liability for damages arising from ~~((ejecting a covered offender from a covered entity or from failing to eject a covered offender from a covered entity))~~ excluding or failing to exclude a covered offender from a covered entity or from imposing or failing to impose conditions of entry and use on a covered offender.

(4) A person provided with written notice from a covered entity under this section may file a petition with the district court alleging that he or she does not meet the definition of "covered offender" in RCW 9A.44.— (section 2, chapter ... (SSB 6775), Laws of 2006). The district court must conduct a hearing on the petition within thirty days of the petition being filed. In the hearing on the petition, the person has the burden of proving that he or she is not a covered offender. If the court finds, by a preponderance of the evidence, that the person is not a covered offender, the court shall order the covered entity to rescind the written notice and shall order the covered entity to pay the person's costs and reasonable attorneys' fees.

Sec. 6. RCW 9A.44.— and 2006 c ... (SSB 6775) s 4 are each amended to read as follows:

(1) A person is guilty of the crime of criminal trespass against children if he or she:

(a) Is a covered offender as defined in RCW 9A.44.— (section 2, chapter ... (SSB 6775), Laws of 2006); and

(b) ~~((Receives written notice that complies with the requirements of section 3 of this act that he or she is not permitted to remain upon or reenter the legal boundaries of the covered entity; and~~

~~(e) Remains upon or reenters the legal boundaries of the covered entity without the written permission of the covered entity)) (i) Is personally served with written notice complying with the requirements of RCW 9A.44.— (section 3, chapter ... (SSB 6775), Laws of 2006) that excludes the covered offender from~~

the legal premises of the covered entity and remains upon or reenters the legal premises of the covered entity; or

(ii) Is personally served with written notice complying with the requirements of RCW 9A.44.— (section 3, chapter ... (SSB 6775), Laws of 2006) that imposes conditions of entry and use on the covered offender and violates the conditions of entry and use.

(2) Criminal trespass against children is a class C felony.

NEW SECTION. Sec. 7. 2006 c ... (SSB 6775) s 5 is hereby repealed.

NEW SECTION. Sec. 8. Section 1 of this act expires September 1, 2006.

NEW SECTION. Sec. 9. Sections 1 and 3 through 7 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately.

NEW SECTION. Sec. 10. Section 2 of this act takes effect September 1, 2006.

NEW SECTION. Sec. 11. Section 3 of this act is null and void if section 1 of Substitute Senate Bill No. 6775 is not enacted into law.

Section 4 of this act is null and void if section 2 of Substitute Senate Bill No. 6775 is not enacted into law.

Section 5 of this act is null and void if section 3 of Substitute Senate Bill No. 6775 is not enacted into law.

Section 6 of this act is null and void if section 4 of Substitute Senate Bill No. 6775 is not enacted into law.

Section 7 of this act is null and void if section 5 of Substitute Senate Bill No. 6775 is not enacted into law.

Passed by the House March 8, 2006.

Passed by the Senate March 7, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 127

[Substitute Senate Bill 6144]

SEX OFFENDERS—NEW STATE RESIDENTS—REQUIREMENTS

AN ACT Relating to registration requirements on sex offenders coming from outside the state who establish or reestablish Washington residency; amending RCW 9A.44.130; and providing an effective date.

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

NEW SECTION. Sec. 1. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Sec. 2. RCW 9A.44.130 and 2005 c 380 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 (~~4.24.500~~) 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) address; (iii) date and place of birth; (iv) place of employment; (v) crime for which convicted; (vi) date and place of conviction; (vii) aliases used; (viii) social security number; (ix) photograph; and (x) fingerprints.

(b) Any person who lacks a fixed residence shall provide the following information when registering: (i) Name; (ii) date and place of birth; (iii) place of employment; (iv) crime for which convicted; (v) date and place of conviction; (vi) aliases used; (vii) social security number; (viii) photograph; (ix) fingerprints; and (x) where he or she plans to stay.

(4)(a) Offenders shall register with the county sheriff within the following deadlines. For purposes of this section the term "conviction" refers to adult convictions and juvenile adjudications for sex offenses or kidnapping offenses:

(i) OFFENDERS IN CUSTODY. (A) Sex offenders who committed a sex offense on, before, or after February 28, 1990, and who, on or after July 28, 1991, are in custody, as a result of that offense, of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, and (B) kidnapping offenders who on or after July 27, 1997, are in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, must register at the time of release from custody with an official designated by the agency that has jurisdiction over the offender. The agency shall within three days forward the registration information to the county sheriff for the county of the offender's anticipated residence. The offender must also register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. The agency that has jurisdiction over the offender shall provide notice to the offender of the duty to register. Failure to register at the time of release and within twenty-four hours of release constitutes a violation of this section and is punishable as provided in subsection (10) of this section.

When the agency with jurisdiction intends to release an offender with a duty to register under this section, and the agency has knowledge that the offender is eligible for developmental disability services from the department of social and health services, the agency shall notify the division of developmental disabilities of the release. Notice shall occur not more than thirty days before the offender is to be released. The agency and the division shall assist the offender in meeting the initial registration requirement under this section. Failure to provide such assistance shall not constitute a defense for any violation of this section.

(ii) OFFENDERS NOT IN CUSTODY BUT UNDER STATE OR LOCAL JURISDICTION. Sex offenders who, on July 28, 1991, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under

the department of 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 ~~((thirty))~~ 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 social and health services shall provide notice to the adult or juvenile in its custody of the duty to register. Any adult or juvenile who has been found not guilty by reason of insanity of committing a sex offense on, before, or after February 28, 1990, but who was released before July 23, 1995, or any adult or juvenile who has been found not guilty by reason of insanity of committing a kidnapping offense but who was released before July 27, 1997, shall be required to register within twenty-four hours of receiving notice of this registration requirement. The state department of social and health services shall make reasonable attempts within available resources to notify sex offenders who were released before July 23, 1995, and kidnapping offenders who were released before July 27, 1997. Failure to register within twenty-four hours of release, or of receiving notice, constitutes a violation of this section and is punishable as provided in subsection (10) of this section.

(vii) **OFFENDERS WHO LACK A FIXED RESIDENCE.** Any person who lacks a fixed residence and leaves the county in which he or she is registered and enters and remains within a new county for twenty-four hours is required to register with the county sheriff not more than twenty-four hours after entering the county and provide the information required in subsection (3)(b) of this section.

(viii) **OFFENDERS WHO LACK A FIXED RESIDENCE AND WHO ARE UNDER SUPERVISION.** Offenders who lack a fixed residence and who are under the supervision of the department shall register in the county of their supervision.

(ix) OFFENDERS WHO MOVE TO, WORK, CARRY ON A VOCATION, OR ATTEND SCHOOL IN ANOTHER STATE. Offenders required to register in Washington, who move to another state, or who work, carry on a vocation, or attend school in another state shall register a new address, fingerprints, and photograph with the new state within ten days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. The person must also send written notice within ten days of moving to the new state or to a foreign country to the county sheriff with whom the person last registered in Washington state. The county sheriff shall promptly forward this information to the Washington state patrol.

(b) Failure to register within the time required under this section constitutes a per se violation of this section and is punishable as provided in subsection (10) of this section. The county sheriff shall not be required to determine whether the person is living within the county.

(c) An arrest on charges of failure to register, service of an information, or a complaint for a violation of this section, or arraignment on charges for a violation of this section, constitutes actual notice of the duty to register. Any person charged with the crime of failure to register under this section who asserts as a defense the lack of notice of the duty to register shall register immediately following actual notice of the duty through arrest, service, or arraignment. Failure to register as required under this subsection (4)(c) constitutes grounds for filing another charge of failing to register. Registering following arrest, service, or arraignment on charges shall not relieve the offender from criminal liability for failure to register prior to the filing of the original charge.

(d) The deadlines for the duty to register under this section do not relieve any sex offender of the duty to register under this section as it existed prior to July 28, 1991.

(5)(a) If any person required to register pursuant to this section changes his or her residence address within the same county, the person must send written notice of the change of address to the county sheriff within seventy-two hours of moving. If any person required to register pursuant to this section moves to a new county, the person must send written notice of the change of address at least fourteen days before moving to the county sheriff in the new county of residence and must register with that county sheriff within twenty-four hours of moving. The person must also send written notice within ten days of the change of address in the new county to the county sheriff with whom the person last registered. The county sheriff with whom the person last registered shall promptly forward the information concerning the change of address to the county sheriff for the county of the person's new residence. Upon receipt of notice of change of address to a new state, the county sheriff shall promptly forward the information regarding the change of address to the agency designated by the new state as the state's offender registration agency.

(b) It is an affirmative defense to a charge that the person failed to send a notice at least fourteen days in advance of moving as required under (a) of this subsection that the person did not know the location of his or her new residence at least fourteen days before moving. The defendant must establish the defense by a preponderance of the evidence and, to prevail on the defense, must also prove by a preponderance that the defendant sent the required notice within twenty-four hours of determining the new address.

(6)(a) Any person required to register under this section who lacks a fixed residence shall provide written notice to the sheriff of the county where he or she last registered within forty-eight hours excluding weekends and holidays after ceasing to have a fixed residence. The notice shall include the information required by subsection (3)(b) of this section, except the photograph and fingerprints. The county sheriff may, for reasonable cause, require the offender to provide a photograph and fingerprints. The sheriff shall forward this information to the sheriff of the county in which the person intends to reside, if the person intends to reside in another county.

(b) A person who lacks a fixed residence must report weekly, in person, to the sheriff of the county where he or she is registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. The county sheriff's office may require the person to list the locations where the person has stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

(c) If any person required to register pursuant to this section does not have a fixed residence, it is an affirmative defense to the charge of failure to register, that he or she provided written notice to the sheriff of the county where he or she last registered within forty-eight hours excluding weekends and holidays after ceasing to have a fixed residence and has subsequently complied with the requirements of subsections (4)(a)(vii) or (viii) and (6) of this section. To prevail, the person must prove the defense by a preponderance of the evidence.

(7) A sex offender subject to registration requirements under this section who applies to change his or her name under RCW 4.24.130 or any other law shall submit a copy of the application to the county sheriff of the county of the person's residence and to the state patrol not fewer than five days before the entry of an order granting the name change. No sex offender under the requirement to register under this section at the time of application shall be granted an order changing his or her name if the court finds that doing so will interfere with legitimate law enforcement interests, except that no order shall be denied when the name change is requested for religious or legitimate cultural reasons or in recognition of marriage or dissolution of marriage. A sex offender under the requirement to register under this section who receives an order changing his or her name shall submit a copy of the order to the county sheriff of the county of the person's residence and to the state patrol within five days of the entry of the order.

(8) The county sheriff shall obtain a photograph of the individual and shall obtain a copy of the individual's fingerprints.

(9) For the purpose of RCW 9A.44.130, 10.01.200, 43.43.540, 70.48.470, and 72.09.330:

(a) "Sex offense" means:

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

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

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

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

(v) Any gross misdemeanor that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex offense under RCW 9.94A.030 or this subsection.

(b) "Kidnapping offense" means: (i) The crimes of kidnapping in the first degree, kidnapping in the second degree, and unlawful imprisonment, as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent; (ii) any offense that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a kidnapping offense under this subsection (9)(b); and (iii) any federal or out-of-state conviction for an offense that under the laws of this state would be classified as a kidnapping offense under this subsection (9)(b).

(c) "Employed" or "carries on a vocation" means employment that is full-time or part-time for a period of time exceeding fourteen days, or for an aggregate period of time exceeding thirty days during any calendar year. A person is employed or carries on a vocation whether the person's employment is financially compensated, volunteered, or for the purpose of government or educational benefit.

(d) "Student" means a person who is enrolled, on a full-time or part-time basis, in any public or private educational institution. An educational institution includes any secondary school, trade or professional institution, or institution of higher education.

(10)(a) A person who knowingly fails to register with the county sheriff or notify the county sheriff, or who changes his or her name without notifying the county sheriff and the state patrol, as required by this section is guilty of a class C felony if the crime for which the individual was convicted was a felony sex offense as defined in subsection (9)(a) of this section or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony sex offense as defined in subsection (9)(a) of this section.

(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.

(11)(a) A person who knowingly fails to register or who moves within the state without notifying the county sheriff as required by this section is guilty of a class C felony if the crime for which the individual was convicted was a felony kidnapping offense as defined in subsection (9)(b) of this section or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony kidnapping offense as defined in subsection (9)(b) of this section.

(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.

(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.

NEW SECTION. Sec. 3. This act takes effect September 1, 2006.

Passed by the Senate February 9, 2006.

Passed by the House March 7, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 128

[Second Substitute Senate Bill 6319]

SEX OFFENDERS—FAILURE TO REGISTER

AN ACT Relating to failure to register as a sex offender; amending RCW 9A.44.130, 9.94A.545, and 9.94A.715; reenacting and amending RCW 9A.44.130, 9.94A.515, and 9.94A.525; creating new sections; prescribing penalties; providing an effective date; and providing an expiration date.

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

Sec. 1. RCW 9A.44.130 and 2003 c 215 s 1 and 2003 c 53 s 68 are each reenacted and amended to read as follows:

(1) Any adult or juvenile residing whether or not the person has a fixed residence, or who is a student, is employed, or carries on a vocation in this state who has been found to have committed or has been convicted of any sex offense or kidnapping offense, or who has been found not guilty by reason of insanity under chapter 10.77 RCW of committing any sex offense or kidnapping offense, shall register with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation, or as otherwise specified in this section. Where a person required to register under this section is in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility as a result of a sex offense or kidnapping offense, the person shall also register at the time of release from custody with an official designated by the agency that has jurisdiction over the person. In addition, any such adult or juvenile: (a) 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; (b) 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 (c) 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. Persons required to register under this section who are enrolled in a public or private institution of higher education on June 11, 1998, must notify the county sheriff immediately. The sheriff shall notify the institution's department of public safety and shall provide that department with the same information provided to a county sheriff under subsection (3) of this section.

(2) This section may not be construed to confer any powers pursuant to RCW ((4.24.500)) 4.24.550 upon the public safety department of any public or private institution of higher education.

(3)(a) The person shall provide the following information when registering: (i) Name; (ii) address; (iii) date and place of birth; (iv) place of employment; (v) crime for which convicted; (vi) date and place of conviction; (vii) aliases used; (viii) social security number; (ix) photograph; and (x) fingerprints.

(b) Any person who lacks a fixed residence shall provide the following information when registering: (i) Name; (ii) date and place of birth; (iii) place of employment; (iv) crime for which convicted; (v) date and place of conviction; (vi) aliases used; (vii) social security number; (viii) photograph; (ix) fingerprints; and (x) where he or she plans to stay.

(4)(a) Offenders shall register with the county sheriff within the following deadlines. For purposes of this section the term "conviction" refers to adult convictions and juvenile adjudications for sex offenses or kidnapping offenses:

(i) OFFENDERS IN CUSTODY. (A) Sex offenders who committed a sex offense on, before, or after February 28, 1990, and who, on or after July 28, 1991, are in custody, as a result of that offense, of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, and (B) kidnapping offenders who on or after July 27, 1997, are in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, must register at the time of release from custody with an official designated by the agency that has jurisdiction over the offender. The agency shall within three days forward the registration information to the county sheriff for the county of the offender's anticipated residence. The offender must also register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. The agency that has jurisdiction over the offender shall provide notice to the offender of the duty to register. Failure to register at the time of release and within twenty-four hours of release constitutes a violation of this section and is punishable as provided in subsection (10) of this section.

When the agency with jurisdiction intends to release an offender with a duty to register under this section, and the agency has knowledge that the offender is eligible for developmental disability services from the department of social and health services, the agency shall notify the division of developmental disabilities of the release. Notice shall occur not more than thirty days before the offender is to be released. The agency and the division shall assist the offender in meeting the initial registration requirement under this section. Failure to provide such assistance shall not constitute a defense for any violation of this section.

(ii) OFFENDERS NOT IN CUSTODY BUT UNDER STATE OR LOCAL JURISDICTION. Sex offenders who, on July 28, 1991, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of correction's active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 28, 1991. Kidnapping offenders who, on July 27, 1997, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of correction's active supervision, as defined by the department of corrections, the

state department of social and health services, or a local division of youth services, for kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A change in supervision status of a sex offender who was required to register under this subsection (4)(a)(ii) as of July 28, 1991, or a kidnapping offender required to register as of July 27, 1997, shall not relieve the offender of the duty to register or to reregister following a change in residence. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(iii) OFFENDERS UNDER FEDERAL JURISDICTION. Sex offenders who, on or after July 23, 1995, and kidnapping offenders who, on or after July 27, 1997, as a result of that offense are in the custody of the United States bureau of prisons or other federal or military correctional agency for sex offenses committed before, on, or after February 28, 1990, or kidnapping offenses committed on, before, or after July 27, 1997, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. Sex offenders who, on July 23, 1995, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 23, 1995. Kidnapping offenders who, on July 27, 1997, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A change in supervision status of a sex offender who was required to register under this subsection (4)(a)(iii) as of July 23, 1995, or a kidnapping offender required to register as of July 27, 1997 shall not relieve the offender of the duty to register or to reregister following a change in residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(iv) OFFENDERS WHO ARE CONVICTED BUT NOT CONFINED. Sex offenders who are convicted of a sex offense on or after July 28, 1991, for a sex offense that was committed on or after February 28, 1990, and kidnapping offenders who are convicted on or after July 27, 1997, for a kidnapping offense that was committed on or after July 27, 1997, but who are not sentenced to serve a term of confinement immediately upon sentencing, shall report to the county sheriff to register immediately upon completion of being sentenced.

(v) OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON RESIDENTS. Sex offenders and kidnapping offenders who move to Washington state from another state or a foreign country that are not under the jurisdiction of the state department of corrections, the indeterminate sentence review board, or the state department of social and health services at the time of moving to Washington, must register within thirty days of establishing residence or reestablishing residence if the person is a former Washington resident. The duty to register under this subsection applies to sex offenders convicted under the laws of another state or a foreign country, federal or military statutes, or Washington state for offenses committed on or after

February 28, 1990, and to kidnapping offenders convicted under the laws of another state or a foreign country, federal or military statutes, or Washington state for offenses committed on or after July 27, 1997. Sex offenders and kidnapping offenders from other states or a foreign country who, when they move to Washington, are under the jurisdiction of the department of corrections, the indeterminate sentence review board, or the department of social and health services must register within twenty-four hours of moving to Washington. The agency that has jurisdiction over the offender shall notify the offender of the registration requirements before the offender moves to Washington.

(vi) OFFENDERS FOUND NOT GUILTY BY REASON OF INSANITY.

Any adult or juvenile who has been found not guilty by reason of insanity under chapter 10.77 RCW of (A) committing a sex offense on, before, or after February 28, 1990, and who, on or after July 23, 1995, is in custody, as a result of that finding, of the state department of social and health services, or (B) committing a kidnapping offense on, before, or after July 27, 1997, and who on or after July 27, 1997, is in custody, as a result of that finding, of the state department of social and health services, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence. The state department of social and health services shall provide notice to the adult or juvenile in its custody of the duty to register. Any adult or juvenile who has been found not guilty by reason of insanity of committing a sex offense on, before, or after February 28, 1990, but who was released before July 23, 1995, or any adult or juvenile who has been found not guilty by reason of insanity of committing a kidnapping offense but who was released before July 27, 1997, shall be required to register within twenty-four hours of receiving notice of this registration requirement. The state department of social and health services shall make reasonable attempts within available resources to notify sex offenders who were released before July 23, 1995, and kidnapping offenders who were released before July 27, 1997. Failure to register within twenty-four hours of release, or of receiving notice, constitutes a violation of this section and is punishable as provided in subsection (10) of this section.

(vii) OFFENDERS WHO LACK A FIXED RESIDENCE. Any person who lacks a fixed residence and leaves the county in which he or she is registered and enters and remains within a new county for twenty-four hours is required to register with the county sheriff not more than twenty-four hours after entering the county and provide the information required in subsection (3)(b) of this section.

(viii) OFFENDERS WHO LACK A FIXED RESIDENCE AND WHO ARE UNDER SUPERVISION. Offenders who lack a fixed residence and who are under the supervision of the department shall register in the county of their supervision.

(ix) OFFENDERS WHO MOVE TO, WORK, CARRY ON A VOCATION, OR ATTEND SCHOOL IN ANOTHER STATE. Offenders required to register in Washington, who move to another state, or who work, carry on a vocation, or attend school in another state shall register a new address, fingerprints, and photograph with the new state within ten days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. The person must also send written notice within ten days of moving to the new state or to a foreign country to the county sheriff with whom the person last

registered in Washington state. The county sheriff shall promptly forward this information to the Washington state patrol.

(b) Failure to register within the time required under this section constitutes a per se violation of this section and is punishable as provided in subsection (10) of this section. The county sheriff shall not be required to determine whether the person is living within the county.

(c) An arrest on charges of failure to register, service of an information, or a complaint for a violation of this section, or arraignment on charges for a violation of this section, constitutes actual notice of the duty to register. Any person charged with the crime of failure to register under this section who asserts as a defense the lack of notice of the duty to register shall register immediately following actual notice of the duty through arrest, service, or arraignment. Failure to register as required under this subsection (4)(c) constitutes grounds for filing another charge of failing to register. Registering following arrest, service, or arraignment on charges shall not relieve the offender from criminal liability for failure to register prior to the filing of the original charge.

(d) The deadlines for the duty to register under this section do not relieve any sex offender of the duty to register under this section as it existed prior to July 28, 1991.

(5)(a) If any person required to register pursuant to this section changes his or her residence address within the same county, the person must send written notice of the change of address to the county sheriff within seventy-two hours of moving. If any person required to register pursuant to this section moves to a new county, the person must send written notice of the change of address at least fourteen days before moving to the county sheriff in the new county of residence and must register with that county sheriff within twenty-four hours of moving. The person must also send written notice within ten days of the change of address in the new county to the county sheriff with whom the person last registered. The county sheriff with whom the person last registered shall promptly forward the information concerning the change of address to the county sheriff for the county of the person's new residence. Upon receipt of notice of change of address to a new state, the county sheriff shall promptly forward the information regarding the change of address to the agency designated by the new state as the state's offender registration agency.

(b) It is an affirmative defense to a charge that the person failed to send a notice at least fourteen days in advance of moving as required under (a) of this subsection that the person did not know the location of his or her new residence at least fourteen days before moving. The defendant must establish the defense by a preponderance of the evidence and, to prevail on the defense, must also prove by a preponderance that the defendant sent the required notice within twenty-four hours of determining the new address.

(6)(a) Any person required to register under this section who lacks a fixed residence shall provide written notice to the sheriff of the county where he or she last registered within forty-eight hours excluding weekends and holidays after ceasing to have a fixed residence. The notice shall include the information required by subsection (3)(b) of this section, except the photograph and fingerprints. The county sheriff may, for reasonable cause, require the offender to provide a photograph and fingerprints. The sheriff shall forward this

information to the sheriff of the county in which the person intends to reside, if the person intends to reside in another county.

(b) A person who lacks a fixed residence must report weekly, in person, to the sheriff of the county where he or she is registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. The county sheriff's office may require the person to list the locations where the person has stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

(c) If any person required to register pursuant to this section does not have a fixed residence, it is an affirmative defense to the charge of failure to register, that he or she provided written notice to the sheriff of the county where he or she last registered within forty-eight hours excluding weekends and holidays after ceasing to have a fixed residence and has subsequently complied with the requirements of subsections (4)(a)(vii) or (viii) and (6) of this section. To prevail, the person must prove the defense by a preponderance of the evidence.

(7) A sex offender subject to registration requirements under this section who applies to change his or her name under RCW 4.24.130 or any other law shall submit a copy of the application to the county sheriff of the county of the person's residence and to the state patrol not fewer than five days before the entry of an order granting the name change. No sex offender under the requirement to register under this section at the time of application shall be granted an order changing his or her name if the court finds that doing so will interfere with legitimate law enforcement interests, except that no order shall be denied when the name change is requested for religious or legitimate cultural reasons or in recognition of marriage or dissolution of marriage. A sex offender under the requirement to register under this section who receives an order changing his or her name shall submit a copy of the order to the county sheriff of the county of the person's residence and to the state patrol within five days of the entry of the order.

(8) The county sheriff shall obtain a photograph of the individual and shall obtain a copy of the individual's fingerprints.

(9) For the purpose of RCW 9A.44.130, 10.01.200, 43.43.540, 70.48.470, and 72.09.330:

(a) "Sex offense" means:

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

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

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

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

(v) Any gross misdemeanor that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex offense under RCW 9.94A.030 or this subsection.

(b) "Kidnapping offense" means: (i) The crimes of kidnapping in the first degree, kidnapping in the second degree, and unlawful imprisonment, as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the

minor's parent; (ii) any offense that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a kidnapping offense under this subsection (9)(b); and (iii) any federal or out-of-state conviction for an offense that under the laws of this state would be classified as a kidnapping offense under this subsection (9)(b).

(c) "Employed" or "carries on a vocation" means employment that is full-time or part-time for a period of time exceeding fourteen days, or for an aggregate period of time exceeding thirty days during any calendar year. A person is employed or carries on a vocation whether the person's employment is financially compensated, volunteered, or for the purpose of government or educational benefit.

(d) "Student" means a person who is enrolled, on a full-time or part-time basis, in any public or private educational institution. An educational institution includes any secondary school, trade or professional institution, or institution of higher education.

(10)(a) A person who knowingly fails to (~~register with the county sheriff or notify the county sheriff, or who changes his or her name without notifying the county sheriff and the state patrol, as required by~~) 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 sex offense as defined in subsection (9)(a) of this section or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony sex offense as defined in subsection (9)(a) of this section.

(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.

(11)(a) A person who knowingly fails to register or who moves within the state without notifying the county sheriff as required by this section is guilty of a class C felony if the crime for which the individual was convicted was a felony kidnapping offense as defined in subsection (9)(b) of this section or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony kidnapping offense as defined in subsection (9)(b) of this section.

(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.

Sec. 2. RCW 9A.44.130 and 2005 c 380 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 ((4.24.500)) 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) address; (iii) date and place of birth; (iv) place of employment; (v) crime for which convicted; (vi) date and place of conviction; (vii) aliases used; (viii) social security number; (ix) photograph; and (x) fingerprints.

(b) Any person who lacks a fixed residence shall provide the following information when registering: (i) Name; (ii) date and place of birth; (iii) place of employment; (iv) crime for which convicted; (v) date and place of conviction; (vi) aliases used; (vii) social security number; (viii) photograph; (ix) fingerprints; and (x) where he or she plans to stay.

(4)(a) Offenders shall register with the county sheriff within the following deadlines. For purposes of this section the term "conviction" refers to adult convictions and juvenile adjudications for sex offenses or kidnapping offenses:

(i) OFFENDERS IN CUSTODY. (A) Sex offenders who committed a sex offense on, before, or after February 28, 1990, and who, on or after July 28, 1991, are in custody, as a result of that offense, of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, and (B) kidnapping offenders who on or after July 27, 1997, are in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, must register at the time of release from custody with an official designated by the agency that has jurisdiction over the offender. The agency shall within three days forward the registration information to the county sheriff for the county of the offender's anticipated residence. The offender must also register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. The agency that has jurisdiction over the offender shall provide notice to the offender of the duty to register. Failure to register at the time of release and within twenty-four hours of release constitutes a violation of this section and is punishable as provided in subsection (10) of this section.

When the agency with jurisdiction intends to release an offender with a duty to register under this section, and the agency has knowledge that the offender is eligible for developmental disability services from the department of social and health services, the agency shall notify the division of developmental disabilities of the release. Notice shall occur not more than thirty days before the offender is to be released. The agency and the division shall assist the offender in meeting the initial registration requirement under this section. Failure to provide such assistance shall not constitute a defense for any violation of this section.

(ii) OFFENDERS NOT IN CUSTODY BUT UNDER STATE OR LOCAL JURISDICTION. Sex offenders who, on July 28, 1991, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of 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 thirty days of establishing residence or reestablishing residence if the person is a former

Washington resident. The duty to register under this subsection applies to sex offenders convicted under the laws of another state or a foreign country, federal or military statutes, or Washington state for offenses committed on or after February 28, 1990, and to kidnapping offenders convicted under the laws of another state or a foreign country, federal or military statutes, or Washington state for offenses committed on or after July 27, 1997. Sex offenders and kidnapping offenders from other states or a foreign country who, when they move to Washington, are under the jurisdiction of the department of corrections, the indeterminate sentence review board, or the department of social and health services must register within twenty-four hours of moving to Washington. The agency that has jurisdiction over the offender shall notify the offender of the registration requirements before the offender moves to Washington.

(vi) **OFFENDERS FOUND NOT GUILTY BY REASON OF INSANITY.** Any adult or juvenile who has been found not guilty by reason of insanity under chapter 10.77 RCW of (A) committing a sex offense on, before, or after February 28, 1990, and who, on or after July 23, 1995, is in custody, as a result of that finding, of the state department of social and health services, or (B) committing a kidnapping offense on, before, or after July 27, 1997, and who on or after July 27, 1997, is in custody, as a result of that finding, of the state department of social and health services, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence. The state department of social and health services shall provide notice to the adult or juvenile in its custody of the duty to register. Any adult or juvenile who has been found not guilty by reason of insanity of committing a sex offense on, before, or after February 28, 1990, but who was released before July 23, 1995, or any adult or juvenile who has been found not guilty by reason of insanity of committing a kidnapping offense but who was released before July 27, 1997, shall be required to register within twenty-four hours of receiving notice of this registration requirement. The state department of social and health services shall make reasonable attempts within available resources to notify sex offenders who were released before July 23, 1995, and kidnapping offenders who were released before July 27, 1997. Failure to register within twenty-four hours of release, or of receiving notice, constitutes a violation of this section and is punishable as provided in subsection (10) of this section.

(vii) **OFFENDERS WHO LACK A FIXED RESIDENCE.** Any person who lacks a fixed residence and leaves the county in which he or she is registered and enters and remains within a new county for twenty-four hours is required to register with the county sheriff not more than twenty-four hours after entering the county and provide the information required in subsection (3)(b) of this section.

(viii) **OFFENDERS WHO LACK A FIXED RESIDENCE AND WHO ARE UNDER SUPERVISION.** Offenders who lack a fixed residence and who are under the supervision of the department shall register in the county of their supervision.

(ix) **OFFENDERS WHO MOVE TO, WORK, CARRY ON A VOCATION, OR ATTEND SCHOOL IN ANOTHER STATE.** Offenders required to register in Washington, who move to another state, or who work, carry on a vocation, or attend school in another state shall register a new address, fingerprints, and photograph with the new state within ten days after establishing residence, or

after beginning to work, carry on a vocation, or attend school in the new state. The person must also send written notice within ten days of moving to the new state or to a foreign country to the county sheriff with whom the person last registered in Washington state. The county sheriff shall promptly forward this information to the Washington state patrol.

(b) Failure to register within the time required under this section constitutes a per se violation of this section and is punishable as provided in subsection (10) of this section. The county sheriff shall not be required to determine whether the person is living within the county.

(c) An arrest on charges of failure to register, service of an information, or a complaint for a violation of this section, or arraignment on charges for a violation of this section, constitutes actual notice of the duty to register. Any person charged with the crime of failure to register under this section who asserts as a defense the lack of notice of the duty to register shall register immediately following actual notice of the duty through arrest, service, or arraignment. Failure to register as required under this subsection (4)(c) constitutes grounds for filing another charge of failing to register. Registering following arrest, service, or arraignment on charges shall not relieve the offender from criminal liability for failure to register prior to the filing of the original charge.

(d) The deadlines for the duty to register under this section do not relieve any sex offender of the duty to register under this section as it existed prior to July 28, 1991.

(5)(a) If any person required to register pursuant to this section changes his or her residence address within the same county, the person must send written notice of the change of address to the county sheriff within seventy-two hours of moving. If any person required to register pursuant to this section moves to a new county, the person must send written notice of the change of address at least fourteen days before moving to the county sheriff in the new county of residence and must register with that county sheriff within twenty-four hours of moving. The person must also send written notice within ten days of the change of address in the new county to the county sheriff with whom the person last registered. The county sheriff with whom the person last registered shall promptly forward the information concerning the change of address to the county sheriff for the county of the person's new residence. Upon receipt of notice of change of address to a new state, the county sheriff shall promptly forward the information regarding the change of address to the agency designated by the new state as the state's offender registration agency.

(b) It is an affirmative defense to a charge that the person failed to send a notice at least fourteen days in advance of moving as required under (a) of this subsection that the person did not know the location of his or her new residence at least fourteen days before moving. The defendant must establish the defense by a preponderance of the evidence and, to prevail on the defense, must also prove by a preponderance that the defendant sent the required notice within twenty-four hours of determining the new address.

(6)(a) Any person required to register under this section who lacks a fixed residence shall provide written notice to the sheriff of the county where he or she last registered within forty-eight hours excluding weekends and holidays after ceasing to have a fixed residence. The notice shall include the information required by subsection (3)(b) of this section, except the photograph and

fingerprints. The county sheriff may, for reasonable cause, require the offender to provide a photograph and fingerprints. The sheriff shall forward this information to the sheriff of the county in which the person intends to reside, if the person intends to reside in another county.

(b) A person who lacks a fixed residence must report weekly, in person, to the sheriff of the county where he or she is registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. The county sheriff's office may require the person to list the locations where the person has stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

(c) If any person required to register pursuant to this section does not have a fixed residence, it is an affirmative defense to the charge of failure to register, that he or she provided written notice to the sheriff of the county where he or she last registered within forty-eight hours excluding weekends and holidays after ceasing to have a fixed residence and has subsequently complied with the requirements of subsections (4)(a)(vii) or (viii) and (6) of this section. To prevail, the person must prove the defense by a preponderance of the evidence.

(7) A sex offender subject to registration requirements under this section who applies to change his or her name under RCW 4.24.130 or any other law shall submit a copy of the application to the county sheriff of the county of the person's residence and to the state patrol not fewer than five days before the entry of an order granting the name change. No sex offender under the requirement to register under this section at the time of application shall be granted an order changing his or her name if the court finds that doing so will interfere with legitimate law enforcement interests, except that no order shall be denied when the name change is requested for religious or legitimate cultural reasons or in recognition of marriage or dissolution of marriage. A sex offender under the requirement to register under this section who receives an order changing his or her name shall submit a copy of the order to the county sheriff of the county of the person's residence and to the state patrol within five days of the entry of the order.

(8) The county sheriff shall obtain a photograph of the individual and shall obtain a copy of the individual's fingerprints.

(9) For the purpose of RCW 9A.44.130, 10.01.200, 43.43.540, 70.48.470, and 72.09.330:

(a) "Sex offense" means:

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

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

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

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

(v) Any gross misdemeanor that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex offense under RCW 9.94A.030 or this subsection.

(b) "Kidnapping offense" means: (i) The crimes of kidnapping in the first degree, kidnapping in the second degree, and unlawful imprisonment, as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent; (ii) any offense that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a kidnapping offense under this subsection (9)(b); and (iii) any federal or out-of-state conviction for an offense that under the laws of this state would be classified as a kidnapping offense under this subsection (9)(b).

(c) "Employed" or "carries on a vocation" means employment that is full-time or part-time for a period of time exceeding fourteen days, or for an aggregate period of time exceeding thirty days during any calendar year. A person is employed or carries on a vocation whether the person's employment is financially compensated, volunteered, or for the purpose of government or educational benefit.

(d) "Student" means a person who is enrolled, on a full-time or part-time basis, in any public or private educational institution. An educational institution includes any secondary school, trade or professional institution, or institution of higher education.

(10)(a) A person who knowingly fails to (~~register with the county sheriff or notify the county sheriff, or who changes his or her name without notifying the county sheriff and the state patrol, as required by~~) 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 sex offense as defined in subsection (9)(a) of this section or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony sex offense as defined in subsection (9)(a) of this section.

(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.

(11)(a) A person who knowingly fails to register or who moves within the state without notifying the county sheriff as required by this section is guilty of a class C felony if the crime for which the individual was convicted was a felony kidnapping offense as defined in subsection (9)(b) of this section or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony kidnapping offense as defined in subsection (9)(b) of this section.

(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.

(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. 3. RCW 9.94A.515 and 2005 c 458 s 2 and 2005 c 183 s 9 are each reenacted and amended to read as follows:

TABLE 2
CRIMES INCLUDED WITHIN EACH
SERIOUSNESS LEVEL

- XVI Aggravated Murder 1 (RCW 10.95.020)
- XV Homicide by abuse (RCW 9A.32.055)
Malicious explosion 1 (RCW 70.74.280(1))
Murder 1 (RCW 9A.32.030)
- XIV Murder 2 (RCW 9A.32.050)
Trafficking 1 (RCW 9A.40.100(1))
- XIII Malicious explosion 2 (RCW 70.74.280(2))
Malicious placement of an explosive 1 (RCW 70.74.270(1))
- XII Assault 1 (RCW 9A.36.011)
Assault of a Child 1 (RCW 9A.36.120)
Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))
Rape 1 (RCW 9A.44.040)
Rape of a Child 1 (RCW 9A.44.073)
Trafficking 2 (RCW 9A.40.100(2))
- XI Manslaughter 1 (RCW 9A.32.060)
Rape 2 (RCW 9A.44.050)
Rape of a Child 2 (RCW 9A.44.076)
- X Child Molestation 1 (RCW 9A.44.083)
Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
Kidnapping 1 (RCW 9A.40.020)
Leading Organized Crime (RCW 9A.82.060(1)(a))
Malicious explosion 3 (RCW 70.74.280(3))
Sexually Violent Predator Escape (RCW 9A.76.115)
- IX Assault of a Child 2 (RCW 9A.36.130)
Explosive devices prohibited (RCW 70.74.180)

- Hit and Run—Death (RCW 46.52.020(4)(a))
- Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)
- Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
- Malicious placement of an explosive 2 (RCW 70.74.270(2))
- Robbery 1 (RCW 9A.56.200)
- Sexual Exploitation (RCW 9.68A.040)
- Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
- VIII Arson 1 (RCW 9A.48.020)
 - Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)
 - Manslaughter 2 (RCW 9A.32.070)
 - Promoting Prostitution 1 (RCW 9A.88.070)
 - Theft of Ammonia (RCW 69.55.010)
 - Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- VII Burglary 1 (RCW 9A.52.020)
 - Child Molestation 2 (RCW 9A.44.086)
 - Civil Disorder Training (RCW 9A.48.120)
 - Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)
 - Drive-by Shooting (RCW 9A.36.045)
 - Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050)

- Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))
- Introducing Contraband 1 (RCW 9A.76.140)
- Malicious placement of an explosive 3 (RCW 70.74.270(3))
- Negligently Causing Death By Use of a Signal Preemption Device (RCW 46.37.675)
- Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)
- Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1))
- Use of a Machine Gun in Commission of a Felony (RCW 9.41.225)
- Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- VI Bail Jumping with Murder 1 (RCW 9A.76.170(3)(a))
- Bribery (RCW 9A.68.010)
- Incest 1 (RCW 9A.64.020(1))
- Intimidating a Judge (RCW 9A.72.160)
- Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
- Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
- Rape of a Child 3 (RCW 9A.44.079)
- Theft of a Firearm (RCW 9A.56.300)
- Unlawful Storage of Ammonia (RCW 69.55.020)
- V Abandonment of dependent person 1 (RCW 9A.42.060)
- Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
- Bail Jumping with class A Felony (RCW 9A.76.170(3)(b))

- Child Molestation 3 (RCW 9A.44.089)
- Criminal Mistreatment 1 (RCW 9A.42.020)
- Custodial Sexual Misconduct 1 (RCW 9A.44.160)
- Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
- Extortion 1 (RCW 9A.56.120)
- Extortionate Extension of Credit (RCW 9A.82.020)
- Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
- Incest 2 (RCW 9A.64.020(2))
- Kidnapping 2 (RCW 9A.40.030)
- Perjury 1 (RCW 9A.72.020)
- Persistent prison misbehavior (RCW 9.94.070)
- Possession of a Stolen Firearm (RCW 9A.56.310)
- Rape 3 (RCW 9A.44.060)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)
- Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
- Sexually Violating Human Remains (RCW 9A.44.105)
- Stalking (RCW 9A.46.110)
- Taking Motor Vehicle Without Permission 1 (RCW 9A.56.070)
- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.021)
- Assault 3 (of a Peace Officer with a Projectile Stun Gun) (RCW 9A.36.031(1)(h))
- Assault by Watercraft (RCW 79A.60.060)

Bribing a Witness/Bribe Received by
Witness (RCW 9A.72.090,
9A.72.100)

Cheating 1 (RCW 9.46.1961)

Commercial Bribery (RCW
9A.68.060)

Counterfeiting (RCW 9.16.035(4))

Endangerment with a Controlled
Substance (RCW 9A.42.100)

Escape 1 (RCW 9A.76.110)

Hit and Run—Injury (RCW
46.52.020(4)(b))

Hit and Run with Vessel—Injury
Accident (RCW 79A.60.200(3))

Identity Theft 1 (RCW 9.35.020(2))

Indecent Exposure to Person Under
Age Fourteen (subsequent sex
offense) (RCW 9A.88.010)

Influencing Outcome of Sporting Event
(RCW 9A.82.070)

Malicious Harassment (RCW
9A.36.080)

Residential Burglary (RCW
9A.52.025)

Robbery 2 (RCW 9A.56.210)

Theft of Livestock 1 (RCW 9A.56.080)

Threats to Bomb (RCW 9.61.160)

Trafficking in Stolen Property 1 (RCW
9A.82.050)

Unlawful factoring of a credit card or
payment card transaction (RCW
9A.56.290(4)(b))

Unlawful transaction of health
coverage as a health care service
contractor (RCW 48.44.016(3))

Unlawful transaction of health
coverage as a health maintenance
organization (RCW 48.46.033(3))

Unlawful transaction of insurance
business (RCW 48.15.023(3))

- Unlicensed practice as an insurance professional (RCW 48.17.063(3))
- Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
- Vehicular Assault, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (RCW 46.61.522)
- Willful Failure to Return from Furlough (RCW 72.66.060)
- III Abandonment of dependent person 2 (RCW 9A.42.070)
 - Assault 3 (Except Assault 3 of a Peace Officer With a Projectile Stun Gun) (RCW 9A.36.031 except subsection (1)(h))
 - Assault of a Child 3 (RCW 9A.36.140)
 - Bail Jumping with class B or C Felony (RCW 9A.76.170(3)(c))
 - Burglary 2 (RCW 9A.52.030)
 - Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
 - Criminal Gang Intimidation (RCW 9A.46.120)
 - Criminal Mistreatment 2 (RCW 9A.42.030)
 - Custodial Assault (RCW 9A.36.100)
 - Cyberstalking (subsequent conviction or threat of death) (RCW 9.61.260(3))
 - Escape 2 (RCW 9A.76.120)
 - Extortion 2 (RCW 9A.56.130)
 - Harassment (RCW 9A.46.020)
 - Intimidating a Public Servant (RCW 9A.76.180)
 - Introducing Contraband 2 (RCW 9A.76.150)

- Malicious Injury to Railroad Property
(RCW 81.60.070)
- Negligently Causing Substantial Bodily
Harm By Use of a Signal
Preemption Device (RCW
46.37.674)
- Patronizing a Juvenile Prostitute (RCW
9.68A.100)
- Perjury 2 (RCW 9A.72.030)
- Possession of Incendiary Device (RCW
9.40.120)
- Possession of Machine Gun or Short-
Barreled Shotgun or Rifle (RCW
9.41.190)
- Promoting Prostitution 2 (RCW
9A.88.080)
- Securities Act violation (RCW
21.20.400)
- Tampering with a Witness (RCW
9A.72.120)
- Telephone Harassment (subsequent
conviction or threat of death)
(RCW 9.61.230(2))
- Theft of Livestock 2 (RCW 9A.56.083)
- Trafficking in Stolen Property 2 (RCW
9A.82.055)
- Unlawful Imprisonment (RCW
9A.40.040)
- Unlawful possession of firearm in the
second degree (RCW 9.41.040(2))
- Vehicular Assault, by the operation or
driving of a vehicle with disregard
for the safety of others (RCW
46.61.522)
- Willful Failure to Return from Work
Release (RCW 72.65.070)
- II Computer Trespass 1 (RCW
9A.52.110)
- Counterfeiting (RCW 9.16.035(3))
- Escape from Community Custody
(RCW 72.09.310)

Health Care False Claims (RCW
48.80.030)

Identity Theft 2 (RCW 9.35.020(3))

Improperly Obtaining Financial
Information (RCW 9.35.010)

Malicious Mischief 1 (RCW
9A.48.070)

Possession of Stolen Property 1 (RCW
9A.56.150)

Failure to Register as a Sex Offender
(second or subsequent offense)
(RCW 9A.44.130(10)(a))

Theft 1 (RCW 9A.56.030)

Theft of Rental, Leased, or Lease-
purchased Property (valued at one
thousand five hundred dollars or
more) (RCW 9A.56.096(5)(a))

Trafficking in Insurance Claims (RCW
48.30A.015)

Unlawful factoring of a credit card or
payment card transaction (RCW
9A.56.290(4)(a))

Unlawful Practice of Law (RCW
2.48.180)

Unlicensed Practice of a Profession or
Business (RCW 18.130.190(7))

I Attempting to Elude a Pursuing Police
Vehicle (RCW 46.61.024)

False Verification for Welfare (RCW
74.08.055)

Forgery (RCW 9A.60.020)

Fraudulent Creation or Revocation of a
Mental Health Advance Directive
(RCW 9A.60.060)

Malicious Mischief 2 (RCW
9A.48.080)

Mineral Trespass (RCW 78.44.330)

Possession of Stolen Property 2 (RCW
9A.56.160)

Reckless Burning 1 (RCW 9A.48.040)

Taking Motor Vehicle Without
Permission 2 (RCW 9A.56.075)
Theft 2 (RCW 9A.56.040)
Theft of Rental, Leased, or Lease-
purchased Property (valued at two
hundred fifty dollars or more but
less than one thousand five hundred
dollars) (RCW 9A.56.096(5)(b))
Transaction of insurance business
beyond the scope of licensure
(RCW 48.17.063(4))
Unlawful Issuance of Checks or Drafts
(RCW 9A.56.060)
Unlawful Possession of Fictitious
Identification (RCW 9A.56.320)
Unlawful Possession of Instruments of
Financial Fraud (RCW 9A.56.320)
Unlawful Possession of Payment
Instruments (RCW 9A.56.320)
Unlawful Possession of a Personal
Identification Device (RCW
9A.56.320)
Unlawful Production of Payment
Instruments (RCW 9A.56.320)
Unlawful Trafficking in Food Stamps
(RCW 9.91.142)
Unlawful Use of Food Stamps (RCW
9.91.144)
Vehicle Prowl 1 (RCW 9A.52.095)

Sec. 4. RCW 9.94A.545 and 2003 c 379 s 8 are each amended to read as follows:

(1) Except as provided in RCW 9.94A.650 and in subsection (2) of this section, on all sentences of confinement for one year or less, in which the offender is convicted of a sex offense, a violent offense, a crime against a person under RCW 9.94A.411, or felony violation of chapter 69.50 or 69.52 RCW or an attempt, conspiracy, or solicitation to commit such a crime, the court may impose up to one year of community custody, subject to conditions and sanctions as authorized in RCW 9.94A.715 and 9.94A.720. An offender shall be on community custody as of the date of sentencing. However, during the time for which the offender is in total or partial confinement pursuant to the sentence or a violation of the sentence, the period of community custody shall toll.

(2) If the offender is guilty of failure to register under RCW 9A.44.130(10)(a), the court shall impose a term of community custody under RCW 9.94A.715.

Sec. 5. RCW 9.94A.715 and 2003 c 379 s 6 are each amended to read as follows:

(1) When a court sentences a person to the custody of the department for a sex offense not sentenced under RCW 9.94A.712, a violent offense, any crime against persons under RCW 9.94A.411(2), or a felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000, or when a court sentences a person to a term of confinement of one year or less for a violation of RCW 9A.44.130(10)(a) committed on or after the effective date of this act, the court shall in addition to the other terms of the sentence, sentence the offender to community custody for the community custody range established under RCW 9.94A.850 or up to the period of earned release awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer. The community custody shall begin: (a) Upon completion of the term of confinement; (b) at such time as the offender is transferred to community custody in lieu of earned release in accordance with RCW 9.94A.728 (1) and (2); or (c) with regard to offenders sentenced under RCW 9.94A.660, upon failure to complete or administrative termination from the special drug offender sentencing alternative program. Except as provided in RCW 9.94A.501, the department shall supervise any sentence of community custody imposed under this section.

(2)(a) Unless a condition is waived by the court, the conditions of community custody shall include those provided for in RCW 9.94A.700(4). The conditions may also include those provided for in RCW 9.94A.700(5). The court may also order the offender to participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community, and the department shall enforce such conditions pursuant to subsection (6) of this section.

(b) As part of any sentence that includes a term of community custody imposed under this subsection, the court shall also require the offender to comply with any conditions imposed by the department under RCW 9.94A.720. The department shall assess the offender's risk of reoffense and may establish and modify additional conditions of the offender's community custody based upon the risk to community safety. In addition, the department may require the offender to participate in rehabilitative programs, or otherwise perform affirmative conduct, and to obey all laws.

(c) The department may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court imposed conditions. The department shall notify the offender in writing of any such conditions or modifications. In setting, modifying, and enforcing conditions of community custody, the department shall be deemed to be performing a quasi-judicial function.

(3) If an offender violates conditions imposed by the court or the department pursuant to this section during community custody, the department may transfer the offender to a more restrictive confinement status and impose other available sanctions as provided in RCW 9.94A.737 and 9.94A.740.

(4) Except for terms of community custody under RCW 9.94A.670, the department shall discharge the offender from community custody on a date determined by the department, which the department may modify, based on risk and performance of the offender, within the range or at the end of the period of earned release, whichever is later.

(5) At any time prior to the completion or termination of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.631 and may be punishable as contempt of court as provided for in RCW 7.21.040. If the court extends a condition beyond the expiration of the term of community custody, the department is not responsible for supervision of the offender's compliance with the condition.

(6) Within the funds available for community custody, the department shall determine conditions and duration of community custody on the basis of risk to community safety, and shall supervise offenders during community custody on the basis of risk to community safety and conditions imposed by the court. The secretary shall adopt rules to implement the provisions of this subsection.

(7) By the close of the next business day after receiving notice of a condition imposed or modified by the department, an offender may request an administrative review under rules adopted by the department. The condition shall remain in effect unless the reviewing officer finds that it is not reasonably related to any of the following: (a) The crime of conviction; (b) the offender's risk of reoffending; or (c) the safety of the community.

Sec. 6. RCW 9.94A.525 and 2002 c 290 s 3 and 2002 c 107 s 3 are each reenacted and amended to read as follows:

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

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

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

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

a felony conviction, if any, or entry of judgment and sentence, the offender had spent five consecutive years in the community without committing any crime that subsequently results in a conviction. Serious traffic convictions shall not be included in the offender score if, since the last date of release from confinement (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of judgment and sentence, the offender spent five years in the community without committing any crime that subsequently results in a conviction. This subsection applies to both adult and juvenile prior convictions.

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

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

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

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

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

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

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

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

conviction and one point for each juvenile prior violent felony conviction and 1/2 point for each juvenile prior nonviolent felony conviction.

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

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

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

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

(12) If the present conviction is for 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.

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

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

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

(16) If the present conviction is for a sex offense, count priors as in subsections (7) through (15) of this section; however count three points for each adult and juvenile prior sex offense conviction.

(17) If the present conviction is for failure to register as a sex offender under RCW 9A.44.130(10), count priors as in subsections (7) through (15) 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(10), which shall count as one point.

(18) If the present conviction is for an offense committed while the offender was under community placement, add one point.

~~((18))~~ (19) The fact that a prior conviction was not included in an offender's offender score or criminal history at a previous sentencing shall have no bearing on whether it is included in the criminal history or offender score for the current offense. Accordingly, prior convictions that were not counted in the offender score or included in criminal history under repealed or previous versions of the sentencing reform act shall be included in criminal history and shall count in the offender score if the current version of the sentencing reform act requires including or counting those convictions.

NEW SECTION. Sec. 7. Section 1 of this act expires September 1, 2006.

NEW SECTION. Sec. 8. Section 2 of this act takes effect September 1, 2006.

NEW SECTION. Sec. 9. If specific funding for the purposes of section 3 of this act, referencing this act and section 3 of this act by bill or chapter number and section number, is not provided by June 30, 2006, in the omnibus appropriations act, section 3 of this act is null and void.

NEW SECTION. Sec. 10. If specific funding for the purposes of section 4 of this act, referencing this act and section 4 of this act by bill or chapter number and section number, is not provided by June 30, 2006, in the omnibus appropriations act, section 4 of this act is null and void.

Passed by the Senate March 6, 2006.

Passed by the House March 2, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 129

[Substitute Senate Bill 6519]

SEX OFFENDERS—REPORTING REQUIREMENT

AN ACT Relating to county sheriffs monitoring registered sex offenders; amending RCW 9A.44.130; reenacting and amending RCW 9A.44.130; providing an effective date; and providing an expiration date.

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

Sec. 1. RCW 9A.44.130 and 2003 c 215 s 1 and 2003 c 53 s 68 are each reenacted and amended to read as follows:

(1) Any adult or juvenile residing whether or not the person has a fixed residence, or who is a student, is employed, or carries on a vocation in this state who has been found to have committed or has been convicted of any sex offense or kidnapping offense, or who has been found not guilty by reason of insanity under chapter 10.77 RCW of committing any sex offense or kidnapping offense, shall register with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation, or as otherwise specified in this section. Where a person required to register under this section is in custody of the state

department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility as a result of a sex offense or kidnapping offense, the person shall also register at the time of release from custody with an official designated by the agency that has jurisdiction over the person. In addition, any such adult or juvenile: (a) 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; (b) 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 (c) 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. Persons required to register under this section who are enrolled in a public or private institution of higher education on June 11, 1998, must notify the county sheriff immediately. The sheriff shall notify the institution's department of public safety and shall provide that department with the same information provided to a county sheriff under subsection (3) of this section.

(2) This section may not be construed to confer any powers pursuant to RCW ((4.24.500)) 4.24.550 upon the public safety department of any public or private institution of higher education.

(3)(a) The person shall provide the following information when registering: (i) Name; (ii) address; (iii) date and place of birth; (iv) place of employment; (v) crime for which convicted; (vi) date and place of conviction; (vii) aliases used; (viii) social security number; (ix) photograph; and (x) fingerprints.

(b) Any person who lacks a fixed residence shall provide the following information when registering: (i) Name; (ii) date and place of birth; (iii) place of employment; (iv) crime for which convicted; (v) date and place of conviction; (vi) aliases used; (vii) social security number; (viii) photograph; (ix) fingerprints; and (x) where he or she plans to stay.

(4)(a) Offenders shall register with the county sheriff within the following deadlines. For purposes of this section the term "conviction" refers to adult convictions and juvenile adjudications for sex offenses or kidnapping offenses:

(i) OFFENDERS IN CUSTODY. (A) Sex offenders who committed a sex offense on, before, or after February 28, 1990, and who, on or after July 28, 1991, are in custody, as a result of that offense, of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, and (B) kidnapping offenders who on or after July 27, 1997, are in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, must register at the time of release from custody with an official designated by the agency that has jurisdiction over the offender. The agency shall within three days forward the registration information to the county sheriff for the county of the offender's anticipated residence. The offender must also register within twenty-four hours from the time of release with the county sheriff for the county of the person's

residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. The agency that has jurisdiction over the offender shall provide notice to the offender of the duty to register. Failure to register at the time of release and within twenty-four hours of release constitutes a violation of this section and is punishable as provided in subsection ~~((40))~~ (11) of this section.

When the agency with jurisdiction intends to release an offender with a duty to register under this section, and the agency has knowledge that the offender is eligible for developmental disability services from the department of social and health services, the agency shall notify the division of developmental disabilities of the release. Notice shall occur not more than thirty days before the offender is to be released. The agency and the division shall assist the offender in meeting the initial registration requirement under this section. Failure to provide such assistance shall not constitute a defense for any violation of this section.

(ii) OFFENDERS NOT IN CUSTODY BUT UNDER STATE OR LOCAL JURISDICTION. Sex offenders who, on July 28, 1991, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of correction's active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 28, 1991. Kidnapping offenders who, on July 27, 1997, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of correction's active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A change in supervision status of a sex offender who was required to register under this subsection (4)(a)(ii) as of July 28, 1991, or a kidnapping offender required to register as of July 27, 1997, shall not relieve the offender of the duty to register or to reregister following a change in residence. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(iii) OFFENDERS UNDER FEDERAL JURISDICTION. Sex offenders who, on or after July 23, 1995, and kidnapping offenders who, on or after July 27, 1997, as a result of that offense are in the custody of the United States bureau of prisons or other federal or military correctional agency for sex offenses committed before, on, or after February 28, 1990, or kidnapping offenses committed on, before, or after July 27, 1997, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. Sex offenders who, on July 23, 1995, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 23, 1995. Kidnapping offenders who, on July 27, 1997, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A

change in supervision status of a sex offender who was required to register under this subsection (4)(a)(iii) as of July 23, 1995, or a kidnapping offender required to register as of July 27, 1997 shall not relieve the offender of the duty to register or to reregister following a change in residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(iv) OFFENDERS WHO ARE CONVICTED BUT NOT CONFINED. Sex offenders who are convicted of a sex offense on or after July 28, 1991, for a sex offense that was committed on or after February 28, 1990, and kidnapping offenders who are convicted on or after July 27, 1997, for a kidnapping offense that was committed on or after July 27, 1997, but who are not sentenced to serve a term of confinement immediately upon sentencing, shall report to the county sheriff to register immediately upon completion of being sentenced.

(v) OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON RESIDENTS. Sex offenders and kidnapping offenders who move to Washington state from another state or a foreign country that are not under the jurisdiction of the state department of corrections, the indeterminate sentence review board, or the state department of social and health services at the time of moving to Washington, must register within thirty days of establishing residence or reestablishing residence if the person is a former Washington resident. The duty to register under this subsection applies to sex offenders convicted under the laws of another state or a foreign country, federal or military statutes, or Washington state for offenses committed on or after February 28, 1990, and to kidnapping offenders convicted under the laws of another state or a foreign country, federal or military statutes, or Washington state for offenses committed on or after July 27, 1997. Sex offenders and kidnapping offenders from other states or a foreign country who, when they move to Washington, are under the jurisdiction of the department of corrections, the indeterminate sentence review board, or the department of social and health services must register within twenty-four hours of moving to Washington. The agency that has jurisdiction over the offender shall notify the offender of the registration requirements before the offender moves to Washington.

(vi) OFFENDERS FOUND NOT GUILTY BY REASON OF INSANITY. Any adult or juvenile who has been found not guilty by reason of insanity under chapter 10.77 RCW of (A) committing a sex offense on, before, or after February 28, 1990, and who, on or after July 23, 1995, is in custody, as a result of that finding, of the state department of social and health services, or (B) committing a kidnapping offense on, before, or after July 27, 1997, and who on or after July 27, 1997, is in custody, as a result of that finding, of the state department of social and health services, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence. The state department of social and health services shall provide notice to the adult or juvenile in its custody of the duty to register. Any adult or juvenile who has been found not guilty by reason of insanity of committing a sex offense on, before, or after February 28, 1990, but who was released before July 23, 1995, or any adult or juvenile who has been found not guilty by reason of insanity of committing a kidnapping offense but who was released before July 27, 1997, shall be required to register within twenty-four hours of receiving

notice of this registration requirement. The state department of social and health services shall make reasonable attempts within available resources to notify sex offenders who were released before July 23, 1995, and kidnapping offenders who were released before July 27, 1997. Failure to register within twenty-four hours of release, or of receiving notice, constitutes a violation of this section and is punishable as provided in subsection ~~((40))~~ (11) 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 ~~((40))~~ (11) of this section. The county sheriff shall not be required to determine whether the person is living within the county.

(c) An arrest on charges of failure to register, service of an information, or a complaint for a violation of this section, or arraignment on charges for a violation of this section, constitutes actual notice of the duty to register. Any person charged with the crime of failure to register under this section who asserts as a defense the lack of notice of the duty to register shall register immediately following actual notice of the duty through arrest, service, or arraignment. Failure to register as required under this subsection (4)(c) constitutes grounds for filing another charge of failing to register. Registering following arrest, service, or arraignment on charges shall not relieve the offender from criminal liability for failure to register prior to the filing of the original charge.

(d) The deadlines for the duty to register under this section do not relieve any sex offender of the duty to register under this section as it existed prior to July 28, 1991.

(5)(a) If any person required to register pursuant to this section changes his or her residence address within the same county, the person must send written notice of the change of address to the county sheriff within seventy-two hours of moving. If any person required to register pursuant to this section moves to a new county, the person must send written notice of the change of address at least fourteen days before moving to the county sheriff in the new county of residence

and must register with that county sheriff within twenty-four hours of moving. The person must also send written notice within ten days of the change of address in the new county to the county sheriff with whom the person last registered. The county sheriff with whom the person last registered shall promptly forward the information concerning the change of address to the county sheriff for the county of the person's new residence. Upon receipt of notice of change of address to a new state, the county sheriff shall promptly forward the information regarding the change of address to the agency designated by the new state as the state's offender registration agency.

(b) It is an affirmative defense to a charge that the person failed to send a notice at least fourteen days in advance of moving as required under (a) of this subsection that the person did not know the location of his or her new residence at least fourteen days before moving. The defendant must establish the defense by a preponderance of the evidence and, to prevail on the defense, must also prove by a preponderance that the defendant sent the required notice within twenty-four hours of determining the new address.

(6)(a) Any person required to register under this section who lacks a fixed residence shall provide written notice to the sheriff of the county where he or she last registered within forty-eight hours excluding weekends and holidays after ceasing to have a fixed residence. The notice shall include the information required by subsection (3)(b) of this section, except the photograph and fingerprints. The county sheriff may, for reasonable cause, require the offender to provide a photograph and fingerprints. The sheriff shall forward this information to the sheriff of the county in which the person intends to reside, if the person intends to reside in another county.

(b) A person who lacks a fixed residence must report weekly, in person, to the sheriff of the county where he or she is registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. The county sheriff's office may require the person to list the locations where the person has stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

(c) If any person required to register pursuant to this section does not have a fixed residence, it is an affirmative defense to the charge of failure to register, that he or she provided written notice to the sheriff of the county where he or she last registered within forty-eight hours excluding weekends and holidays after ceasing to have a fixed residence and has subsequently complied with the requirements of subsections (4)(a)(vii) or (viii) and (6) of this section. To prevail, the person must prove the defense by a preponderance of the evidence.

(7) 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.

~~((8))~~ (9) 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.

~~((9))~~ (10) 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 ~~((9))~~ (10)(b); and (iii) any federal or out-of-state conviction for an offense that under the laws of this state would be classified as a kidnapping offense under this subsection ~~((9))~~ (10)(b).

(c) "Employed" or "carries on a vocation" means employment that is full-time or part-time for a period of time exceeding fourteen days, or for an aggregate period of time exceeding thirty days during any calendar year. A person is employed or carries on a vocation whether the person's employment is financially compensated, volunteered, or for the purpose of government or educational benefit.

(d) "Student" means a person who is enrolled, on a full-time or part-time basis, in any public or private educational institution. An educational institution includes any secondary school, trade or professional institution, or institution of higher education.

~~((10))~~ (11)(a) A person who knowingly fails to register with the county sheriff or notify the county sheriff, or who changes his or her name without notifying the county sheriff and the state patrol, as required by this section is guilty of a class C felony if the crime for which the individual was convicted was a felony sex offense as defined in subsection ~~((9))~~ (10)(a) of this section or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony sex offense as defined in subsection ~~((9))~~ (10)(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.

~~((11))~~ (12)(a) A person who knowingly fails to register or who moves within the state without notifying the county sheriff as required by this section is guilty of a class C felony if the crime for which the individual was convicted was a felony kidnapping offense as defined in subsection ~~((9))~~ (10)(b) of this section or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony kidnapping offense as defined in subsection ~~((9))~~ (10)(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.

Sec. 2. RCW 9A.44.130 and 2005 c 380 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 ((4.24.500)) 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) address; (iii) date and place of birth; (iv) place of employment; (v)

crime for which convicted; (vi) date and place of conviction; (vii) aliases used; (viii) social security number; (ix) photograph; and (x) fingerprints.

(b) Any person who lacks a fixed residence shall provide the following information when registering: (i) Name; (ii) date and place of birth; (iii) place of employment; (iv) crime for which convicted; (v) date and place of conviction; (vi) aliases used; (vii) social security number; (viii) photograph; (ix) fingerprints; and (x) where he or she plans to stay.

(4)(a) Offenders shall register with the county sheriff within the following deadlines. For purposes of this section the term "conviction" refers to adult convictions and juvenile adjudications for sex offenses or kidnapping offenses:

(i) OFFENDERS IN CUSTODY. (A) Sex offenders who committed a sex offense on, before, or after February 28, 1990, and who, on or after July 28, 1991, are in custody, as a result of that offense, of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, and (B) kidnapping offenders who on or after July 27, 1997, are in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, must register at the time of release from custody with an official designated by the agency that has jurisdiction over the offender. The agency shall within three days forward the registration information to the county sheriff for the county of the offender's anticipated residence. The offender must also register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. The agency that has jurisdiction over the offender shall provide notice to the offender of the duty to register. Failure to register at the time of release and within twenty-four hours of release constitutes a violation of this section and is punishable as provided in subsection ((10)) (11) 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 thirty days of establishing residence or reestablishing residence if the person is a former Washington resident. The duty to register under this subsection applies to sex offenders convicted under the laws of another state or a foreign country, federal or military statutes, or Washington state for offenses committed on or after February 28, 1990, and to kidnapping offenders convicted under the laws of another state or a foreign country, federal or military statutes, or Washington

state for offenses committed on or after July 27, 1997. Sex offenders and kidnapping offenders from other states or a foreign country who, when they move to Washington, are under the jurisdiction of the department of corrections, the indeterminate sentence review board, or the department of social and health services must register within twenty-four hours of moving to Washington. The agency that has jurisdiction over the offender shall notify the offender of the registration requirements before the offender moves to Washington.

(vi) **OFFENDERS FOUND NOT GUILTY BY REASON OF INSANITY.** Any adult or juvenile who has been found not guilty by reason of insanity under chapter 10.77 RCW of (A) committing a sex offense on, before, or after February 28, 1990, and who, on or after July 23, 1995, is in custody, as a result of that finding, of the state department of social and health services, or (B) committing a kidnapping offense on, before, or after July 27, 1997, and who on or after July 27, 1997, is in custody, as a result of that finding, of the state department of social and health services, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence. The state department of social and health services shall provide notice to the adult or juvenile in its custody of the duty to register. Any adult or juvenile who has been found not guilty by reason of insanity of committing a sex offense on, before, or after February 28, 1990, but who was released before July 23, 1995, or any adult or juvenile who has been found not guilty by reason of insanity of committing a kidnapping offense but who was released before July 27, 1997, shall be required to register within twenty-four hours of receiving notice of this registration requirement. The state department of social and health services shall make reasonable attempts within available resources to notify sex offenders who were released before July 23, 1995, and kidnapping offenders who were released before July 27, 1997. Failure to register within twenty-four hours of release, or of receiving notice, constitutes a violation of this section and is punishable as provided in subsection ~~((10))~~ (11) 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))~~ (11) of this section. The county sheriff shall not be required to determine whether the person is living within the county.

(c) An arrest on charges of failure to register, service of an information, or a complaint for a violation of this section, or arraignment on charges for a violation of this section, constitutes actual notice of the duty to register. Any person charged with the crime of failure to register under this section who asserts as a defense the lack of notice of the duty to register shall register immediately following actual notice of the duty through arrest, service, or arraignment. Failure to register as required under this subsection (4)(c) constitutes grounds for filing another charge of failing to register. Registering following arrest, service, or arraignment on charges shall not relieve the offender from criminal liability for failure to register prior to the filing of the original charge.

(d) The deadlines for the duty to register under this section do not relieve any sex offender of the duty to register under this section as it existed prior to July 28, 1991.

(5)(a) If any person required to register pursuant to this section changes his or her residence address within the same county, the person must send written notice of the change of address to the county sheriff within seventy-two hours of moving. If any person required to register pursuant to this section moves to a new county, the person must send written notice of the change of address at least fourteen days before moving to the county sheriff in the new county of residence and must register with that county sheriff within twenty-four hours of moving. The person must also send written notice within ten days of the change of address in the new county to the county sheriff with whom the person last registered. The county sheriff with whom the person last registered shall promptly forward the information concerning the change of address to the county sheriff for the county of the person's new residence. Upon receipt of notice of change of address to a new state, the county sheriff shall promptly forward the information regarding the change of address to the agency designated by the new state as the state's offender registration agency.

(b) It is an affirmative defense to a charge that the person failed to send a notice at least fourteen days in advance of moving as required under (a) of this subsection that the person did not know the location of his or her new residence at least fourteen days before moving. The defendant must establish the defense by a preponderance of the evidence and, to prevail on the defense, must also prove by a preponderance that the defendant sent the required notice within twenty-four hours of determining the new address.

(6)(a) Any person required to register under this section who lacks a fixed residence shall provide written notice to the sheriff of the county where he or she last registered within forty-eight hours excluding weekends and holidays after ceasing to have a fixed residence. The notice shall include the information required by subsection (3)(b) of this section, except the photograph and fingerprints. The county sheriff may, for reasonable cause, require the offender to provide a photograph and fingerprints. The sheriff shall forward this information to the sheriff of the county in which the person intends to reside, if the person intends to reside in another county.

(b) A person who lacks a fixed residence must report weekly, in person, to the sheriff of the county where he or she is registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. The county sheriff's office may require the person to list the locations where the person has stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

(c) If any person required to register pursuant to this section does not have a fixed residence, it is an affirmative defense to the charge of failure to register, that he or she provided written notice to the sheriff of the county where he or she last registered within forty-eight hours excluding weekends and holidays after ceasing to have a fixed residence and has subsequently complied with the requirements of subsections (4)(a)(vii) or (viii) and (6) of this section. To prevail, the person must prove the defense by a preponderance of the evidence.

(7) 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.

~~((8))~~ (9) 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.

~~((9))~~ (10) 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 ~~((9))~~ (10)(b); and (iii) any federal or out-of-state conviction for an offense that under the laws of this state would be classified as a kidnapping offense under this subsection ~~((9))~~ (10)(b).

(c) "Employed" or "carries on a vocation" means employment that is full-time or part-time for a period of time exceeding fourteen days, or for an aggregate period of time exceeding thirty days during any calendar year. A person is employed or carries on a vocation whether the person's employment is financially compensated, volunteered, or for the purpose of government or educational benefit.

(d) "Student" means a person who is enrolled, on a full-time or part-time basis, in any public or private educational institution. An educational institution includes any secondary school, trade or professional institution, or institution of higher education.

~~((10))~~ (11)(a) A person who knowingly fails to register with the county sheriff or notify the county sheriff, or who changes his or her name without notifying the county sheriff and the state patrol, as required by this section is guilty of a class C felony if the crime for which the individual was convicted was a felony sex offense as defined in subsection ~~((9))~~ (10)(a) of this section or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony sex offense as defined in subsection ~~((9))~~ (10)(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.

~~((11))~~ (12)(a) A person who knowingly fails to register or who moves within the state without notifying the county sheriff as required by this section is

guilty of a class C felony if the crime for which the individual was convicted was a felony kidnapping offense as defined in subsection ~~((9))~~ (10)(b) of this section or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony kidnapping offense as defined in subsection ~~((9))~~ (10)(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.

~~((12))~~ (13) 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.

NEW SECTION. Sec. 3. Section 1 of this act expires September 1, 2006.

NEW SECTION. Sec. 4. Section 2 of this act takes effect September 1, 2006.

Passed by the Senate March 8, 2006.

Passed by the House March 7, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 130

[Substitute House Bill 2407]

SEX OFFENDERS—ELECTRONIC MONITORING

AN ACT Relating to electronic monitoring of sex offenders; amending RCW 9.94A.713 and 9.94A.715; and adding a new section to chapter 4.24 RCW.

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

Sec. 1. RCW 9.94A.713 and 2001 2nd sp.s. c 12 s 304 are each amended to read as follows:

(1) When an offender is sentenced under RCW 9.94A.712, the department shall assess the offender's risk of recidivism and shall recommend to the board any additional or modified conditions of the offender's community custody based upon the risk to community safety. In addition, the department shall make a recommendation with regard to, and the board may require the offender to participate in, rehabilitative programs, or otherwise perform affirmative conduct, and obey all laws. The department may recommend and, if recommended, the board may impose electronic monitoring as a condition of community custody for the offender. Within the resources made available by the department for this purpose, the department shall carry out any monitoring imposed under this section using the most appropriate technology given the individual circumstances of the offender. As used in this section, "electronic monitoring" means the monitoring of an offender using an electronic offender tracking system including, but not limited to, a system using radio frequency or active or passive global positioning technology. The board must consider and may impose department-recommended conditions.

(2) The department may not recommend and the board may not impose conditions that are contrary to those ordered by the court and may not

contravene or decrease court-imposed conditions. The board shall notify the offender in writing of any such conditions or modifications.

(3) In setting, modifying, and enforcing conditions of community custody, the department shall be deemed to be performing a quasi-judicial function.

(4) If an offender violates conditions imposed by the court, the department, or the board during community custody, the board or the department may transfer the offender to a more restrictive confinement status and impose other available sanctions as provided in RCW 9.95.435.

(5) By the close of the next business day, after receiving notice of a condition imposed by the board or the department, an offender may request an administrative hearing under rules adopted by the board. The condition shall remain in effect unless the hearing examiner finds that it is not reasonably related to any of the following:

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

(6) An offender released by the board under RCW 9.95.420 shall be subject to the supervision of the department until the expiration of the maximum term of the sentence. The department shall monitor the offender's compliance with conditions of community custody imposed by the court, department, or board, and promptly report any violations to the board. Any violation of conditions of community custody established or modified by the board shall be subject to the provisions of RCW 9.95.425 through 9.95.440.

(7) If the department finds that an emergency exists requiring the immediate imposition of conditions of release in addition to those set by the board under RCW 9.95.420 and subsection (1) of this section in order to prevent the offender from committing a crime, the department may impose additional conditions. The department may not impose conditions that are contrary to those set by the board or the court and may not contravene or decrease court-imposed or board-imposed conditions. Conditions imposed under this subsection shall take effect immediately after notice to the offender by personal service, but shall not remain in effect longer than seven working days unless approved by the board under subsection (1) of this section within seven working days.

Sec. 2. RCW 9.94A.715 and 2003 c 379 s 6 are each amended to read as follows:

(1) When a court sentences a person to the custody of the department for a sex offense not sentenced under RCW 9.94A.712, a violent offense, any crime against persons under RCW 9.94A.411(2), or a felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000, the court shall in addition to the other terms of the sentence, sentence the offender to community custody for the community custody range established under RCW 9.94A.850 or up to the period of earned release awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer. The community custody shall begin: (a) Upon completion of the term of confinement; (b) at such time as the offender is transferred to community custody in lieu of earned release in accordance with RCW 9.94A.728 (1) and (2); or (c) with regard to offenders sentenced under RCW 9.94A.660, upon failure to complete or administrative termination from the special drug offender sentencing alternative program. Except as provided in

RCW 9.94A.501, the department shall supervise any sentence of community custody imposed under this section.

(2)(a) Unless a condition is waived by the court, the conditions of community custody shall include those provided for in RCW 9.94A.700(4). The conditions may also include those provided for in RCW 9.94A.700(5). The court may also order the offender to participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community, and the department shall enforce such conditions pursuant to subsection (6) of this section.

(b) As part of any sentence that includes a term of community custody imposed under this subsection, the court shall also require the offender to comply with any conditions imposed by the department under RCW 9.94A.720. The department shall assess the offender's risk of reoffense and may establish and modify additional conditions of the offender's community custody based upon the risk to community safety. In addition, the department may require the offender to participate in rehabilitative programs, or otherwise perform affirmative conduct, and to obey all laws. The department may impose electronic monitoring as a condition of community custody for an offender sentenced to a term of community custody under this section pursuant to a conviction for a sex offense. Within the resources made available by the department for this purpose, the department shall carry out any electronic monitoring imposed under this section using the most appropriate technology given the individual circumstances of the offender. As used in this section, "electronic monitoring" means the monitoring of an offender using an electronic offender tracking system including, but not limited to, a system using radio frequency or active or passive global positioning system technology.

(c) The department may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court imposed conditions. The department shall notify the offender in writing of any such conditions or modifications. In setting, modifying, and enforcing conditions of community custody, the department shall be deemed to be performing a quasi-judicial function.

(3) If an offender violates conditions imposed by the court or the department pursuant to this section during community custody, the department may transfer the offender to a more restrictive confinement status and impose other available sanctions as provided in RCW 9.94A.737 and 9.94A.740.

(4) Except for terms of community custody under RCW 9.94A.670, the department shall discharge the offender from community custody on a date determined by the department, which the department may modify, based on risk and performance of the offender, within the range or at the end of the period of earned release, whichever is later.

(5) At any time prior to the completion or termination of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the

expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.631 and may be punishable as contempt of court as provided for in RCW 7.21.040. If the court extends a condition beyond the expiration of the term of community custody, the department is not responsible for supervision of the offender's compliance with the condition.

(6) Within the funds available for community custody, the department shall determine conditions and duration of community custody on the basis of risk to community safety, and shall supervise offenders during community custody on the basis of risk to community safety and conditions imposed by the court. The secretary shall adopt rules to implement the provisions of this subsection.

(7) By the close of the next business day after receiving notice of a condition imposed or modified by the department, an offender may request an administrative review under rules adopted by the department. The condition shall remain in effect unless the reviewing officer finds that it is not reasonably related to any of the following: (a) The crime of conviction; (b) the offender's risk of reoffending; or (c) the safety of the community.

NEW SECTION. Sec. 3. A new section is added to chapter 4.24 RCW to read as follows:

Local governments, their subdivisions and employees, the department of corrections and its employees, and the Washington association of sheriffs and police chiefs and its employees are immune from civil liability for damages arising from incidents involving offenders who are placed on electronic monitoring, unless it is shown that an employee acted with gross negligence or bad faith.

Passed by the House March 6, 2006.

Passed by the Senate February 28, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 131

[Substitute Senate Bill 6325]

SEX OFFENDERS—RESIDENCY REQUIREMENTS

AN ACT Relating to establishing residence restrictions for sex offenders; creating new sections; repealing 2005 c 436 s 4 (uncodified); repealing 2005 c 436 s 6 (uncodified); and providing a contingent expiration date.

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

NEW SECTION. Sec. 1. (1) Sections 1 through 3 and 5 of chapter 436, Laws of 2005, supersede and preempt all rules, regulations, codes, statutes, or ordinances of all cities, counties, municipalities, and local agencies regarding the same subject matter. The state preemption created in this section applies to all rules, regulations, codes, statutes, and ordinances pertaining to residency restrictions for persons convicted of any sex offense at any time.

(2) This section does not apply to rules, regulations, codes, statutes, or ordinances adopted by cities, counties, municipalities, or local agencies prior to March 1, 2006, except as required by an order issued by a court of competent

jurisdiction pursuant to litigation regarding the rules, regulations, codes, statutes, or ordinances.

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

- (1) 2005 c 436 s 4 (uncodified); and
- (2) 2005 c 436 s 6 (uncodified).

NEW SECTION. Sec. 3. (1) The association of Washington cities, working with the cities and towns of Washington state, shall develop statewide standards for cities and towns to use when determining whether to impose residency restrictions on sex offenders within their jurisdiction.

(2) The association of Washington cities shall work in consultation with a representative from each of the following agencies and organizations:

- (a) The attorney general of Washington;
- (b) The Washington state association of counties;
- (c) The department of corrections;
- (d) The Washington state coalition of sexual assault programs;
- (e) The Washington association of sheriffs and police chiefs; and

(f) Any other agencies and organizations as deemed appropriate by the association of Washington cities, such as the Washington association of prosecuting attorneys, the juvenile rehabilitation administration of the department of social and health services, the indeterminate sentence review board, the Washington association for the treatment of sexual abusers, and the department of community, trade, and economic development.

(3) The statewide standards for whether to impose residency restrictions on sex offenders should consider the following elements:

(a) An identification of areas in which sex offenders should not reside due to concerns regarding public safety and welfare;

(b) An identification of areas in which sex offenders may reside, taking into consideration factors such as:

- (i) How many housing units must reasonably be available in order to accommodate registered sex offenders in a city or town;
- (ii) The average response time of emergency services to the areas;
- (iii) The proximity of risk potential activities to the areas; and
- (iv) The proximity of medical care, mental health care providers, and sex offender treatment providers to the areas;

(c) A prohibition against completely precluding sex offender residences within a city or town, implicating a sex offender's right to travel, or enacting a criminal regulatory measure;

(d) Appropriate civil remedies for violations of a local ordinance; and

(e) Unique local conditions that should be given due deference, such as proximity to state facilities that house or treat sex offenders.

(4) The association of Washington cities, on behalf of the cities and towns in Washington, shall present consensus statewide standards, along with any consensus recommendations and proposed legislation, to the governor and the legislature no later than December 31, 2007. The standards and any recommendations or proposed legislation must reflect a consensus among the association of Washington cities and the entities in subsection (2)(a) through (e)

of this section. These entities must participate in good faith in activities carried out under this section with a goal of achieving consensus standards.

NEW SECTION. Sec. 4. (1) If the association of Washington cities submits consensus statewide standards to the governor and the legislature on or before December 31, 2007, section 1 of this act expires July 1, 2008, and may only be revived by an affirmative act of the legislature through duly enacted legislation.

(2) If the association of Washington cities does not submit consensus statewide standards to the governor and legislature on or before December 31, 2007, section 1 of this act does not expire.

Passed by the Senate March 8, 2006.

Passed by the House March 7, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 132

[Substitute Senate Bill 5042]

SEX OFFENSES—STATUTE OF LIMITATIONS

AN ACT Relating to tolling the statute of limitations for felony sex offenses; and amending RCW 9A.04.080.

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

Sec. 1. RCW 9A.04.080 and 1998 c 221 s 2 are each amended to read as follows:

(1) Prosecutions for criminal offenses shall not be commenced after the periods prescribed in this section.

(a) The following offenses may be prosecuted at any time after their commission:

(i) Murder;

(ii) Homicide by abuse;

(iii) Arson if a death results;

(iv) Vehicular homicide;

(v) Vehicular assault if a death results;

(vi) Hit-and-run injury-accident if a death results (RCW 46.52.020(4)).

(b) The following offenses shall not be prosecuted more than ten years after their commission:

(i) Any felony committed by a public officer if the commission is in connection with the duties of his or her office or constitutes a breach of his or her public duty or a violation of the oath of office;

(ii) Arson if no death results; or

(iii) Violations of RCW 9A.44.040 or 9A.44.050 if the rape is reported to a law enforcement agency within one year of its commission; except that if the victim is under fourteen years of age when the rape is committed and the rape is reported to a law enforcement agency within one year of its commission, the violation may be prosecuted up to three years after the victim's eighteenth birthday or up to ten years after the rape's commission, whichever is later. If a violation of RCW 9A.44.040 or 9A.44.050 is not reported within one year, the rape may not be prosecuted: (A) More than three years after its commission if

the violation was committed against a victim fourteen years of age or older; or (B) more than three years after the victim's eighteenth birthday or more than seven years after the rape's commission, whichever is later, if the violation was committed against a victim under fourteen years of age.

(c) Violations of the following statutes shall not be prosecuted more than three years after the victim's eighteenth birthday or more than seven years after their commission, whichever is later: RCW 9A.44.073, 9A.44.076, 9A.44.083, 9A.44.086, 9A.44.070, 9A.44.080, 9A.44.100(1)(b), or 9A.64.020.

(d) The following offenses shall not be prosecuted more than six years after their commission: Violations of RCW 9A.82.060 or 9A.82.080.

(e) The following offenses shall not be prosecuted more than five years after their commission: Any class C felony under chapter 74.09, 82.36, or 82.38 RCW.

(f) Bigamy shall not be prosecuted more than three years after the time specified in RCW 9A.64.010.

(g) A violation of RCW 9A.56.030 must not be prosecuted more than three years after the discovery of the offense when the victim is a tax exempt corporation under 26 U.S.C. Sec. 501(c)(3).

(h) No other felony may be prosecuted more than three years after its commission; except that in a prosecution under RCW 9A.44.115, if the person who was viewed, photographed, or filmed did not realize at the time that he or she was being viewed, photographed, or filmed, the prosecution must be commenced within two years of the time the person who was viewed or in the photograph or film first learns that he or she was viewed, photographed, or filmed.

(i) No gross misdemeanor may be prosecuted more than two years after its commission.

(j) No misdemeanor may be prosecuted more than one year after its commission.

(2) The periods of limitation prescribed in subsection (1) of this section do not run during any time when the person charged is not usually and publicly resident within this state.

(3) In any prosecution for a sex offense as defined in RCW 9.94A.030, the periods of limitation prescribed in subsection (1) of this section run from the date of commission or one year from the date on which the identity of the suspect is conclusively established by deoxyribonucleic acid testing, whichever is later.

(4) If, before the end of a period of limitation prescribed in subsection (1) of this section, an indictment has been found or a complaint or an information has been filed, and the indictment, complaint, or information is set aside, then the period of limitation is extended by a period equal to the length of time from the finding or filing to the setting aside.

Passed by the Senate January 18, 2006.

Passed by the House February 28, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 133

[House Bill 3252]

SPECIAL SEX OFFENDER SENTENCING ALTERNATIVE

AN ACT Relating to prohibiting offenders who enter Alford pleas from receiving a special sex offender sentencing alternative; reenacting and amending RCW 9.94A.670; and prescribing penalties.

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

Sec. 1. RCW 9.94A.670 and 2004 c 176 s 4 and 2004 c 38 s 9 are each reenacted and amended to read as follows:

(1) Unless the context clearly requires otherwise, the definitions in this subsection apply to this section only.

(a) "Sex offender treatment provider" or "treatment provider" means a certified sex offender treatment provider or a certified affiliate sex offender treatment provider as defined in RCW 18.155.020.

(b) "Substantial bodily harm" means bodily injury that involves a temporary but substantial disfigurement, or that causes a temporary but substantial loss or impairment of the function of any body part or organ, or that causes a fracture of any body part or organ.

(c) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the crime charged. "Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

(2) An offender is eligible for the special sex offender sentencing alternative if:

(a) The offender has been convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent offense. If the conviction results from a guilty plea, the offender must, as part of his or her plea of guilty, voluntarily and affirmatively admit he or she committed all of the elements of the crime to which the offender is pleading guilty. This alternative is not available to offenders who plead guilty to the offense charged under *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970) and *State v. Newton*, 87 Wash.2d 363, 552 P.2d 682 (1976);

(b) The offender has no prior convictions for a sex offense as defined in RCW 9.94A.030 or any other felony sex offenses in this or any other state;

(c) The offender has no prior adult convictions for a violent offense that was committed within five years of the date the current offense was committed;

(d) The offense did not result in substantial bodily harm to the victim;

(e) The offender had an established relationship with, or connection to, the victim such that the sole connection with the victim was not the commission of the crime; and

(f) The offender's standard sentence range for the offense includes the possibility of confinement for less than eleven years.

(3) If the court finds the offender is eligible for this alternative, the court, on its own motion or the motion of the state or the offender, may order an examination to determine whether the offender is amenable to treatment.

(a) The report of the examination shall include at a minimum the following:

(i) The offender's version of the facts and the official version of the facts;

(ii) The offender's offense history;

(iii) An assessment of problems in addition to alleged deviant behaviors;

- (iv) The offender's social and employment situation; and
- (v) Other evaluation measures used.

The report shall set forth the sources of the examiner's information.

(b) The examiner shall assess and report regarding the offender's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

- (i) Frequency and type of contact between offender and therapist;
- (ii) Specific issues to be addressed in the treatment and description of planned treatment modalities;
- (iii) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;
- (iv) Anticipated length of treatment; and
- (v) Recommended crime-related prohibitions and affirmative conditions, which must include, to the extent known, an identification of specific activities or behaviors that are precursors to the offender's offense cycle, including, but not limited to, activities or behaviors such as viewing or listening to pornography or use of alcohol or controlled substances.

(c) The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The examiner shall be selected by the party making the motion. The offender shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

(4) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this alternative, consider whether the alternative is too lenient in light of the extent and circumstances of the offense, consider whether the offender has victims in addition to the victim of the offense, consider whether the offender is amenable to treatment, consider the risk the offender would present to the community, to the victim, or to persons of similar age and circumstances as the victim, and consider the victim's opinion whether the offender should receive a treatment disposition under this section. The court shall give great weight to the victim's opinion whether the offender should receive a treatment disposition under this section. If the sentence imposed is contrary to the victim's opinion, the court shall enter written findings stating its reasons for imposing the treatment disposition. The fact that the offender admits to his or her offense does not, by itself, constitute amenability to treatment. If the court determines that this alternative is appropriate, the court shall then impose a sentence or, pursuant to RCW 9.94A.712, a minimum term of sentence, within the standard sentence range. If the sentence imposed is less than eleven years of confinement, the court may suspend the execution of the sentence and impose the following conditions of suspension:

(a) The court shall order the offender to serve a term of confinement of up to twelve months or the maximum term within the standard range, whichever is less. The court may order the offender to serve a term of confinement greater than twelve months or the maximum term within the standard range based on the presence of an aggravating circumstance listed in RCW 9.94A.535(~~(2)~~) (3). In no case shall the term of confinement exceed the statutory maximum sentence for the offense. The court may order the offender to serve all or part of his or her term of confinement in partial confinement. An offender sentenced to a term of

confinement under this subsection is not eligible for earned release under RCW 9.92.151 or 9.94A.728.

(b) The court shall place the offender on community custody for the length of the suspended sentence, the length of the maximum term imposed pursuant to RCW 9.94A.712, or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department under RCW 9.94A.720.

(c) The court shall order treatment for any period up to five years in duration. The court, in its discretion, shall order outpatient sex offender treatment or inpatient sex offender treatment, if available. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The offender shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the community corrections officer, and the court. If any party or the court objects to a proposed change, the offender shall not change providers or conditions without court approval after a hearing.

(d) As conditions of the suspended sentence, the court shall impose specific prohibitions and affirmative conditions relating to the known precursor activities or behaviors identified in the proposed treatment plan under subsection (3)(b)(v) of this section or identified in an annual review under subsection (7)(b) of this section.

(5) As conditions of the suspended sentence, the court may impose one or more of the following:

(a) Crime-related prohibitions;

(b) Require the offender to devote time to a specific employment or occupation;

(c) Require the offender to remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;

(d) Require the offender to report as directed to the court and a community corrections officer;

(e) Require the offender to pay all court-ordered legal financial obligations as provided in RCW 9.94A.030;

(f) Require the offender to perform community restitution work; or

(g) Require the offender to reimburse the victim for the cost of any counseling required as a result of the offender's crime.

(6) At the time of sentencing, the court shall set a treatment termination hearing for three months prior to the anticipated date for completion of treatment.

(7)(a) The sex offender treatment provider shall submit quarterly reports on the offender's progress in treatment to the court and the parties. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance, offender's compliance with requirements, treatment activities, the offender's relative progress in treatment, and any other material specified by the court at sentencing.

(b) The court shall conduct a hearing on the offender's progress in treatment at least once a year. At least fourteen days prior to the hearing, notice of the hearing shall be given to the victim. The victim shall be given the opportunity to make statements to the court regarding the offender's supervision and treatment. At the hearing, the court may modify conditions of community custody

including, but not limited to, crime-related prohibitions and affirmative conditions relating to activities and behaviors identified as part of, or relating to precursor activities and behaviors in, the offender's offense cycle or revoke the suspended sentence.

(8) At least fourteen days prior to the treatment termination hearing, notice of the hearing shall be given to the victim. The victim shall be given the opportunity to make statements to the court regarding the offender's supervision and treatment. Prior to the treatment termination hearing, the treatment provider and community corrections officer shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment, including proposed community custody conditions. The court may order an evaluation regarding the advisability of termination from treatment by a sex offender treatment provider who may not be the same person who treated the offender under subsection (4) of this section or any person who employs, is employed by, or shares profits with the person who treated the offender under subsection (4) of this section unless the court has entered written findings that such evaluation is in the best interest of the victim and that a successful evaluation of the offender would otherwise be impractical. The offender shall pay the cost of the evaluation. At the treatment termination hearing the court may: (a) Modify conditions of community custody, and either (b) terminate treatment, or (c) extend treatment in two-year increments for up to the remaining period of community custody.

(9)(a) If a violation of conditions other than a second violation of the prohibitions or affirmative conditions relating to precursor behaviors or activities imposed under subsection (4)(d) or (7)(b) of this section occurs during community custody, the department shall either impose sanctions as provided for in RCW 9.94A.737(2)(a) or refer the violation to the court and recommend revocation of the suspended sentence as provided for in subsections (6) and (8) of this section.

(b) If a second violation of the prohibitions or affirmative conditions relating to precursor behaviors or activities imposed under subsection (4)(d) or (7)(b) of this section occurs during community custody, the department shall refer the violation to the court and recommend revocation of the suspended sentence as provided in subsection (10) of this section.

(10) The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence if: (a) The offender violates the conditions of the suspended sentence, or (b) the court finds that the offender is failing to make satisfactory progress in treatment. All confinement time served during the period of community custody shall be credited to the offender if the suspended sentence is revoked.

(11) The offender's sex offender treatment provider may not be the same person who examined the offender under subsection (3) of this section or any person who employs, is employed by, or shares profits with the person who examined the offender under subsection (3) of this section, unless the court has entered written findings that such treatment is in the best interests of the victim and that successful treatment of the offender would otherwise be impractical. Examinations and treatment ordered pursuant to this subsection shall only be conducted by certified sex offender treatment providers or certified affiliate sex

offender treatment providers under chapter 18.155 RCW unless the court finds that:

(a) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; or

(b)(i) No certified sex offender treatment providers or certified affiliate sex offender treatment providers are available for treatment within a reasonable geographical distance of the offender's home; and

(ii) The evaluation and treatment plan comply with this section and the rules adopted by the department of health.

(12) If the offender is less than eighteen years of age when the charge is filed, the state shall pay for the cost of initial evaluation and treatment.

Passed by the House February 1, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 134

[Substitute House Bill 2654]

SEX OFFENDER TREATMENT PROVIDERS

AN ACT Relating to sex offender treatment providers; and amending RCW 18.155.070 and 18.155.075.

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

Sec. 1. RCW 18.155.070 and 1990 c 3 s 807 are each amended to read as follows:

The department shall issue a certificate to any applicant who meets the following requirements:

(1) Successful completion of an educational program approved by the secretary or successful completion of alternate training which meets the criteria of the secretary;

(2) Successful completion of any experience requirement established by the secretary;

(3) Successful completion of an examination administered or approved by the secretary;

(4) Not having engaged in unprofessional conduct or being unable to practice with reasonable skill and safety as a result of a physical or mental impairment;

(5) Not convicted of a sex offense, as defined in RCW 9.94A.030 or convicted in any other jurisdiction of an offense that under the laws of this state would be classified as a sex offense as defined in RCW 9.94A.030; and

(6) Other requirements as may be established by the secretary that impact the competence of the sex offender treatment provider.

Sec. 2. RCW 18.155.075 and 2004 c 38 s 6 are each amended to read as follows:

The department shall issue an affiliate certificate to any applicant who meets the following requirements:

(1) Successful completion of an educational program approved by the secretary or successful completion of alternate training which meets the criteria of the secretary;

(2) Successful completion of an examination administered or approved by the secretary;

(3) Proof of supervision by a certified sex offender treatment provider;

(4) Not having engaged in unprofessional conduct or being unable to practice with reasonable skill and safety as a result of a physical or mental impairment; ~~(and)~~

(5) Not convicted of a sex offense, as defined in RCW 9.94A.030 or convicted in any other jurisdiction of an offense that under the laws of this state would be classified as a sex offense as defined in RCW 9.94A.030; and

(6) Other requirements as may be established by the secretary that impact the competence of the sex offender treatment provider.

Passed by the House February 8, 2006.

Passed by the Senate March 3, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 135

[Engrossed Substitute Senate Bill 6580]

SEX OFFENDER NOTIFICATION—SCHOOLS

AN ACT Relating to sex offender and kidnapping offender notification and information sharing in schools; creating new sections; and providing an expiration date.

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

NEW SECTION. Sec. 1. (1) The office of the superintendent of public instruction shall convene a work group to develop a model policy for schools to follow when they receive notification pursuant to RCW 9A.44.130. The model policy must address, among other issues:

(a) The designation of appropriate school personnel to receive notification of information received pursuant to RCW 9A.44.130;

(b) Identification of school personnel who are in a position to recognize high-risk situations or factors that may indicate the offender is encountering difficulty in controlling his or her behavior;

(c) Whether some portion of the records received from the juvenile rehabilitation administration or court personnel is confidential or otherwise protected;

(d) To whom some portion of the information received must or should be disclosed;

(e) How to assist juvenile offenders in making a safe and successful transition from institutional schools to public schools;

(f) How to work with juvenile probation and juvenile parole professionals in implementing a safety plan;

(g) What actions school authorities may take when they identify high-risk situations, both for the short-term and long-term safety of other students; and

(h) Variations in approaches depending on the offender level of the enrolled offender.

(2) In carrying out its duties under this section, the office of the superintendent of public instruction shall consult, as appropriate, with representatives from other agencies and professional organizations, including:

- (a) The Washington state school directors association;
- (b) The department of corrections;
- (c) County sheriffs' offices;
- (d) Prosecuting attorneys;
- (e) Juvenile probation counselors;
- (f) Juvenile court administrators;
- (g) The juvenile rehabilitation administration of the department of social and health services;
- (h) Elementary and secondary school districts;
- (i) Educational service districts;
- (j) The Washington association of school administrators;
- (k) The Washington state parent-teacher association;
- (l) Parents and guardians of school-age children;
- (m) Washington coalition of sexual assault programs; and
- (n) Other individuals with related experience as deemed appropriate.

(3) The office of the superintendent of public instruction shall submit to appropriate committees of the legislature a final report and recommendations by November 15, 2006.

(4) This section expires July 1, 2007.

NEW SECTION. Sec. 2. The Washington coalition of sexual assault programs, in consultation with the Washington association of sheriffs and police chiefs, the Washington association of prosecuting attorneys, and the office of the superintendent of public instruction, shall develop educational materials to be made available throughout the state to inform parents and other interested community members about:

(1) The laws related to sex offenses, including registration, community notification and the classification of sex offenders based on an assessment of the risk of reoffending;

(2) How to recognize behaviors characteristic of sex offenses and sex offenders;

(3) How to prevent victimization, particularly that of young children;

(4) How to take advantage of community resources for victims of sexual assault; and

(5) Other information as deemed appropriate.

NEW SECTION. Sec. 3. If specific funding for the purposes of section 2 of this act, referencing section 2 of this act by bill or chapter number and section number is not provided by June 30, 2006, in the omnibus appropriations act, section 2 of this act is null and void.

Passed by the Senate February 9, 2006.

Passed by the House February 28, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 136

[Senate Bill 6576]

SEX OFFENDER WEB SITE—INFORMATION

AN ACT Relating to forwarding of sex offender information; and amending RCW 43.43.540.

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

Sec. 1. RCW 43.43.540 and 2002 c 118 s 2 are each amended to read as follows:

The county sheriff shall (1) forward the information, photographs, and fingerprints obtained pursuant to RCW 9A.44.130, including the sex offender's risk level classification and any notice of change of address, to the Washington state patrol within five working days; and (2) upon implementation of RCW 4.24.550(5)(a), the Washington state patrol will forward ~~((any))~~ the information ~~((obtained pursuant to RCW 9A.44.130 that is))~~ necessary to operate the registered sex offender web site described in RCW 4.24.550(5)(a) to the Washington association of sheriffs and police chiefs within five working days of receiving the information, including any notice of change of address or change in risk level notification. The state patrol shall maintain a central registry of sex offenders and kidnapping offenders required to register under RCW 9A.44.130 and shall adopt rules consistent with chapters 10.97, 10.98, and 43.43 RCW as are necessary to carry out the purposes of RCW 9A.44.130, 9A.44.140, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and 72.09.330. The Washington state patrol shall reimburse the counties for the costs of processing the offender registration, including taking the fingerprints and the photographs.

Passed by the Senate February 9, 2006.

Passed by the House March 1, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 137

[Substitute Senate Bill 6320]

SEX OFFENDER MODEL POLICY WORK GROUP

AN ACT Relating to a model policy for disclosure of sex offender information; amending RCW 4.24.5501; and creating a new section.

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

Sec. 1. RCW 4.24.5501 and 1997 c 364 s 6 are each amended to read as follows:

(1) ~~((By December 1, 1997))~~ When funded, the Washington association of sheriffs and police chiefs shall convene a sex offender model policy work group to develop a model policy for law enforcement agencies ~~((to follow when they disclose information about sex offenders to the public under RCW 4.24.550. The model policy shall be designed to further the objectives of providing adequate notice to the community concerning sex offenders who are or will be residing in the community and of assisting community members in developing constructive plans to prepare themselves and their children for residing near released sex offenders))~~ and other criminal justice personnel. The model policy

shall provide guidelines for sex offender registration, community notification, and strategies for sex offender management.

(2) In developing the policy, the association shall consult with representatives of the following agencies and professions: (a) The department of corrections; (b) the department of social and health services; (c) the indeterminate sentence review board; (d) the Washington state council of police officers; (e) local correctional agencies; (f) the Washington association of prosecuting attorneys; (g) the Washington public defender association; (h) the Washington association for the treatment of sexual abusers; (i) the office of the superintendent of public instruction; (j) the criminal justice training commission; (k) the Washington association of criminal defense lawyers; (l) the association of Washington cities; (m) the Washington coalition of sexual assault programs; and ((+)) (n) victim advocates.

The sex offender model policy work group, once convened, shall first conduct a series of community meetings around the state to assess the practices and needs of communities, identify best practices on sex offender registration, community notification, and strategies for sex offender management. Once the sex offender model policy work group has received input from stakeholders on a final draft of the model policy, the policy shall be presented to the Washington association of sheriffs and police chiefs for adoption or rejection. Following the adoption of a model policy, the sex offender model policy work group shall conduct a series of meetings around the state with local law enforcement agencies and other criminal justice personnel to review the model policy and conduct training as needed. The sex offender model policy work group shall then be dissolved, and, when funded, the Washington association of sheriffs and police chiefs shall be responsible for the continued promotion of the model policy, including annual or biennial regional workshops with local law enforcement agencies and other criminal justice personnel to encourage sex offender registration, community notification, and strategies for sex offender management policies and practices that best fit the needs, characteristics, and risks of each community.

(3) The model policy shall, at a minimum, include recommendations to address the following issues: (a) Procedures for local agencies or officials to accomplish the notifications required under RCW 4.24.550(~~((8))~~) (10), including the identification of best practices for community notification, as they relate to the specific needs and characteristics to each community and the risk posed to that community; (b) contents and form of community notification documents, including procedures for ensuring the accuracy of factual information contained in the notification documents, and ways of protecting the privacy of victims of the offenders' crimes; (c) methods of distributing community notification documents, including distribution to schools; (d) methods of providing follow-up notifications to community residents at specified intervals and of disclosing information about offenders to law enforcement agencies in other jurisdictions if necessary to protect the public; (e) methods of educating community residents at public meetings on how they can use the information in the notification document in a reasonable manner to enhance their individual and collective safety; (f) procedures for educating community members regarding the right of sex offenders not to be the subject of harassment or criminal acts as a result of the notification process; (~~and~~) (g) procedures and documents for local law

enforcement agencies to provide appropriate notification when a sex offender risk level is reclassified, including strategies to monitor the reclassification of sex offender risk levels by local law enforcement agencies; (h) formulas and instructions on standard sex offender risk assessment instruments; (i) strategies for sex offender management; and (j) other matters the Washington association of sheriffs and police chiefs deems necessary ((to ensure the effective and fair administration of RCW 4.24.550)) as it relates to sex offender registration, community notification, and management.

NEW SECTION. Sec. 2. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2006, in the supplemental omnibus appropriations act, this act is null and void.

Passed by the Senate February 9, 2006.

Passed by the House March 2, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 138

[Substitute House Bill 2576]

SEXUAL ASSAULT PROTECTION ORDER ACT

AN ACT Relating to protection of sexual assault victims; amending RCW 9A.46.060, 10.14.130, 10.31.100, 19.220.010, 26.50.110, and 59.18.575; reenacting and amending RCW 26.50.160; adding a new chapter to Title 7 RCW; creating a new section; and prescribing penalties.

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

NEW SECTION. Sec. 1. Sexual assault is the most heinous crime against another person short of murder. Sexual assault inflicts humiliation, degradation, and terror on victims. According to the FBI, a woman is raped every six minutes in the United States. Rape is recognized as the most underreported crime; estimates suggest that only one in seven rapes is reported to authorities. Victims who do not report the crime still desire safety and protection from future interactions with the offender. Some cases in which the rape is reported are not prosecuted. In these situations, the victim should be able to seek a civil remedy requiring that the offender stay away from the victim.

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

(1) "Nonconsensual" means a lack of freely given agreement.

(2) "Petitioner" means any named petitioner for the sexual assault protection order or any named victim of nonconsensual sexual conduct or nonconsensual sexual penetration on whose behalf the petition is brought.

(3) "Sexual assault protection order" means an ex parte temporary order or a final order granted under this chapter, which includes a remedy authorized by section 10 of this act.

(4) "Sexual conduct" means any of the following:

(a) Any intentional or knowing touching or fondling of the genitals, anus, or breasts, directly or indirectly, including through clothing;

(b) Any intentional or knowing display of the genitals, anus, or breasts for the purposes of arousal or sexual gratification of the respondent;

(c) Any intentional or knowing touching or fondling of the genitals, anus, or breasts, directly or indirectly, including through clothing, that the petitioner is forced to perform by another person or the respondent;

(d) Any forced display of the petitioner's genitals, anus, or breasts for the purposes of arousal or sexual gratification of the respondent or others;

(e) Any intentional or knowing touching of the clothed or unclothed body of a child under the age of thirteen, if done for the purpose of sexual gratification or arousal of the respondent or others; and

(f) Any coerced or forced touching or fondling by a child under the age of thirteen, directly or indirectly, including through clothing, of the genitals, anus, or breasts of the respondent or others.

(5) "Sexual penetration" means any contact, however slight, between the sex organ or anus of one person by an object, the sex organ, mouth, or anus of another person, or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex organ or anus of another person, including but not limited to cunnilingus, fellatio, or anal penetration. Evidence of emission of semen is not required to prove sexual penetration.

(6) "Nonphysical contact" includes, but is not limited to, telephone calls, mail, e-mail, fax, and written notes.

NEW SECTION. Sec. 3. A petition for a sexual assault protection order may be filed by a person:

(1) Who is a victim of nonconsensual sexual conduct or nonconsensual sexual penetration, including a single incident of nonconsensual sexual conduct or nonconsensual sexual penetration; or

(2) On behalf of any of the following persons who is a victim of nonconsensual sexual conduct or nonconsensual sexual penetration:

(a) A minor child;

(b) A vulnerable adult as defined in RCW 74.34.020 or 74.34.021; or

(c) Any other adult who, because of age, disability, health, or inaccessibility, cannot file the petition.

NEW SECTION. Sec. 4. (1) Any person may seek relief under this chapter by filing a petition with a court alleging that the person has been the victim of nonconsensual sexual conduct or nonconsensual sexual penetration committed by the respondent.

(2) 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.

(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) Jurisdiction of the courts over proceedings under this chapter shall be the same as jurisdiction over domestic violence protection orders under RCW 26.50.020(5).

(6) An action under this chapter shall be filed in the county or the municipality where the petitioner resides.

NEW SECTION. Sec. 5. There shall exist an action known as a petition for a sexual assault protection order.

(1) A petition for relief shall allege the existence of nonconsensual sexual conduct or nonconsensual sexual penetration, and shall be accompanied by an affidavit made under oath stating the specific statements or actions made at the same time of the sexual assault or subsequently thereafter, which give rise to a reasonable fear of future dangerous acts, for which relief is sought. Petitioner and respondent shall disclose the existence of any other litigation or of any other restraining, protection, or no-contact orders between the parties.

(2) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties.

(3) Within ninety days of receipt of the master copy from the administrative office of the courts, all court clerk's offices shall make available the standardized forms, instructions, and informational brochures required by section 19 of this act and shall fill in and keep current specific program names and telephone numbers for community resources. Any assistance or information provided by clerks under this section does not constitute the practice of law and clerks are not responsible for incorrect information contained in a petition.

(4) No filing fee may be charged for proceedings under this chapter. Forms and instructional brochures and the necessary number of certified copies shall be provided free of charge.

(5) A person is not required to post a bond to obtain relief in any proceeding under this section.

(6) If the petition states that disclosure of the petitioner's address would risk abuse of the petitioner or any member of the petitioner's family or household, that address may be omitted from all documents filed with the court. If the petitioner has not disclosed an address under this subsection, the petitioner shall designate an alternative address at which the respondent may serve notice of any motions.

NEW SECTION. Sec. 6. Upon receipt of the petition, the court shall order a hearing which shall be held not later than fourteen days from the date of the order. The court may schedule a hearing by telephone pursuant to local court rule, to reasonably accommodate a disability, or in exceptional circumstances to protect a petitioner from further nonconsensual sexual conduct or nonconsensual sexual penetration. The court shall require assurances of the petitioner's identity before conducting a telephonic hearing. Except as provided in section 12 of this act, personal service shall be made upon the respondent not less than five court days prior to the hearing. If timely personal service cannot be made, the court shall set a new hearing date and shall require additional attempts at obtaining personal service. The court may issue an ex parte temporary sexual assault order pending the hearing as provided in section 12 of this act.

NEW SECTION. Sec. 7. Sexual assault advocates, as defined in RCW 5.60.060, shall be allowed to accompany the victim and confer with the victim, unless otherwise directed by the court. Court administrators shall allow sexual assault advocates to assist victims of nonconsensual sexual conduct or nonconsensual sexual penetration in the preparation of petitions for sexual assault protection orders. Sexual assault advocates are not engaged in the unauthorized practice of law when providing assistance of the types specified in

this section. Communications between the petitioner and a sexual assault advocate are protected as provided by RCW 5.60.060.

NEW SECTION. Sec. 8. The court may appoint counsel to represent the petitioner if the respondent is represented by counsel.

NEW SECTION. Sec. 9. (1) In proceedings for a sexual assault protection order and prosecutions for violating a sexual assault protection order, the prior sexual activity or the reputation of the petitioner is inadmissible except:

(a) As evidence concerning the past sexual conduct of the petitioner with the respondent when this evidence is offered by the respondent upon the issue of whether the petitioner consented to the sexual conduct with respect to which the offense is alleged; or

(b) When constitutionally required to be admitted.

(2) No evidence admissible under this section may be introduced unless ruled admissible by the court after an offer of proof has been made at a hearing held in camera to determine whether the respondent has evidence to impeach the witness in the event that prior sexual activity with the respondent is denied. The offer of proof shall include reasonably specific information as to the date, time, and place of the past sexual conduct between the petitioner and the respondent. Unless the court finds that reasonably specific information as to date, time, or place, or some combination thereof, has been offered as to prior sexual activity with the respondent, counsel for the respondent shall be ordered to refrain from inquiring into prior sexual activity between the petitioner and the respondent. The court may not admit evidence under this section unless it determines at the hearing that the evidence is relevant and the probative value of the evidence outweighs the danger of unfair prejudice. The evidence shall be admissible at trial to the extent an order made by the court specifies the evidence that may be admitted and areas with respect to which the petitioner may be examined or cross-examined.

NEW SECTION. Sec. 10. (1)(a) If the court finds by a preponderance of the evidence that the petitioner has been a victim of nonconsensual sexual conduct or nonconsensual sexual penetration by the respondent, the court shall issue a sexual assault protection order; provided that the petitioner must also satisfy the requirements of section 12 of this act for ex parte temporary orders or section 13 of this act for final orders.

(b) The petitioner shall not be denied a sexual assault protection order because the petitioner or the respondent is a minor or because the petitioner did not report the assault to law enforcement. The court, when determining whether or not to issue a sexual assault protection order, may not require proof of physical injury on the person of the victim or proof that the petitioner has reported the sexual assault to law enforcement. Modification and extension of prior sexual assault protection orders shall be in accordance with this chapter.

(2) The court may provide relief as follows:

(a) Restrain the respondent from having any contact, including nonphysical contact, with the petitioner directly, indirectly, or through third parties regardless of whether those third parties know of the order;

(b) Exclude the respondent from the petitioner's residence, workplace, or school, or from the day care or school of a child, if the victim is a child;

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

(d) Order any other injunctive relief as necessary or appropriate for the protection of the petitioner.

(3) In cases where the petitioner and the respondent are under the age of eighteen and attend the same public or private elementary, middle, or high school, the court, when issuing a protection order and providing relief, shall consider, among the other facts of the case, the severity of the act, any continuing physical danger or emotional distress to the petitioner, and the expense difficulty, and educational disruption that would be caused by a transfer of the respondent to another school. The court may order that the person restrained in the order not attend the public or approved private elementary, middle, or high school attended by the person under the age of eighteen protected by the order. In the event the court orders a transfer of the restrained person to another school, the parents or legal guardians of the person restrained in the order are responsible for transportation and other costs associated with the change of school by the person restrained in the order. The court shall send notice of the restriction on attending the same school as the person protected by the order to the public or approved private school the person restrained by the order will attend and to the school the person protected by the order attends.

(4) Denial of a remedy may not be based, in whole or in part, on evidence that:

- (a) The respondent was voluntarily intoxicated;
 - (b) The petitioner was voluntarily intoxicated; or
 - (c) The petitioner engaged in limited consensual sexual touching.
- (5) Monetary damages are not recoverable as a remedy.

(6) A knowing violation of a court order issued under this section is punishable under RCW 26.50.110.

NEW SECTION. Sec. 11. For the purposes of issuing a sexual assault protection order, deciding what relief should be included in the order, and enforcing the order, RCW 9A.08.020 shall govern whether the respondent is legally accountable for the conduct of another person.

NEW SECTION. Sec. 12. (1) An ex parte temporary sexual assault protection order shall issue if the petitioner satisfies the requirements of this subsection by a preponderance of the evidence. The petitioner shall establish that:

- (a) The petitioner has been a victim of nonconsensual sexual conduct or nonconsensual sexual penetration by the respondent; and
- (b) There is good cause to grant the remedy, regardless of prior service of process or of notice upon the respondent, because the harm which that remedy is intended to prevent would be likely to occur if the respondent were given any prior notice, or greater notice than was actually given, of the petitioner's efforts to obtain judicial relief.

(2) If the respondent appears in court for this hearing for an ex parte temporary order, he or she may elect to file a general appearance and testify. Any resulting order may be an ex parte temporary order, governed by this section.

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

(4) A knowing violation of a court order issued under this section is punishable under RCW 26.50.110.

NEW SECTION. Sec. 13. (1)(a) An ex parte temporary sexual assault protection order shall be effective for a fixed period not to exceed fourteen days. A full hearing, as provided in this chapter, shall be set for not later than fourteen days from the issuance of the temporary order. Except as provided in section 6 of this act, the respondent shall be personally served with a copy of the ex parte temporary sexual assault protection order along with a copy of the petition and notice of the date set for the hearing.

(b) Any ex parte temporary 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.

(2) Except as otherwise provided in this section or section 16 of this act, a final sexual assault protection order shall be effective for a fixed period of time, not to exceed two years.

(3) Any ex parte temporary or final sexual assault protection order may be renewed one or more times, as required. 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. If the motion for renewal is uncontested and the petitioner seeks no modification of the order, the order may be renewed on the basis of the petitioner's motion or affidavit stating that there has been no material change in relevant circumstances since entry of the order and stating the reason for the requested renewal. Renewals may be granted only in open court.

(4) Any sexual assault protection order which would expire on a court holiday shall instead expire at the close of the next court business day.

(5) The practice of dismissing or suspending a criminal prosecution in exchange for the issuance of a sexual assault protection order undermines the purposes of this chapter. This section shall not be construed as encouraging that practice.

NEW SECTION. Sec. 14. (1) Any sexual assault protection order shall describe each remedy granted by the court, in reasonable detail and not by reference to any other document, so that the respondent may clearly understand what he or she must do or refrain from doing.

(2) A sexual assault protection order shall further state the following:

(a) The name of each petitioner that the court finds was the victim of nonconsensual sexual conduct or nonconsensual sexual penetration by the respondent;

(b) The date and time the sexual assault protection order was issued, whether it is an ex parte temporary or final order, and the duration of the order;

(c) The date, time, and place for any scheduled hearing for renewal of that sexual assault protection order or for another order of greater duration or scope;

(d) For each remedy in an ex parte temporary sexual assault protection order, the reason for entering that remedy without prior notice to the respondent or greater notice than was actually given;

(e) For ex parte temporary sexual assault protection orders, that the respondent may petition the court, to reopen the order if he or she did not receive actual prior notice of the hearing and if the respondent alleges that he or she had a meritorious defense to the order or that the order or its remedy is not authorized by this chapter.

(3) A sexual assault protection order shall include the following notice, printed in conspicuous type: "A knowing violation of this sexual assault protection order is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest. 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."

NEW SECTION. Sec. 15. (1) An order issued under this chapter shall be personally served upon the respondent, except as provided in subsection (6) of this section.

(2) The sheriff of the county or the peace officers of the municipality in which the respondent resides shall serve the respondent personally unless the petitioner elects to have the respondent served by a private party.

(3) If service by a sheriff or municipal peace officer is to be used, the clerk of the court shall have a copy of any order issued under this chapter forwarded on or before the next judicial day to the appropriate law enforcement agency specified in the order for service upon the respondent. Service of an order issued under this chapter shall take precedence over the service of other documents unless they are of a similar emergency nature.

(4) If the sheriff or municipal peace officer cannot complete service upon the respondent within ten days, the sheriff or municipal peace officer shall notify the petitioner. The petitioner shall provide information sufficient to permit notification.

(5) Returns of service under this chapter shall be made in accordance with the applicable court rules.

(6) If an order entered by the court recites that the respondent appeared in person before the court, the necessity for further service is waived and proof of service of that order is not necessary.

NEW SECTION. Sec. 16. (1)(a) When any person charged with or arrested for a sex offense as defined in RCW 9.94A.030, a violation of RCW 9A.44.096, a violation of RCW 9.68A.090, or a 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, 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 sexual assault protection 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 sexual assault protection order shall also be issued in writing as soon as possible.

(2)(a) At the time of arraignment or whenever a motion is brought to modify the conditions of the defendant's release, the court shall determine whether a sexual assault protection order shall be issued or extended. If a sexual assault protection 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.

(b) A sexual assault protection order issued by the court in conjunction with criminal charges shall terminate if the defendant is acquitted or the charges are dismissed, unless the victim files an independent action for a sexual assault protection order. If the victim files an independent action for a sexual assault protection order, the order may be continued by the court until a full hearing is conducted pursuant to section 6 of this act.

(3)(a) 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. 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."

(b) A certified copy of the order shall be provided to the victim at no charge.

(4) If a sexual assault protection 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.

(5) Whenever an order prohibiting contact is issued pursuant to subsection (2) 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.

(6)(a) When a defendant is found guilty of a sex offense as defined in RCW 9.94A.030, any violation of RCW 9A.44.096, or any violation of RCW 9.68A.090, or 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, and a condition

of the sentence restricts the defendant's ability to have contact with the victim, the condition shall be recorded as a sexual assault protection order.

(b) The written order entered as a condition of sentencing 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. 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 final sexual assault protection order entered in conjunction with a criminal prosecution shall remain in effect for a period of two years following the expiration of any sentence of imprisonment and subsequent period of community supervision, conditional release, probation, or parole.

(d) A certified copy of the order shall be provided to the victim at no charge.

(7) A knowing violation of a court order issued under subsection (1), (2), or (6) of this section is punishable under RCW 26.50.110.

(8) Whenever a sexual assault protection order is issued, modified, or terminated under subsection (1), (2), or (6) 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 (2) of this section, the law enforcement agency shall remove the order from the computer-based criminal intelligence information system.

NEW SECTION. Sec. 17. (1) A copy of a sexual assault protection order granted under this chapter shall be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the order, the law enforcement agency shall immediately enter the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order shall remain in the computer for one year or until the expiration date specified on the order. Upon receipt of notice that an order has been terminated, the law enforcement agency shall remove the order from the computer-based criminal intelligence information system. The law enforcement agency shall only expunge from the computer-based criminal intelligence information system orders that are expired, vacated, terminated, or superseded. Entry into the law enforcement information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in the state.

(2) The information entered into the computer-based criminal intelligence information system shall include notice to law enforcement whether the order was personally served, served by publication, or served by mail.

NEW SECTION. Sec. 18. Upon application with notice to all parties and after a hearing, the court may modify the terms of an existing sexual assault protection order. In any situation where an order is terminated or modified before its expiration date, the clerk of the court shall forward on or before the next judicial day a true copy of the modified order or the termination order to the appropriate law enforcement agency specified in the modified or termination order. Upon receipt of the order, the law enforcement agency shall promptly enter it in the computer-based criminal intelligence information system, or if the order is terminated, remove the order from the computer-based criminal intelligence information system.

NEW SECTION. Sec. 19. (1) The administrative office of the courts shall develop and prepare instructions and informational brochures required under section 5 of this act, standard petition and order for protection forms, and a court staff handbook on sexual assault, and the protection order process. The standard petition and order for protection forms must be used after September 1, 2006, for all petitions filed and orders issued under this chapter. The instructions, brochures, forms, and handbook shall be prepared in consultation with interested persons, including a representative of the state sexual assault coalition, judges, and law enforcement personnel.

(a) The instructions shall be designed to assist petitioners in completing the petition, and shall include a sample of standard petition and order for protection forms.

(b) The informational brochure shall describe the use of and the process for obtaining, modifying, and terminating a protection order as provided under this chapter.

(c) The order for protection form shall include, in a conspicuous location, notice of criminal penalties resulting from violation of the order, and the following statement: "You can be arrested even if the person or persons who obtained the order invite or allow you to violate the order's prohibitions. The respondent has the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order upon written application."

(d) The court staff handbook shall allow for the addition of a community resource list by the court clerk.

(2) All court clerks shall obtain a community resource list from a sexual assault program serving the county in which the court is located. The community resource list shall include the names and telephone numbers of sexual assault programs serving the community in which the court is located, including law enforcement agencies, domestic violence agencies, sexual assault agencies, legal assistance programs, interpreters, multicultural programs, and batterers' treatment programs. The court shall make the community resource list available as part of or in addition to the informational brochures described in subsection (1) of this section.

(3) The administrative office of the courts shall distribute a master copy of the petition and order forms, instructions, and informational brochures to all court clerks and shall distribute a master copy of the petition and order forms to all superior, district, and municipal courts.

(4) For purposes of this section, "court clerks" means court administrators in courts of limited jurisdiction and elected court clerks.

(5) The administrative office of the courts shall determine the significant non-English-speaking or limited English-speaking populations in the state. The administrator shall then arrange for translation of the instructions and informational brochures required by this section, which shall contain a sample of the standard petition and order for protection forms, into the languages spoken by those significant non-English-speaking populations and shall distribute a master copy of the translated instructions and informational brochures to all court clerks by December 1, 2006.

(6) The administrative office of the courts shall update the instructions, brochures, standard petition and order for protection forms, and court staff handbook when changes in the law make an update necessary.

NEW SECTION. Sec. 20. An ex parte temporary order issued under this chapter shall not be admissible as evidence in any subsequent civil action for damages arising from the conduct alleged in the petition or the order.

Sec. 21. RCW 9A.46.060 and 2004 c 94 s 4 are each amended to read as follows:

As used in this chapter, "harassment" may include but is not limited to any of the following crimes:

- (1) Harassment (RCW 9A.46.020);
- (2) Malicious harassment (RCW 9A.36.080);
- (3) Telephone harassment (RCW 9.61.230);
- (4) Assault in the first degree (RCW 9A.36.011);
- (5) Assault of a child in the first degree (RCW 9A.36.120);
- (6) Assault in the second degree (RCW 9A.36.021);
- (7) Assault of a child in the second degree (RCW 9A.36.130);
- (8) Assault in the fourth degree (RCW 9A.36.041);
- (9) Reckless endangerment (RCW 9A.36.050);
- (10) Extortion in the first degree (RCW 9A.56.120);
- (11) Extortion in the second degree (RCW 9A.56.130);
- (12) Coercion (RCW 9A.36.070);
- (13) Burglary in the first degree (RCW 9A.52.020);
- (14) Burglary in the second degree (RCW 9A.52.030);
- (15) Criminal trespass in the first degree (RCW 9A.52.070);
- (16) Criminal trespass in the second degree (RCW 9A.52.080);
- (17) Malicious mischief in the first degree (RCW 9A.48.070);
- (18) Malicious mischief in the second degree (RCW 9A.48.080);
- (19) Malicious mischief in the third degree (RCW 9A.48.090);
- (20) Kidnapping in the first degree (RCW 9A.40.020);
- (21) Kidnapping in the second degree (RCW 9A.40.030);
- (22) Unlawful imprisonment (RCW 9A.40.040);
- (23) Rape in the first degree (RCW 9A.44.040);
- (24) Rape in the second degree (RCW 9A.44.050);
- (25) Rape in the third degree (RCW 9A.44.060);
- (26) Indecent liberties (RCW 9A.44.100);
- (27) Rape of a child in the first degree (RCW 9A.44.073);
- (28) Rape of a child in the second degree (RCW 9A.44.076);
- (29) Rape of a child in the third degree (RCW 9A.44.079);
- (30) Child molestation in the first degree (RCW 9A.44.083);

- (31) Child molestation in the second degree (RCW 9A.44.086);
- (32) Child molestation in the third degree (RCW 9A.44.089);
- (33) Stalking (RCW 9A.46.110);
- (34) Cyberstalking (RCW 9.61.260);
- (35) Residential burglary (RCW 9A.52.025);
- (36) Violation of a temporary (~~(or)~~), permanent, or final protective order issued pursuant to chapter 7.— (sections 1 through 20 of this act), 9A.46, 10.14, 10.99, 26.09, or 26.50 RCW;
- (37) Unlawful discharge of a laser in the first degree (RCW 9A.49.020); and
- (38) Unlawful discharge of a laser in the second degree (RCW 9A.49.030).

Sec. 22. RCW 10.14.130 and 1987 c 280 s 13 are each amended to read as follows:

Protection orders authorized under this chapter shall not be issued for any action specifically covered by chapter 7.— (sections 1 through 20 of this act), 10.99, or 26.50 RCW.

Sec. 23. RCW 10.31.100 and 2000 c 119 s 4 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.— (sections 1 through 20 of this act), 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 persons involved.

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

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

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

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

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

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

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

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

(5) Any police officer having probable cause to believe that a person has committed or is committing a violation of RCW 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 (2) or (8) if the police officer acts in good faith and without malice.

Sec. 24. RCW 19.220.010 and 2003 c 268 s 1 are each amended to read as follows:

(1) Each international matchmaking organization doing business in Washington state shall disseminate to a recruit, upon request, state background check information and personal history information relating to any Washington state resident about whom any information is provided to the recruit, in the recruit's native language. The organization shall notify all recruits that background check and personal history information is available upon request. The notice that background check and personal history information is available upon request shall be in the recruit's native language and shall be displayed in a manner that separates it from other information, is highly noticeable, and in lettering not less than one-quarter of an inch high.

(2) If an international matchmaking organization receives a request for information from a recruit pursuant to subsection (1) of this section, the organization shall notify the Washington state resident of the request. Upon receiving notification, the Washington state resident shall obtain from the state patrol and provide to the organization the complete transcript of any background check information provided pursuant to RCW 43.43.760 based on a submission of fingerprint impressions and provided pursuant to RCW 43.43.838 and shall provide to the organization his or her personal history information. The organization shall require the resident to affirm that personal history information is complete and accurate. The organization shall refrain from knowingly providing any further services to the recruit or the Washington state resident in regards to facilitating future interaction between the recruit and the Washington

state resident until the organization has obtained the requested information and provided it to the recruit.

(3) This section does not apply to a traditional matchmaking organization of a religious nature that otherwise operates in compliance with the laws of the countries of the recruits of such organization and the laws of the United States nor to any organization that does not charge a fee to any party for the service provided.

(4) As used in this section:

(a) "International matchmaking organization" means a corporation, partnership, business, or other legal entity, whether or not organized under the laws of the United States or any state, that does business in the United States and for profit offers to Washington state residents, including aliens lawfully admitted for permanent residence and residing in Washington state, dating, matrimonial, or social referral services involving citizens of a foreign country or countries who are not residing in the United States, by: (i) An exchange of names, telephone numbers, addresses, or statistics; (ii) selection of photographs; or (iii) a social environment provided by the organization in a country other than the United States.

(b) "Personal history information" means a declaration of the person's current marital status, the number of previous marriages, annulments, and dissolutions for the person, and whether any previous marriages occurred as a result of receiving services from an international matchmaking organization; founded allegations of child abuse or neglect; and any existing orders under chapter 7.—(sections 1 through 20 of this act), 10.14, 10.99, or 26.50 RCW. Personal history information shall include information from the state of Washington and any information from other states or countries.

(c) "Recruit" means a noncitizen, nonresident person, recruited by an international matchmaking organization for the purpose of providing dating, matrimonial, or social referral services.

Sec. 25. RCW 26.50.110 and 2000 c 119 s 24 are each amended to read as follows:

(1) Whenever an order is granted under this chapter, chapter 7.—(sections 1 through 20 of this act), 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or there is a valid foreign protection order as defined in RCW 26.52.020, and the respondent or person to be restrained knows of the order, a violation of the restraint provisions, or of a provision excluding the person from a residence, workplace, school, or day care, or of a provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or of a provision of a foreign protection order specifically indicating that a violation will be a crime, for which an arrest is required under RCW 10.31.100(2) (a) or (b), is a gross misdemeanor except as provided in subsections (4) and (5) of this section. Upon conviction, and in addition to any other penalties provided by law, the court may require that the respondent submit to electronic monitoring. The court shall specify who shall provide the electronic monitoring services, and the terms under which the monitoring shall 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 convicted person to pay for electronic monitoring.

(2) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order issued under this chapter, chapter 7.— (sections 1 through 20 of this act), 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020, that restrains the person or excludes the person from a residence, workplace, school, or day care, or prohibits the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, if the person restrained knows of the order. Presence of the order in the law enforcement computer-based criminal intelligence information system is not the only means of establishing knowledge of the order.

(3) A violation of an order issued under this chapter, chapter 7.— (sections 1 through 20 of this act), 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, shall also constitute contempt of court, and is subject to the penalties prescribed by law.

(4) Any assault that is a violation of an order issued under this chapter, chapter 7.— (sections 1 through 20 of this act), 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, and that does not amount to assault in the first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony, and any conduct in violation of such an order that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony.

(5) A violation of a court order issued under this chapter, chapter 7.— (sections 1 through 20 of this act), 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, is a class C felony if the offender has at least two previous convictions for violating the provisions of an order issued under this chapter, chapter 7.— (sections 1 through 20 of this act), 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020. The previous convictions may involve the same victim or other victims specifically protected by the orders the offender violated.

(6) Upon the filing of an affidavit by the petitioner or any peace officer alleging that the respondent has violated an order granted under this chapter, chapter 7.— (sections 1 through 20 of this act), 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020, the court may issue an order to the respondent, requiring the respondent to appear and show cause within fourteen days why the respondent should not be found in contempt of court and punished accordingly. The hearing may be held in the court of any county or municipality in which the petitioner or respondent temporarily or permanently resides at the time of the alleged violation.

Sec. 26. RCW 26.50.160 and 2000 c 119 s 25 and 2000 c 51 s 1 are each reenacted and amended to read as follows:

To prevent the issuance of competing protection orders in different courts and to give courts needed information for issuance of orders, the judicial information system shall be available in each district, municipal, and superior court by July 1, 1997, and shall include a data base containing the following information:

(1) The names of the parties and the cause number for every order of protection issued under this title, every sexual assault protection order issued under chapter 7.— RCW (sections 1 through 20 of this act), every criminal no-

contact order issued under chapters 9A.46 and 10.99 RCW, every antiharassment order issued under chapter 10.14 RCW, every dissolution action under chapter 26.09 RCW, every third-party custody action under chapter 26.10 RCW, every parentage action under chapter 26.26 RCW, every restraining order issued on behalf of an abused child or adult dependent person under chapter 26.44 RCW, every foreign protection order filed under chapter 26.52 RCW, and every order for protection of a vulnerable adult under chapter 74.34 RCW. When a guardian or the department of social and health services has petitioned for relief on behalf of an abused child, adult dependent person, or vulnerable adult, the name of the person on whose behalf relief was sought shall be included in the data base as a party rather than the guardian or department;

(2) A criminal history of the parties; and

(3) Other relevant information necessary to assist courts in issuing orders under this chapter as determined by the judicial information system committee.

Sec. 27. RCW 59.18.575 and 2004 c 17 s 3 are each amended to read as follows:

(1)(a) If a tenant notifies the landlord in writing that he or she or a household member was a victim of an act that constitutes a crime of domestic violence, sexual assault, or stalking, and either (a)(i) or (ii) of this subsection applies, then subsection (2) of this section applies:

(i) The tenant or the household member has a valid order for protection under one or more of the following: Chapter ~~7.00~~ (sections 1 through 20 of this act), 26.50, or 26.26 RCW or RCW 9A.46.040, 9A.46.050, 10.14.080, 10.99.040 (2) or (3), or 26.09.050; or

(ii) The tenant or the household member has reported the domestic violence, sexual assault, or stalking to a qualified third party acting in his or her official capacity and the qualified third party has provided the tenant or the household member a written record of the report signed by the qualified third party.

(b) When a copy of a valid order for protection or a written record of a report signed by a qualified third party, as required under (a) of this subsection, is made available to the landlord, the tenant may terminate the rental agreement and quit the premises without further obligation under the rental agreement or under chapter 59.12 RCW. However, the request to terminate the rental agreement must occur within ninety days of the reported act, event, or circumstance that gave rise to the protective order or report to a qualified third party. A record of the report to a qualified third party that is provided to the tenant or household member shall consist of a document signed and dated by the qualified third party stating: (i) That the tenant or the household member notified him or her that he or she was a victim of an act or acts that constitute a crime of domestic violence, sexual assault, or stalking; (ii) the time and date the act or acts occurred; (iii) the location where the act or acts occurred; (iv) a brief description of the act or acts of domestic violence, sexual assault, or stalking; and (v) that the tenant or household member informed him or her of the name of the alleged perpetrator of the act or acts. The record of the report provided to the tenant or household member shall not include the name of the alleged perpetrator of the act or acts of domestic violence, sexual assault, or stalking. The qualified third party shall keep a copy of the record of the report and shall note on the retained copy the name of the alleged perpetrator of the act or acts of domestic violence, sexual assault, or stalking. The record of the report to a

NEW SECTION. Sec. 28. This act may be cited as the sexual assault protection order act.

NEW SECTION. Sec. 29. Sections 1 through 20 of this act constitute a new chapter in Title 7 RCW.

Passed by the House March 8, 2006.

Passed by the Senate March 7, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 139

[Second Substitute Senate Bill 6172]

CHILD PORNOGRAPHY

AN ACT Relating to increasing penalties for the crimes of possession of depictions of a minor engaged in sexually explicit conduct; voyeurism; and communication with a minor for an immoral purpose; amending RCW 9.68A.070, 9.94A.030, and 9.94A.030; reenacting and amending RCW 9.68A.090 and 9.94A.515; creating a new section; prescribing penalties; providing an effective date; and providing an expiration date.

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

Sec. 1. RCW 9.68A.090 and 2003 c 53 s 42 and 2003 c 26 s 1 are each reenacted and amended to read as follows:

(1) Except as provided in subsection (2) of this section, a person who communicates with a minor for immoral purposes, or a person who communicates with someone the person believes to be a minor for immoral purposes, is guilty of a gross misdemeanor.

(2) A person who communicates with a minor for immoral purposes is guilty of a class C felony punishable according to chapter 9A.20 RCW if the person has previously been convicted under this section or of a felony sexual offense under chapter 9.68A, 9A.44, or 9A.64 RCW or of any other felony sexual offense in this or any other state or if the person communicates with a minor or with someone the person believes to be a minor for immoral purposes through the sending of an electronic communication.

Sec. 2. RCW 9.94A.515 and 2005 c 458 s 2 and 2005 c 183 s 9 are each reenacted and amended to read as follows:

TABLE 2	
CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL	
XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055)
	Malicious explosion 1 (RCW 70.74.280(1))
	Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050)
	Trafficking 1 (RCW 9A.40.100(1))

- XIII Malicious explosion 2 (RCW 70.74.280(2))
 - Malicious placement of an explosive 1 (RCW 70.74.270(1))
- XII Assault 1 (RCW 9A.36.011)
 - Assault of a Child 1 (RCW 9A.36.120)
 - Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))
 - Rape 1 (RCW 9A.44.040)
 - Rape of a Child 1 (RCW 9A.44.073)
 - Trafficking 2 (RCW 9A.40.100(2))
- XI Manslaughter 1 (RCW 9A.32.060)
 - Rape 2 (RCW 9A.44.050)
 - Rape of a Child 2 (RCW 9A.44.076)
- X Child Molestation 1 (RCW 9A.44.083)
 - Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
 - Kidnapping 1 (RCW 9A.40.020)
 - Leading Organized Crime (RCW 9A.82.060(1)(a))
 - Malicious explosion 3 (RCW 70.74.280(3))
 - Sexually Violent Predator Escape (RCW 9A.76.115)
- IX Assault of a Child 2 (RCW 9A.36.130)
 - Explosive devices prohibited (RCW 70.74.180)
 - Hit and Run—Death (RCW 46.52.020(4)(a))
 - Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)
 - Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
 - Malicious placement of an explosive 2 (RCW 70.74.270(2))
 - Robbery 1 (RCW 9A.56.200)

- Sexual Exploitation (RCW 9.68A.040)
- Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
- VIII Arson 1 (RCW 9A.48.020)
 - Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)
 - Manslaughter 2 (RCW 9A.32.070)
 - Promoting Prostitution 1 (RCW 9A.88.070)
 - Theft of Ammonia (RCW 69.55.010)
 - Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- VII Burglary 1 (RCW 9A.52.020)
 - Child Molestation 2 (RCW 9A.44.086)
 - Civil Disorder Training (RCW 9A.48.120)
 - Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)
 - Drive-by Shooting (RCW 9A.36.045)
 - Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050)
 - Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))
 - Introducing Contraband 1 (RCW 9A.76.140)
 - Malicious placement of an explosive 3 (RCW 70.74.270(3))
 - Negligently Causing Death By Use of a Signal Preemption Device (RCW 46.37.675)
 - Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)

- Unlawful Possession of a Firearm in the first degree (RCW 9A.04.040(1))
- Use of a Machine Gun in Commission of a Felony (RCW 9A.04.225)
- Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- VI Bail Jumping with Murder 1 (RCW 9A.76.170(3)(a))
- Bribery (RCW 9A.68.010)
- Incest 1 (RCW 9A.64.020(1))
- Intimidating a Judge (RCW 9A.72.160)
- Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
- Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
- Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct (RCW 9.68A.070)
- Rape of a Child 3 (RCW 9A.44.079)
- Theft of a Firearm (RCW 9A.56.300)
- Unlawful Storage of Ammonia (RCW 69.55.020)
- V Abandonment of dependent person 1 (RCW 9A.42.060)
- Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
- Bail Jumping with class A Felony (RCW 9A.76.170(3)(b))
- Child Molestation 3 (RCW 9A.44.089)
- Criminal Mistreatment 1 (RCW 9A.42.020)
- Custodial Sexual Misconduct 1 (RCW 9A.44.160)
- Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)

Extortion 1 (RCW 9A.56.120)
Extortionate Extension of Credit (RCW
9A.82.020)
Extortionate Means to Collect
Extensions of Credit (RCW
9A.82.040)
Incest 2 (RCW 9A.64.020(2))
Kidnapping 2 (RCW 9A.40.030)
Perjury 1 (RCW 9A.72.020)
Persistent prison misbehavior (RCW
9.94.070)
Possession of a Stolen Firearm (RCW
9A.56.310)
Rape 3 (RCW 9A.44.060)
Rendering Criminal Assistance 1
(RCW 9A.76.070)
Sexual Misconduct with a Minor 1
(RCW 9A.44.093)
Sexually Violating Human Remains
(RCW 9A.44.105)
Stalking (RCW 9A.46.110)
Taking Motor Vehicle Without
Permission 1 (RCW 9A.56.070)
IV Arson 2 (RCW 9A.48.030)
Assault 2 (RCW 9A.36.021)
Assault 3 (of a Peace Officer with a
Projectile Stun Gun) (RCW
9A.36.031(1)(h))
Assault by Watercraft (RCW
79A.60.060)
Bribing a Witness/Bribe Received by
Witness (RCW 9A.72.090,
9A.72.100)
Cheating 1 (RCW 9.46.1961)
Commercial Bribery (RCW
9A.68.060)
Counterfeiting (RCW 9.16.035(4))
Endangerment with a Controlled
Substance (RCW 9A.42.100)
Escape 1 (RCW 9A.76.110)

Hit and Run—Injury (RCW
46.52.020(4)(b))

Hit and Run with Vessel—Injury
Accident (RCW 79A.60.200(3))

Identity Theft 1 (RCW 9.35.020(2))

Indecent Exposure to Person Under
Age Fourteen (subsequent sex
offense) (RCW 9A.88.010)

Influencing Outcome of Sporting Event
(RCW 9A.82.070)

Malicious Harassment (RCW
9A.36.080)

Residential Burglary (RCW
9A.52.025)

Robbery 2 (RCW 9A.56.210)

Theft of Livestock 1 (RCW 9A.56.080)

Threats to Bomb (RCW 9.61.160)

Trafficking in Stolen Property 1 (RCW
9A.82.050)

Unlawful factoring of a credit card or
payment card transaction (RCW
9A.56.290(4)(b))

Unlawful transaction of health
coverage as a health care service
contractor (RCW 48.44.016(3))

Unlawful transaction of health
coverage as a health maintenance
organization (RCW 48.46.033(3))

Unlawful transaction of insurance
business (RCW 48.15.023(3))

Unlicensed practice as an insurance
professional (RCW 48.17.063(3))

Use of Proceeds of Criminal
Profiteering (RCW 9A.82.080 (1)
and (2))

Vehicular Assault, by being under the
influence of intoxicating liquor or
any drug, or by the operation or
driving of a vehicle in a reckless
manner (RCW 46.61.522)

- Willful Failure to Return from Furlough (RCW 72.66.060)
- III Abandonment of dependent person 2 (RCW 9A.42.070)
- Assault 3 (Except Assault 3 of a Peace Officer With a Projectile Stun Gun) (RCW 9A.36.031 except subsection (1)(h))
- Assault of a Child 3 (RCW 9A.36.140)
- Bail Jumping with class B or C Felony (RCW 9A.76.170(3)(c))
- Burglary 2 (RCW 9A.52.030)
- Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
- Criminal Gang Intimidation (RCW 9A.46.120)
- Criminal Mistreatment 2 (RCW 9A.42.030)
- Custodial Assault (RCW 9A.36.100)
- Cyberstalking (subsequent conviction or threat of death) (RCW 9.61.260(3))
- Escape 2 (RCW 9A.76.120)
- Extortion 2 (RCW 9A.56.130)
- Harassment (RCW 9A.46.020)
- Intimidating a Public Servant (RCW 9A.76.180)
- Introducing Contraband 2 (RCW 9A.76.150)
- Malicious Injury to Railroad Property (RCW 81.60.070)
- Negligently Causing Substantial Bodily Harm By Use of a Signal Preemption Device (RCW 46.37.674)
- Patronizing a Juvenile Prostitute (RCW 9.68A.100)
- Perjury 2 (RCW 9A.72.030)

- Possession of Incendiary Device (RCW 9.40.120)
- Possession of Machine Gun or Short-Barreled Shotgun or Rifle (RCW 9.41.190)
- Promoting Prostitution 2 (RCW 9A.88.080)
- Securities Act violation (RCW 21.20.400)
- Tampering with a Witness (RCW 9A.72.120)
- Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230(2))
- Theft of Livestock 2 (RCW 9A.56.083)
- Trafficking in Stolen Property 2 (RCW 9A.82.055)
- Unlawful Imprisonment (RCW 9A.40.040)
- Unlawful possession of firearm in the second degree (RCW 9.41.040(2))
- Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)
- Willful Failure to Return from Work Release (RCW 72.65.070)
- II Computer Trespass 1 (RCW 9A.52.110)
 - Counterfeiting (RCW 9.16.035(3))
 - Escape from Community Custody (RCW 72.09.310)
 - Health Care False Claims (RCW 48.80.030)
 - Identity Theft 2 (RCW 9.35.020(3))
 - Improperly Obtaining Financial Information (RCW 9.35.010)
 - Malicious Mischief 1 (RCW 9A.48.070)

- Possession of Stolen Property 1 (RCW 9A.56.150)
- Theft 1 (RCW 9A.56.030)
- Theft of Rental, Leased, or Lease-purchased Property (valued at one thousand five hundred dollars or more) (RCW 9A.56.096(5)(a))
- Trafficking in Insurance Claims (RCW 48.30A.015)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(a))
- Unlawful Practice of Law (RCW 2.48.180)
- Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))
- Voyeurism (RCW 9A.44.115)
- I Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
- False Verification for Welfare (RCW 74.08.055)
- Forgery (RCW 9A.60.020)
- Fraudulent Creation or Revocation of a Mental Health Advance Directive (RCW 9A.60.060)
- Malicious Mischief 2 (RCW 9A.48.080)
- Mineral Trespass (RCW 78.44.330)
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Reckless Burning 1 (RCW 9A.48.040)
- Taking Motor Vehicle Without Permission 2 (RCW 9A.56.075)
- Theft 2 (RCW 9A.56.040)
- Theft of Rental, Leased, or Lease-purchased Property (valued at two hundred fifty dollars or more but less than one thousand five hundred dollars) (RCW 9A.56.096(5)(b))

Transaction of insurance business
beyond the scope of licensure
(RCW 48.17.063(4))

Unlawful Issuance of Checks or Drafts
(RCW 9A.56.060)

Unlawful Possession of Fictitious
Identification (RCW 9A.56.320)

Unlawful Possession of Instruments of
Financial Fraud (RCW 9A.56.320)

Unlawful Possession of Payment
Instruments (RCW 9A.56.320)

Unlawful Possession of a Personal
Identification Device (RCW
9A.56.320)

Unlawful Production of Payment
Instruments (RCW 9A.56.320)

Unlawful Trafficking in Food Stamps
(RCW 9.91.142)

Unlawful Use of Food Stamps (RCW
9.91.144)

Vehicle Prowl 1 (RCW 9A.52.095)

Sec. 3. RCW 9.68A.070 and 1990 c 155 s 1 are each amended to read as follows:

A person who knowingly possesses visual or printed matter depicting a minor engaged in sexually explicit conduct is guilty of a class ((C)) B felony.

Sec. 4. RCW 9.94A.030 and 2005 c 436 s 1 are each amended to read as follows:

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

(1) "Board" means the indeterminate sentence review board created under chapter 9.95 RCW.

(2) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department, means that the department, either directly or through a collection agreement authorized by RCW 9.94A.760, is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(3) "Commission" means the sentencing guidelines commission.

(4) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(5) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670, 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the community subject to controls placed on the offender's movement and activities by the department. For offenders placed on community custody for crimes committed on or after July 1, 2000, the department shall assess the offender's risk of reoffense and may establish and modify conditions of community custody, in addition to those imposed by the court, based upon the risk to community safety.

(6) "Community custody range" means the minimum and maximum period of community custody included as part of a sentence under RCW 9.94A.715, as established by the commission or the legislature under RCW 9.94A.850, for crimes committed on or after July 1, 2000.

(7) "Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

(8) "Community protection zone" means the area within eight hundred eighty feet of the facilities and grounds of a public or private school.

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

(10) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed by a court pursuant to this chapter or RCW 16.52.200(6) or 46.61.524. Where the court finds that any offender has a chemical dependency that has contributed to his or her offense, the conditions of supervision may, subject to available resources, include treatment. For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

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

(12) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(13) "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.

(14) "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.

(15) "Day fine" means a fine imposed by the sentencing court that equals the difference between the offender's net daily income and the reasonable obligations that the offender has for the support of the offender and any dependents.

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

(17) "Department" means the department of corrections.

(18) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, 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) "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) "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) "Earned release" means earned release from confinement as provided in RCW 9.94A.728.

(23) "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) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-and-run injury-accident (RCW 46.52.020(4)); or

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

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

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

(b) Assault in the second degree;

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

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

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

(h) Indecent liberties;

(i) Kidnapping in the second degree;

- (j) Leading organized crime;
- (k) Manslaughter in the first degree;
- (l) Manslaughter in the second degree;
- (m) Promoting prostitution in the first degree;
- (n) Rape in the third degree;
- (o) Robbery in the second degree;
- (p) Sexual exploitation;
- (q) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;
- (r) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;
- (s) Any other class B felony offense with a finding of sexual motivation;
- (t) Any other felony with a deadly weapon verdict under RCW 9.94A.602;
- (u) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;
- (v)(i) A prior conviction for indecent liberties under RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;
- (ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997.
- (30) "Nonviolent offense" means an offense which is not a violent offense.
- (31) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.
- (32) "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) "Persistent offender" is an offender who:
 - (a)(i) Has been convicted in this state of any felony considered a most serious offense; and

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.525; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree; or (C) an attempt to commit any crime listed in this subsection (33)(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.

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

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

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

(37) "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.

(38) "Risk assessment" means the application of an objective instrument supported by research and adopted by the department for the purpose of assessing an offender's risk of reoffense, taking into consideration the nature of the harm done by the offender, place and circumstances of the offender related to risk, the offender's relationship to any victim, and any information provided to the department by victims. The results of a risk assessment shall not be based on unconfirmed or unconfirmable allegations.

(39) "Serious traffic offense" means:

(a) Driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

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

(40) "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.

(41) "Sex offense" means:

- (a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.130(11);
- (ii) A violation of RCW 9A.64.020;
- (iii) A felony that is a violation of chapter 9.68A RCW other than RCW ((9.68A.070-07)) 9.68A.080; or
- (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;

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

(c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or

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

(42) "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.

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

(44) "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.

(45) "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.

(46) "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.

(47) "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.

(48) "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.

(49) "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.

(50) "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.

(51) "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. 5. RCW 9.94A.030 and 2003 c 53 s 55 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 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670, 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the community subject to controls placed on the offender's movement and activities by the department. For offenders placed on community custody for crimes committed on or after July 1, 2000, the department shall assess the offender's risk of reoffense and may establish and modify conditions of community custody, in addition to those imposed by the court, based upon the risk to community safety.

(6) "Community custody range" means the minimum and maximum period of community custody included as part of a sentence under RCW 9.94A.715, as established by the commission or the legislature under RCW 9.94A.850, for crimes committed on or after July 1, 2000.

(7) "Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

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

(9) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed by a court pursuant to this chapter or RCW 16.52.200(6) or 46.61.524. Where the court finds that any offender has a chemical dependency that has contributed to his or her offense, the conditions of supervision may, subject to available resources, include treatment. For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

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

(11) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(12) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

(13) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere.

(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.

(14) "Day fine" means a fine imposed by the sentencing court that equals the difference between the offender's net daily income and the reasonable obligations that the offender has for the support of the offender and any dependents.

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

(16) "Department" means the department of corrections.

(17) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community supervision, the number of actual hours or days of community restitution work, or dollars or terms of a legal financial obligation. The fact that an offender through earned release can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

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

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

(20) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.4013) 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.

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

(22) "Escape" means:

(a) Sexually violent predator escape (RCW 9A.76.115), escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

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

(23) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-and-run injury-accident (RCW 46.52.020(4)); or

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

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

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

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

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

agency of the expense of an emergency response to the incident resulting in the conviction, subject to RCW 38.52.430.

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

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

(b) Assault in the second degree;

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

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

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

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Robbery in the second degree;

(p) Sexual exploitation;

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

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

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

(t) Any other felony with a deadly weapon verdict under RCW 9.94A.602;

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

(v)(i) A prior conviction for indecent liberties under RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997.

(29) "Nonviolent offense" means an offense which is not a violent offense.

(30) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of

age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

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

(32) "Persistent offender" is an offender who:

(a)(i) Has been convicted in this state of any felony considered a most serious offense; and

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.525; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree; or (C) an attempt to commit any crime listed in this subsection (32)(b)(i); and

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

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

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

(35) "Risk assessment" means the application of an objective instrument supported by research and adopted by the department for the purpose of assessing an offender's risk of reoffense, taking into consideration the nature of

the harm done by the offender, place and circumstances of the offender related to risk, the offender's relationship to any victim, and any information provided to the department by victims. The results of a risk assessment shall not be based on unconfirmed or unconfirmable allegations.

(36) "Serious traffic offense" means:

(a) Driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

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

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

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

(ii) Homicide by abuse;

(iii) Murder in the second degree;

(iv) Manslaughter in the first degree;

(v) Assault in the first degree;

(vi) Kidnapping in the first degree;

(vii) Rape in the first degree;

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

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

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

(38) "Sex offense" means:

(a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.130(11);

(ii) A violation of RCW 9A.64.020;

(iii) A felony that is a violation of chapter 9.68A RCW other than RCW ~~(9.68A.070 or)~~ 9.68A.080; or

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

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

(c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or

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

(39) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

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

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

(42) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

(43) "Transition training" means written and verbal instructions and assistance provided by the department to the offender during the two weeks prior to the offender's successful completion of the work ethic camp program. The transition training shall include instructions in the offender's requirements and obligations during the offender's period of community custody.

(44) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

(45) "Violent offense" means:

(a) Any of the following felonies:

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

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

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;

(v) Indecent liberties if committed by forcible compulsion;

(vi) Kidnapping in the second degree;

(vii) Arson in the second degree;

(viii) Assault in the second degree;

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

(x) Extortion in the first degree;

(xi) Robbery in the second degree;

(xii) Drive-by shooting;

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

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

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

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

(46) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.725.

(47) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.690 designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

(48) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school.

NEW SECTION. Sec. 6. Section 4 of this act expires July 1, 2006.

NEW SECTION. Sec. 7. Section 5 of this act takes effect July 1, 2006.

NEW SECTION. Sec. 8. If specific funding for the purposes of section 2 of this act, referencing section 2 of this act by bill or chapter number and section number, is not provided by June 30, 2006, in the omnibus appropriations act, section 2 of this act is null and void.

Passed by the Senate March 6, 2006.

Passed by the House March 3, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 140

[Senate Bill 6364]

SAFE BOATING—CARBON MONOXIDE DANGERS

AN ACT Relating to the regulation of recreational vessels; amending RCW 79A.60.610; adding a new section to chapter 79A.60 RCW; adding new sections to chapter 88.02 RCW; creating a new section; prescribing penalties; and providing an effective date.

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

NEW SECTION. Sec. 1. A new section is added to chapter 79A.60 RCW to read as follows:

(1) No person may operate a motor driven boat or vessel or have the engine of a motor driven boat or vessel run idle while an individual is teak surfing, platform dragging, or bodysurfing behind the motor driven boat or vessel.

(2) No person may operate a motor driven boat or vessel or have the engine of a motor driven boat or vessel run idle while an individual is occupying or holding onto the swim platform, swim deck, swim step, or swim ladder of the motor driven boat or vessel.

(3) Subsection (2) of this section does not apply when an individual is occupying the swim platform, swim deck, swim step, or swim ladder for a very brief period of time while assisting with the docking or departure of the vessel, while exiting or entering the vessel, or while the vessel is engaged in law enforcement or emergency rescue activity.

(4) For the purposes of this section, "teak surfing" or "platform dragging" means holding onto the swim platform, swim deck, swim step, swim ladder, or any portion of the exterior of the transom of a motor driven boat or vessel for any amount of time while the motor driven boat or vessel is underway at any speed.

(5) For the purposes of this section, "bodysurfing" means swimming or floating on one's stomach or on one's back on or in the wake directly behind a motor driven boat or vessel that is underway.

(6) A violation of this section is a natural resource infraction punishable as provided under chapter 7.84 RCW, however the fine imposed may not exceed one hundred dollars.

NEW SECTION. Sec. 2. A new section is added to chapter 88.02 RCW to read as follows:

(1) Any new or used motor driven boat or vessel, as that term is defined in RCW 79A.60.010, other than a personal watercraft, sold within this state must display a carbon monoxide warning sticker developed by the department on the interior of the vessel.

(2) For vessels sold by a dealer, the dealer shall ensure that the warning sticker has been affixed prior to completing a transaction.

(3) For a vessel sold by an individual, the department shall include the sticker in the registration materials provided to the new owner, and the department shall notify the new owner that the sticker must be affixed as described in subsection (1) of this section.

(4) A warning sticker already developed by a vessel manufacturer may satisfy the requirements of this section if it has been approved by the department. The department shall approve a carbon monoxide warning sticker that has been approved by the United States coast guard for similar uses in other states.

NEW SECTION. Sec. 3. A new section is added to chapter 88.02 RCW to read as follows:

The department shall include an informational brochure about the dangers of carbon monoxide poisoning and vessels and the warning stickers required by section 2 of this act as part of the registration materials mailed by the department for two consecutive years for registrations that are due or become due after the effective date of this section, and thereafter upon recommendation by the director of the department. The materials shall instruct the vessel owner to affix the stickers as required by section 2 of this act.

Sec. 4. RCW 79A.60.610 and 1994 c 151 s 2 are each amended to read as follows:

The commission shall undertake a statewide recreational boating fire prevention education program concerning the safe use of marine fuels and electrical systems (~~and the hazards of carbon monoxide~~). The boating fire prevention education program shall provide for the distribution of fire safety materials and decals warning of fire hazards and for educational opportunities to educate boaters on the safety practices needed to operate heaters, stoves, and other appliances in Washington's unique aquatic environment. The commission shall evaluate the boating public's voluntary participation in the program and the program's impact on safe boating.

NEW SECTION. Sec. 5. This act may be known and cited as the Jenda Jones and Denise Colbert safe boating act.

NEW SECTION. Sec. 6. Sections 2 and 3 of this act take effect January 1, 2007.

Passed by the Senate March 6, 2006.
Passed by the House March 3, 2006.
Approved by the Governor March 20, 2006.
Filed in Office of Secretary of State March 20, 2006.

CHAPTER 141

[Substitute House Bill 2416]

STATE PARK FEES

AN ACT Relating to state park fees; amending RCW 79A.05.070; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 79A.05.070 and 2003 c 186 s 1 are each amended to read as follows:

The commission may:

- (1) Make rules and regulations for the proper administration of its duties;
- (2) Accept any grants of funds made with or without a matching requirement by the United States, or any agency thereof, for purposes in keeping with the purposes of this chapter; accept gifts, bequests, devises and endowments for purposes in keeping with such purposes; enter into cooperative agreements with and provide for private nonprofit groups to use state park property and facilities to raise money to contribute gifts, grants, and support to the commission for the purposes of this chapter. The commission may assist the nonprofit group in a cooperative effort by providing necessary agency personnel and services, if available. However, none of the moneys raised may inure to the benefit of the nonprofit group, except in furtherance of its purposes to benefit the commission as provided in this chapter. The agency and the private nonprofit group shall agree on the nature of any project to be supported by such gift or grant prior to the use of any agency property or facilities for raising money. Any such gifts may be in the form of recreational facilities developed or built in part or in whole for public use on agency property, provided that the facility is consistent with the purposes of the agency;
- (3) Require certification by the commission of all parks and recreation workers employed in state aided or state controlled programs;
- (4) Act jointly, when advisable, with the United States, any other state agencies, institutions, departments, boards, or commissions in order to carry out the objectives and responsibilities of this chapter;
- (5) Grant franchises and easements for any legitimate purpose on parks or parkways, for such terms and subject to such conditions and considerations as the commission shall specify;
- (6) Charge such fees for services, utilities, and use of facilities as the commission shall deem proper. The commission may not charge fees for general park access or parking;
- (7) Enter into agreements whereby individuals or companies may rent undeveloped parks or parkway land for grazing, agricultural, or mineral development purposes upon such terms and conditions as the commission shall deem proper, for a term not to exceed forty years;
- (8) Determine the qualifications of and employ a director of parks and recreation who shall receive a salary as fixed by the governor in accordance with

the provisions of RCW 43.03.040 and determine the qualifications and salary of and employ such other persons as may be needed to carry out the provisions hereof; and

(9) Without being limited to the powers hereinbefore enumerated, the commission shall have such other powers as in the judgment of a majority of its members are deemed necessary to effectuate the purposes of this chapter: PROVIDED, That the commission shall not have power to supervise directly any local park or recreation district, and no funds shall be made available for such purpose.

NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect April 9, 2006.

Passed by the House March 7, 2006.

Passed by the Senate March 7, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 142

[Substitute House Bill 1523]

TAX EXEMPTIONS—CONDITIONING OF VEGETABLE SEEDS

AN ACT Relating to extending a sales and use tax exemption to the construction of facilities to be used for the conditioning of vegetable seeds; amending RCW 82.60.020; and providing an effective date.

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

Sec. 1. RCW 82.60.020 and 2004 c 25 s 3 are each amended to read as follows:

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

(1) "Applicant" means a person applying for a tax deferral under this chapter.

(2) "Department" means the department of revenue.

(3) "Eligible area" means a rural county as defined in RCW 82.14.370.

(4)(a) "Eligible investment project" means an investment project in an eligible area as defined in subsection (3) of this section.

(b) The lessor or owner of a qualified building is not eligible for a deferral unless:

(i) The underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person; or

(ii)(A) The lessor by written contract agrees to pass the economic benefit of the deferral to the lessee;

(B) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual survey required under RCW 82.60.070; and

(C) The economic benefit of the deferral passed to the lessee is no less than the amount of tax deferred by the lessor and is evidenced by written documentation of any type of payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee.

(c) "Eligible investment project" does not include any portion of an investment project undertaken by a light and power business as defined in RCW 82.16.010(5), other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part, or investment projects which have already received deferrals under this chapter.

(5) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project.

(6) "Manufacturing" means the same as defined in RCW 82.04.120. "Manufacturing" also includes computer programming, the production of computer software, and other computer-related services, ~~(and)~~ the activities performed by research and development laboratories and commercial testing laboratories, and the conditioning of vegetable seeds.

(7) "Person" has the meaning given in RCW 82.04.030.

(8) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity used for manufacturing and research and development activities, including plant offices and warehouses or other facilities for the storage of raw material or finished goods if such facilities are an essential or an integral part of a factory, mill, plant, or laboratory used for manufacturing or research and development. If a building is used partly for manufacturing or research and development and partly for other purposes, the applicable tax deferral shall be determined by apportionment of the costs of construction under rules adopted by the department.

(9) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The term "entire tax year" means a full-time position that is filled for a period of twelve consecutive months. The term "full-time" means at least thirty-five hours a week, four hundred fifty-five hours a quarter, or one thousand eight hundred twenty hours a year.

(10) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; operating structures; and all equipment used to control or operate the machinery.

(11) "Recipient" means a person receiving a tax deferral under this chapter.

(12) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

NEW SECTION. Sec. 2. This act takes effect July 1, 2006.

Passed by the House March 8, 2006.

Passed by the Senate March 7, 2006.

Approved by the Governor March 20, 2006.
 Filed in Office of Secretary of State March 20, 2006.

CHAPTER 143

[House Bill 2330]

CRAB POT BUOY TAG PROGRAM

AN ACT Relating to a crab pot buoy tag program; and amending RCW 77.70.430.

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

Sec. 1. RCW 77.70.430 and 2005 c 395 s 1 are each amended to read as follows:

(1) In order to administer a Puget Sound crab pot buoy tag program, the department may charge a fee to holders of a Dungeness crab—Puget Sound fishery license to reimburse the department for the production of Puget Sound crab pot buoy tags and the administration of a Puget Sound crab pot buoy tag program.

(2) In order to administer a Washington coastal Dungeness crab pot buoy tag program, the department may charge a fee to holders of a Dungeness crab—coastal or a Dungeness crab coastal class B fishery license and to holders of out-of-state licenses who are issued a pot certificate by the department to reimburse the department for the production of Washington coastal crab pot buoy tags and the administration of a Washington coastal crab pot buoy tag program.

(3) The department shall annually review the costs of crab pot buoy tag production under this section with the goal of minimizing the per tag production costs. Any savings in production costs shall be passed on to the fishers required to purchase crab pot buoy tags under this section in the form of a lower tag fee.

Passed by the House January 25, 2006.

Passed by the Senate March 1, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 144

[House Bill 2386]

GEODUCK HARVESTING

AN ACT Relating to commercial geoduck harvesting; and amending RCW 77.60.070.

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

Sec. 1. RCW 77.60.070 and 2000 c 107 s 25 are each amended to read as follows:

(1) The director may not authorize a person to take geoduck clams for commercial purposes outside the harvest area designated in a current department of natural resources geoduck harvesting agreement issued under RCW ~~((79.96.080))~~ 79.135.210. The director may not authorize commercial harvest of geoduck clams from bottoms that are shallower than eighteen feet below mean lower low water (0.0. ft.) ~~(, or that lie in an area bounded by the line of ordinary high tide (mean high tide) and)~~. Vessels conducting harvest operations must remain seaward of a line two hundred yards seaward from and parallel to the line

of ordinary high tide. This section does not apply to the harvest of private sector cultured aquatic products as defined in RCW 15.85.020.

(2) Commercial geoduck harvesting shall be done with a hand-held, manually operated water jet or suction device guided and controlled from under water by a diver. Periodically, the director shall determine the effect of each type or unit of gear upon the geoduck population or the substrate they inhabit. The director may require modification of the gear or stop its use if it is being operated in a wasteful or destructive manner or if its operation may cause permanent damage to the bottom or adjacent shellfish populations.

Passed by the House February 10, 2006.

Passed by the Senate March 3, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 145

[Substitute House Bill 2481]

INSURANCE—ARSON, MALICIOUS MISCHIEF ACTIONS

AN ACT Relating to insuring victims of crimes; adding a new section to chapter 48.18 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that access to insurance can be imperiled by the response of insurers to criminal acts. Rather than allow criminals to achieve their objectives, it is the intent of the legislature that criminals, through criminal acts, should not dictate insurance underwriting decisions. It is the intent of the legislature that courts should use restitution from perpetrators of intentional property crimes to make property owners and insurers whole.

NEW SECTION. Sec. 2. A new section is added to chapter 48.18 RCW to read as follows:

(1) For the purposes of this section:

(a) "Arson" has the same meaning as in chapter 9A.48 RCW.

(b) "Health care facility" has the same meaning as defined in RCW 48.43.005.

(c) "Health care provider" has the same meaning as defined in RCW 48.43.005.

(d) "Insured" means a current policyholder or a person or entity that is covered under the insurance policy.

(e) A perpetrator does not have to be identified for an act of arson or malicious mischief to have occurred.

(f) "Malicious mischief" has the same meaning as in chapter 9A.48 RCW.

(g) "Underwriting action" means an insurer:

(i) Cancels or refuses to renew an insurance policy; or

(ii) Changes the terms or benefits in an insurance policy.

(2) This section applies to property insurance policies if the insured is:

(a) A health care facility;

(b) A health care provider; or

(c) A religious organization.

(3) An insurer may not take an underwriting action on a policy described in subsection (2) of this section because an insured has made one or more insurance claims for any loss that occurred during the preceding sixty months that is the result of arson or malicious mischief. An insurer may take an underwriting action due to other factors that are not prohibited by this subsection.

(4) If an insured sustains a loss that is the result of arson or malicious mischief, the insured must file a report with the police or other law enforcement authority within thirty days of discovery of the incident, and a law enforcement authority must determine that a crime has occurred. The report must contain sufficient information to provide an insurer with reasonable notice that the loss was the result of arson or malicious mischief. The insured has a duty to cooperate with any law enforcement official or insurer investigation.

(5) Annually, each insurer must report underwriting actions to the commissioner if the insurer has taken an underwriting action against any insured who has filed a claim during the preceding sixty months that was the result of arson or malicious mischief. The report must include the policy number, name of the insured, location of the property, and the reason for the underwriting action.

Passed by the House February 9, 2006.

Passed by the Senate March 7, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 146

[Substitute House Bill 2908]

ISLAND COUNTY—BOUNDARIES

AN ACT Relating to Island county boundaries; and amending RCW 36.04.150.

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

Sec. 1. RCW 36.04.150 and 1891 c 119 p 217 s 1 are each amended to read as follows:

Island county shall consist of all of the islands known as Whidbey, Camano, Smith(~~(*)~~), Deception, Strawberry, Baby, Minor, Kalamut, and Ben Ure(~~(*)~~) and shall extend into the adjacent channels to connect with the boundaries of adjoining counties as defined by statute.

Passed by the House February 8, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 147

[Substitute House Bill 2917]

AGRICULTURAL LANDS—ACCESSORY USES

AN ACT Relating to accessory uses on agricultural lands; and amending RCW 36.70A.177.

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

Sec. 1. RCW 36.70A.177 and 2004 c 207 s 1 are each amended to read as follows:

(1) A county or a city may use a variety of innovative zoning techniques in areas designated as agricultural lands of long-term commercial significance under RCW 36.70A.170. The innovative zoning techniques should be designed to conserve agricultural lands and encourage the agricultural economy. Except as provided in subsection (3) of this section, a county or city should encourage nonagricultural uses to be limited to lands with poor soils or otherwise not suitable for agricultural purposes.

(2) Innovative zoning techniques a county or city may consider include, but are not limited to:

(a) Agricultural zoning, which limits the density of development and restricts or prohibits nonfarm uses of agricultural land and may allow accessory uses, including nonagricultural accessory uses and activities, that support, promote, or sustain agricultural operations and production, as provided in subsection (3) of this section;

(b) Cluster zoning, which allows new development on one portion of the land, leaving the remainder in agricultural or open space uses;

(c) Large lot zoning, which establishes as a minimum lot size the amount of land necessary to achieve a successful farming practice;

(d) Quarter/quarter zoning, which permits one residential dwelling on a one-acre minimum lot for each one-sixteenth of a section of land; and

(e) Sliding scale zoning, which allows the number of lots for single-family residential purposes with a minimum lot size of one acre to increase inversely as the size of the total acreage increases.

~~(3)(a))~~ Accessory uses allowed under subsection (2)(a) of this section shall comply with the following:

~~((i))~~ (a) Accessory uses shall be located, designed, and operated so as ~~((not))~~ to not interfere with ~~((natural resource land uses and shall be accessory to the growing of crops or raising of animals)), and to support the continuation of, the overall agricultural use of the property and neighboring properties, and shall comply with the requirements of this chapter;~~

~~((ii))~~ (b) Accessory ~~((commercial or retail))~~ uses ~~((shall predominately produce, store, or sell regionally produced))~~ may include:

(i) Agricultural accessory uses and activities, including but not limited to the storage, distribution, and marketing of regional agricultural products from one or more producers, ~~((products derived from regional agricultural production,))~~ agriculturally related experiences, or ~~((products produced on-site. Accessory commercial and retail uses shall offer for sale predominantly products or services produced on-site))~~ the production, marketing, and distribution of value-added agricultural products, including support services that facilitate these activities; and

~~((iii) Accessory uses may operate out of existing or new buildings with parking and other supportive uses))~~ (ii) Nonagricultural accessory uses and activities as long as they are consistent with the size ~~((and)),~~ scale, and intensity of the existing agricultural use of the property and the existing buildings on the site ~~((but)).~~ Nonagricultural accessory uses and activities, including new buildings, parking, or supportive uses, shall not be located outside the general

area already developed for buildings and residential uses and shall not otherwise convert more than one acre of agricultural land to nonagricultural uses((:

~~(b) Accessory uses may include compatible commercial or retail uses including, but not limited to:~~

~~(i) Storage and refrigeration of regional agricultural products;~~

~~(ii) Production, sales, and marketing of value added agricultural products derived from regional sources;~~

~~(iii) Supplemental sources of on farm income that support and sustain on farm agricultural operations and production;~~

~~(iv) Support services that facilitate the production, marketing, and distribution of agricultural products; and~~

~~(v) Off farm and on farm sales and marketing of predominately regional agricultural products and experiences, locally made art and arts and crafts, and ancillary retail sales or service activities)); and~~

(c) Counties and cities have the authority to limit or exclude accessory uses otherwise authorized in this subsection (3) in areas designated as agricultural lands of long-term commercial significance.

(4) This section shall not be interpreted to limit agricultural production on designated agricultural lands.

Passed by the House March 6, 2006.

Passed by the Senate March 3, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 148

[Substitute House Bill 2958]

CRIMINAL WILDLIFE PENALTY ASSESSMENT—NONTOXIC SHOT

AN ACT Relating to violations of rules concerning nontoxic shot; amending RCW 77.15.400 and 77.15.425; and prescribing penalties.

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

Sec. 1. RCW 77.15.400 and 2001 c 253 s 41 are each amended to read as follows:

(1) A person is guilty of unlawful hunting of wild birds in the second degree if the person:

(a) Hunts for, takes, or possesses a wild bird and the person does not have and possess all licenses, tags, stamps, and permits required under this title;

(b) Maliciously destroys, takes, or harms the eggs or nests of a wild bird except when authorized by permit;

(c) Violates any rule of the commission or director regarding seasons, bag or possession limits but less than two times the bag or possession limit, closed areas, closed times, or other rule addressing the manner or method of hunting or possession of wild birds; or

(d) Possesses a wild bird taken during a closed season for that wild bird or taken from a closed area for that wild bird.

(2) A person is guilty of unlawful hunting of wild birds in the first degree if the person takes or possesses two times or more than the possession or bag limit for wild birds allowed by rule of the commission or director.

(3)(a) Unlawful hunting of wild birds in the second degree is a misdemeanor.

(b) Unlawful hunting of wild birds in the first degree is a gross misdemeanor.

(4) In addition to the penalties set forth in this section, if a person, other than a youth as defined in RCW 77.08.010 for hunting purposes, violates a rule adopted by the commission under the authority of this title that requires the use of nontoxic shot, upon conviction:

(a) The court shall require a payment of one thousand dollars as a criminal wildlife penalty assessment that must be paid to the clerk of the court and distributed to the state treasurer for deposit in the fish and wildlife enforcement reward account created in RCW 77.15.425. The criminal wildlife penalty assessment must be imposed regardless of and in addition to any sentence, fine, or costs imposed for violating this section. The criminal wildlife penalty assessment must be included by the court in any pronouncement of sentence and may not be suspended, waived, modified, or deferred in any respect; and

(b) The department shall revoke the hunting license of the person and order a suspension of small game hunting privileges for two years.

Sec. 2. RCW 77.15.425 and 2005 c 406 s 1 are each amended to read as follows:

The fish and wildlife enforcement reward account is created in the custody of the state treasurer. All receipts from criminal wildlife penalty assessments under RCW 77.15.420 and 77.15.400 must be deposited into the account. The department may accept money or personal property from persons under conditions requiring the property or money to be used consistent with the intent of expenditures from the fish and wildlife enforcement reward account. Expenditures from the account may be used only for investigation and prosecution of fish and wildlife offenses, to provide rewards to persons informing the department about violations of this title and rules adopted under this title, and for other valid enforcement uses as determined by the commission. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

Passed by the House February 13, 2006.

Passed by the Senate March 3, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 149

[Engrossed Substitute House Bill 2984]

AFFORDABLE HOUSING INCENTIVE PROGRAMS

AN ACT Relating to affordable housing incentive programs; amending RCW 82.02.020; adding a new section to chapter 36.70A RCW; and creating new sections.

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

NEW SECTION. Sec. 1. The legislature finds that as new market-rate housing developments are constructed and housing costs rise, there is a significant and growing number of low-income households that cannot afford

market-rate housing in Washington state. The legislature finds that assistance to low-income households that cannot afford market-rate housing requires a broad variety of tools to address this serious, statewide problem. The legislature further finds that absent any incentives to provide low-income housing, market conditions will result in housing developments in many areas that lack units affordable to low-income households, circumstances that can cause adverse socioeconomic effects.

The legislature encourages cities, towns, and counties to enact or expand affordable housing incentive programs, including density bonuses and other incentives, to increase the availability of low-income housing for renter and owner occupancy that is located in largely market-rate housing developments throughout the community, consistent with local needs and adopted comprehensive plans. While this act establishes minimum standards for those cities, towns, and counties choosing to implement or expand upon an affordable housing incentive program, cities, towns, and counties are encouraged to enact programs that address local circumstances and conditions while simultaneously contributing to the statewide need for additional low-income housing.

NEW SECTION. Sec. 2. A new section is added to chapter 36.70A RCW to read as follows:

(1)(a) Any city or county planning under RCW 36.70A.040 may enact or expand affordable housing incentive programs providing for the development of low-income housing units through development regulations. An affordable housing incentive program may include, but is not limited to:

- (i) Density bonuses within the urban growth area;
- (ii) Height and bulk bonuses;
- (iii) Fee waivers or exemptions;
- (iv) Parking reductions;
- (v) Expedited permitting, conditioned on provision of low-income housing units; or
- (vi) Mixed use projects.

(b) The city or county may enact or expand such programs whether or not the programs may impose a tax, fee, or charge on the development or construction of property.

(c) If a developer chooses not to participate in an optional affordable housing incentive program adopted and authorized under this section, a city, county, or town may not condition, deny, or delay the issuance of a permit or development approval that is consistent with zoning and development standards on the subject property absent incentive provisions of this program.

(2) Affordable housing incentive programs enacted or expanded under this section shall comply with the following:

(a) The incentives or bonuses shall provide for the construction of low-income housing units;

(b) Jurisdictions shall establish standards for low-income renter or owner occupancy housing, including income guidelines consistent with local housing needs, to assist low-income households that cannot afford market-rate housing. Low-income households are defined for renter and owner occupancy program purposes as follows:

(i) Rental housing units to be developed shall be affordable to and occupied by households with an income of fifty percent or less of the county median family income, adjusted for family size; and

(ii) Owner occupancy housing units shall be affordable to and occupied by households with an income of eighty percent or less of the county median family income, adjusted for family size. The legislative authority of a jurisdiction, after holding a public hearing, may establish lower income levels. The legislative authority of a jurisdiction, after holding a public hearing, may also establish higher income levels for rental housing or for owner occupancy housing upon finding that higher income levels are needed to address local housing market conditions. The higher income level for rental housing may not exceed eighty percent of the county area median family income. The higher income level for owner occupancy housing may not exceed one hundred percent of the county area median family income. These established higher income levels must be considered "low-income" for the purposes of this section;

(c) The jurisdiction shall establish a maximum rent level or sales price for each low-income housing unit developed under the terms of a program and may adjust these levels or prices based on the average size of the household expected to occupy the unit. For renter-occupied housing units, the total housing costs, including basic utilities as determined by the jurisdiction, may not exceed thirty percent of the income limit for the low-income housing unit;

(d) Low-income housing units shall be provided in a range of sizes comparable to those units that are available to other residents. To the extent practicable, the number of bedrooms in low-income units must be in the same proportion as the number of bedrooms in units within the entire building. The low-income units shall generally be distributed throughout the building, except that units may be provided in an adjacent building. The low-income units shall have substantially the same functionality as the other units in the building or buildings;

(e) Low-income housing units developed under an affordable housing incentive program shall be committed to continuing affordability for at least fifty years. A local government, however, may accept payments in lieu of continuing affordability. The program shall include measures to enforce continuing affordability and income standards applicable to low-income units constructed under this section that may include, but are not limited to, covenants, options, or other agreements to be executed and recorded by owners and developers;

(f) Programs authorized under subsection (1) of this section may apply to part or all of a jurisdiction and different standards may be applied to different areas within a jurisdiction. Programs authorized under this section may be modified to meet local needs and may include provisions not expressly provided in this section or RCW 82.02.020; and

(g) Low-income housing units developed under an affordable housing incentive program are encouraged to be provided within market-rate housing developments for which a bonus or incentive is provided. However, programs may allow units to be provided in an adjacent building and may allow payments of money or property in lieu of low-income housing units if the payment equals the approximate cost of developing the same number and quality of housing units that would otherwise be developed. Any city or county shall use these funds or property to support the development of low-income housing, including

support provided through loans or grants to public or private owners or developers of housing.

(3) Affordable housing incentive programs enacted or expanded under this section may be applied within the jurisdiction to address the need for increased residential development, consistent with local growth management and housing policies, as follows:

(a) The jurisdiction shall identify certain land use designations within a geographic area where increased residential development will assist in achieving local growth management and housing policies;

(b) The jurisdiction shall provide increased residential development capacity through zoning changes, bonus densities, height and bulk increases, parking reductions, or other regulatory changes or other incentives;

(c) The jurisdiction shall determine that increased residential development capacity or other incentives can be achieved within the identified area, subject to consideration of other regulatory controls on development; and

(d) The jurisdiction may establish a minimum amount of affordable housing that must be provided by all residential developments being built under the revised regulations, consistent with the requirements of this section.

Sec. 3. RCW 82.02.020 and 2005 c 502 s 5 are each amended to read as follows:

Except only as expressly provided in chapters 67.28 and 82.14 RCW, the state preempts the field of imposing taxes upon retail sales of tangible personal property, the use of tangible personal property, parimutuel wagering authorized pursuant to RCW 67.16.060, conveyances, and cigarettes, and no county, town, or other municipal subdivision shall have the right to impose taxes of that nature. Except as provided in RCW 82.02.050 through 82.02.090, no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land. However, this section does not preclude dedications of land or easements within the proposed development or plat which the county, city, town, or other municipal corporation can demonstrate are reasonably necessary as a direct result of the proposed development or plat to which the dedication of land or easement is to apply.

This section does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of a proposed development, subdivision, or plat. A local government shall not use such voluntary agreements for local off-site transportation improvements within the geographic boundaries of the area or areas covered by an adopted transportation program authorized by chapter 39.92 RCW. Any such voluntary agreement is subject to the following provisions:

(1) The payment shall be held in a reserve account and may only be expended to fund a capital improvement agreed upon by the parties to mitigate the identified, direct impact;

(2) The payment shall be expended in all cases within five years of collection; and

(3) Any payment not so expended shall be refunded with interest to be calculated from the original date the deposit was received by the county and at the same rate applied to tax refunds pursuant to RCW 84.69.100; however, if the payment is not expended within five years due to delay attributable to the developer, the payment shall be refunded without interest.

No county, city, town, or other municipal corporation shall require any payment as part of such a voluntary agreement which the county, city, town, or other municipal corporation cannot establish is reasonably necessary as a direct result of the proposed development or plat.

Nothing in this section prohibits cities, towns, counties, or other municipal corporations from collecting reasonable fees from an applicant for a permit or other governmental approval to cover the cost to the city, town, county, or other municipal corporation of processing applications, inspecting and reviewing plans, or preparing detailed statements required by chapter 43.21C RCW.

This section does not limit the existing authority of any county, city, town, or other municipal corporation to impose special assessments on property specifically benefitted thereby in the manner prescribed by law.

Nothing in this section prohibits counties, cities, or towns from imposing or permits counties, cities, or towns to impose water, sewer, natural gas, drainage utility, and drainage system charges: PROVIDED, That no such charge shall exceed the proportionate share of such utility or system's capital costs which the county, city, or town can demonstrate are attributable to the property being charged: PROVIDED FURTHER, That these provisions shall not be interpreted to expand or contract any existing authority of counties, cities, or towns to impose such charges.

Nothing in this section prohibits a transportation benefit district from imposing fees or charges authorized in RCW 36.73.120 nor prohibits the legislative authority of a county, city, or town from approving the imposition of such fees within a transportation benefit district.

Nothing in this section prohibits counties, cities, or towns from imposing transportation impact fees authorized pursuant to chapter 39.92 RCW.

Nothing in this section prohibits counties, cities, or towns from requiring property owners to provide relocation assistance to tenants under RCW 59.18.440 and 59.18.450.

Nothing in this section limits the authority of counties, cities, or towns to implement programs consistent with section 2 of this act, nor to enforce agreements made pursuant to such programs.

This section does not apply to special purpose districts formed and acting pursuant to Titles 54, 57, or 87 RCW, nor is the authority conferred by these titles affected.

NEW SECTION. Sec. 4. The powers granted in this act are supplemental and additional to the powers otherwise held by local governments, and nothing in this act shall be construed as a limit on such powers. The authority granted in this act shall extend to any affordable housing incentive program enacted or expanded prior to the effective date of this act if the extension is adopted by the applicable local government in an ordinance or resolution.

Passed by the House March 4, 2006.

Passed by the Senate March 1, 2006.

Approved by the Governor March 20, 2006.
Filed in Office of Secretary of State March 20, 2006.

CHAPTER 150

[Substitute House Bill 3033]

ANIMAL IDENTIFICATION—ADVISORY COMMITTEE

AN ACT Relating to animal identification; creating a new section; and providing an expiration date.

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

NEW SECTION. Sec. 1. (1) The director of agriculture shall convene an advisory committee composed of representatives from the various segments of the cattle industry that will be involved in the implementation of the state's component of the national animal identification program for animal health and disease trace-back purposes. The advisory committee shall be chaired by the director of agriculture or the director's appointee. In making the appointments to the advisory committee, the director shall consult with organizations that represent the affected segments of the cattle industry. The director may appoint additional members to the advisory committee as deemed necessary. The director shall appoint to the advisory committee one member from a federally recognized tribe who is in the cattle industry.

(2) The advisory committee shall evaluate the requirements of the federal program and examine approaches being taken by other states to implement the requirements, with an emphasis on neighboring states and the states that engage in the largest amount of trade in cattle with Washington, and evaluate demonstration projects that the department shall conduct at two or more facilities that handle large numbers of animals. The advisory committee shall make a recommendation on how the federal requirements should be implemented in Washington that includes recommended funding amounts and sources. In developing a funding proposal, the advisory committee shall consult with the office of financial management.

(3) The department shall submit a written report of the activities and recommendations of the advisory committee to the house of representatives and to the senate by December 1, 2006.

(4) This section expires July 1, 2007.

Passed by the House February 11, 2006.

Passed by the Senate March 6, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 151

[Engrossed Substitute House Bill 3222]

TAX EXEMPTION—LIVESTOCK NUTRIENT MANAGEMENT

AN ACT Relating to excise tax exemptions for the handling and processing of livestock manure; amending RCW 82.08.890, 82.12.890, 82.08.900, and 82.12.900; amending 2001 2nd sp.s. c 18 s 1 (uncodified); creating a new section; and providing an effective date.

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

Sec. 1. 2001 2nd sp.s. c 18 s 1 (uncodified) is amended to read as follows:

It is the intent of the legislature to provide tax exemptions to assist dairy farmers to comply with the dairy nutrient management act, chapter 90.64 RCW, to encourage owners of nondairy animal feeding operations to develop and implement approved nutrient management plans, and to assist public or private entities to establish and operate anaerobic digesters to treat ~~((dairy))~~ livestock nutrients on a regional or on-farm basis.

Sec. 2. RCW 82.08.890 and 2001 2nd sp.s. c 18 s 2 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to sales to eligible persons of services rendered in respect to operating, repairing, cleaning, altering, or improving of ~~((dairy))~~ livestock nutrient management equipment and facilities, or to sales of tangible personal property that becomes an ingredient or component of the equipment and facilities.

(2)(a) To be eligible, the equipment and facilities must be used exclusively for activities necessary to maintain a ((dairy)) livestock nutrient management plan (as required under chapter 90.64 RCW. This).

(b) The exemption applies to sales made after the ((dairy)) livestock nutrient management plan is: (i) Certified under chapter 90.64 RCW; (ii) approved as part of the permit issued under chapter 90.48 RCW; or (iii) approved as required under subsection (4)(c)(iii) of this section.

~~((2))~~ (3)(a) The department of revenue must provide an exemption certificate to an eligible person upon application by that person. The department of agriculture must provide a list of eligible persons, as defined in subsection (4)(c)(i) and (ii) of this section, to the department of revenue. Conservation districts must maintain lists of eligible persons as defined in subsection (4)(c)(iii) of this section to allow the department of revenue to verify eligibility. The application must be in a form and manner prescribed by the department and must contain information regarding the location of the dairy or animal feeding operation and other information the department may require.

(b) A person claiming an exemption under this section must keep records necessary for the department to verify eligibility under this section. The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

~~((3))~~ (4) The definitions in this subsection apply to this section and RCW 82.12.890 unless the context clearly requires otherwise:

(a) ("Dairy nutrient management equipment and facilities" means machinery, equipment, and structures used in the handling and treatment of dairy manure, such as aerators, agitators, alley scrapers, augers, dams, gutter cleaners, loaders, lagoons, pipes, pumps, separators, and tanks. The term also includes tangible personal property that becomes an ingredient or component of the equipment and facilities, including repair and replacement parts) "Animal feeding operation" means a lot or facility, other than an aquatic animal production facility, where the following conditions are met:

(i) Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve-month period; and

(ii) Crops, vegetation, forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(b) "Conservation district" means a subdivision of state government organized under chapter 89.08 RCW.

~~((b))~~ (c) "Eligible person" means a person (i) licensed to produce milk under chapter 15.36 RCW who has a certified dairy nutrient management plan ((by December 31, 2003)), as required by chapter 90.64 RCW; (ii) who owns an animal feeding operation and has a permit issued under chapter 90.48 RCW; or (iii) who owns an animal feeding operation and has a nutrient management plan approved by a conservation district as meeting natural resource conservation service field office technical guide standards.

(d) "Livestock nutrient management equipment and facilities" means machinery, equipment, and structures used in the handling and treatment of livestock manure, such as aerators, agitators, alley scrapers, augers, dams, gutter cleaners, loaders, lagoons, pipes, pumps, separators, and tanks. The term also includes tangible personal property that becomes an ingredient or component of the equipment and facilities, including repair and replacement parts.

(e) "Permit" means either a state waste discharge permit or a national pollutant discharge elimination system permit, or both.

Sec. 3. RCW 82.12.890 and 2003 c 5 s 15 are each amended to read as follows:

(1) The provisions of this chapter do not apply with respect to the use by an eligible person of tangible personal property that becomes an ingredient or component of ((dairy)) livestock nutrient management equipment and facilities, as defined in RCW 82.08.890, or to labor and services rendered in respect to repairing, cleaning, altering, or improving eligible tangible personal property.

(2)(a) To be eligible, the equipment and facilities must be used exclusively for activities necessary to maintain a ((dairy)) livestock nutrient management plan ((as required under chapter 90.64 RCW. This)).

(b) The exemption applies to the use of tangible personal property or labor and services made after the ((dairy)) livestock nutrient management plan is: (i) Certified under chapter 90.64 RCW; (ii) approved as part of the permit issued under chapter 90.48 RCW; or (iii) approved as required under RCW 82.08.890(4)(c)(iii).

(3) The exemption certificate and recordkeeping requirements of RCW 82.08.890 apply to this section. The definitions in RCW 82.08.890 apply to this section.

Sec. 4. RCW 82.08.900 and 2001 2nd sp.s. c 18 s 4 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to sales to an eligible person establishing or operating an anaerobic digester or to services rendered in respect to installing, constructing, repairing, cleaning, altering, or improving an anaerobic digester, or to sales of tangible personal property that becomes an ingredient or component of the anaerobic digester. The anaerobic digester must be used primarily to treat ((dairy)) livestock manure.

(2)(a) The department of revenue must provide an exemption certificate to an eligible person upon application by that person. The application must be in a form and manner prescribed by the department and must contain information

regarding the location of the facility and other information as the department may require.

(b) A person claiming an exemption under this section must keep records necessary for the department to verify eligibility under this section. The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(3) The definitions in this subsection apply to this section and RCW 82.12.900 unless the context clearly requires otherwise:

(a) "Anaerobic digester" means a facility that processes manure from ~~((cattle))~~ livestock into biogas and dried manure using microorganisms in a decomposition process within a closed, oxygen-free container.

(b) "Eligible person" means any person establishing or operating an anaerobic digester to treat primarily ~~((dairy))~~ livestock manure.

(c) "Primarily" means more than fifty percent measured by volume or weight.

Sec. 5. RCW 82.12.900 and 2003 c 5 s 16 are each amended to read as follows:

The provisions of this chapter do not apply with respect to the use of anaerobic digesters, tangible personal property that becomes an ingredient or component of anaerobic digesters, or the use of services rendered in respect to installing, repairing, cleaning, altering, or improving eligible tangible personal property by an eligible person establishing or operating an anaerobic digester, as defined in RCW 82.08.900. The anaerobic digester must be used primarily to treat ~~((dairy))~~ livestock manure.

NEW SECTION. Sec. 6. The conservation commission shall compile the following information on nutrient management plans written and approved by conservation districts for animal feeding operations during the 2005-2007 biennium: (1) The number of requests received to write or approve plans; (2) the number of plans completed and approved; (3) the total costs of writing and approving the plans, and the funding sources used; and (4) the relationship, if any, between the tax exemptions provided in this act and the number of plans written and approved. In its report, the commission shall compare the totals under subsections (1) through (3) of this section to the totals in the previous biennium. The conservation commission shall report this information to the appropriate committees of the legislature by December 1, 2007.

NEW SECTION. Sec. 7. This act takes effect July 1, 2006.

Passed by the House February 11, 2006.

Passed by the Senate March 7, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 152

[Engrossed Substitute Senate Bill 5385]

INVASIVE SPECIES COUNCIL

AN ACT Relating to creating an invasive species council; amending RCW 79A.25.010; adding new sections to chapter 79A.25 RCW; and providing an expiration date.

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

NEW SECTION. Sec. 1. The legislature finds that:

(1) The land, water, and other resources of Washington are being severely impacted by the invasion of an increasing number of harmful invasive plant and animal species.

(2) These impacts are resulting in damage to Washington's environment and causing economic hardships.

(3) The multitude of public and private organizations with an interest in controlling and preventing the spread of harmful invasive species in Washington need a mechanism for cooperation, communication, collaboration, and developing a statewide plan of action to meet these threats.

NEW SECTION. Sec. 2. (1) There is created the Washington invasive species council to exist until December 31, 2011. Staff support to the council shall be provided by the committee and from the agencies represented on the council. For administrative purposes, the council shall be located within the committee.

(2) The purpose of the council is to provide policy level direction, planning, and coordination for combating harmful invasive species throughout the state and preventing the introduction of others that may be potentially harmful.

(3) The council is a joint effort between local, tribal, state, and federal governments, as well as the private sector and nongovernmental interests. The purpose of the council is to foster cooperation, communication, and coordinated approaches that support local, state, and regional initiatives for the prevention and control of invasive species.

(4) For the purposes of this chapter, "invasive species" include nonnative organisms that cause economic or environmental harm and are capable of spreading to new areas of the state. "Invasive species" does not include domestic livestock, intentionally planted agronomic crops, or nonharmful exotic organisms.

NEW SECTION. Sec. 3. (1) Membership in the council includes a representative from the following entities:

(a) The department of agriculture, represented by the director or the director's designee;

(b) The department of fish and wildlife, represented by the director or the director's designee;

(c) The department of ecology, represented by the director or the director's designee;

(d) The department of natural resources, represented by the commissioner or the commissioner's designee;

(e) The department of transportation, represented by the secretary or the secretary's designee;

(f) The Washington state noxious weed control board, appointed by the board;

(g) A county located east of the crest of the Cascade mountains, appointed by the other members of the council; and

(h) A county located west of the crest of the Cascade mountains, appointed by the other members of the council.

(2) The councilmembers may add members to the council as the councilmembers deem appropriate to accomplish its goals.

(3) The council must invite one representative each from the United States department of agriculture, the United States fish and wildlife service, the United States environmental protection agency, and the United States coast guard to participate on the council in a nonvoting, ex officio capacity.

(4) A representative of the office of the governor must convene the first meeting of the council and serve as chair until the council selects a chair. At the first meeting of the council, the council shall address issues including, but not limited to, voting methods, meeting schedules, and the need for and use of advisory and technical committees.

NEW SECTION. Sec. 4. The council's goals are to:

(1) Minimize the effects of harmful invasive species on Washington's citizens and ensure the economic and environmental well-being of the state;

(2) Serve as a forum for identifying and understanding invasive species issues from all perspectives;

(3) Serve as a forum to facilitate the communication, cooperation, and coordination of local, tribal, state, federal, private, and nongovernmental entities for the prevention, control, and management of nonnative invasive species;

(4) Serve as an avenue for public outreach and for raising public awareness of invasive species issues;

(5) Develop and implement a statewide invasive species strategic plan as described in this chapter;

(6) Review the current funding mechanisms and levels for state agencies to manage noxious weeds on the lands under their authority;

(7) Make recommendations for legislation necessary to carry out the purposes of this chapter;

(8) Establish criteria for the prioritization of invasive species response actions and projects; and

(9) Utilizing the process described in subsection (8) of this section, select at least one project per year from the strategic plan for coordinated action by the Washington invasive species councilmember entities.

NEW SECTION. Sec. 5. (1) The council shall develop and periodically update a statewide strategic plan for addressing invasive species. The strategic plan should incorporate the reports and activities of the aquatic nuisance species committee, the state noxious weed control board, and other appropriate reports and activities. In addition, the council must coordinate with the biodiversity council created in Executive Order 04-02 to ensure that a statewide strategy for the control of invasive species is integrated into the thirty-year strategy for biodiversity conservation that the biodiversity council must submit to the legislature in 2007.

(2) The strategic plan must, at a minimum, address:

(a) Statewide coordination and intergovernmental cooperation;

(b) Prevention of new biological invasions through deliberate or unintentional introduction;

(c) Inventory and monitoring of invasive species;

(d) Early detection of and rapid response to new invasions;

(e) Control, management, and eradication of established populations of invasive species;

(f) Projects that can be implemented during the period covered by the strategic plan for the control, management, and eradication of new or established populations of invasive species;

(g) Revegetation, reclamation, or restoration of native species following control or eradication of invasive species;

(h) Tools that can be made available to assist state agencies that are responsible for managing public land to control invasive noxious weeds and recommendations as to how the agencies should be held responsible for the failure to control invasive noxious weeds;

(i) Research and public education;

(j) Funding and resources available for invasive species prevention, control, and management; and

(k) Recommendations for legislation necessary to carry out the purposes of this chapter.

(3) The strategic plan must be updated at least once every three years following its initial development. The strategic plan must be submitted to the governor and appropriate committees of the legislature by September 15th of each applicable year. The council shall complete the initial strategic plan within two years of the effective date of this section.

(4) Each state department and agency named to the council shall, consistent with state law, make best efforts to implement elements of the completed plan that are applicable to the department or agency.

NEW SECTION. Sec. 6. (1) The council shall submit an annual report of its activities to the governor and the relevant policy committees of the senate and house of representatives by December 15th of each year. The annual report must include an evaluation of progress made in the preceding year to implement or carry out the strategic plan and an identification of projects from the strategic plan that will be a focus for the following year.

(2) Prior to the start of the 2011 legislative session, the council must prepare a report to the appropriate committees of the legislature that makes recommendations as to the extension or modification of the council.

NEW SECTION. Sec. 7. The council may establish advisory and technical committees that it considers necessary to aid and advise the council in the performance of its functions. The committees may be continuing or temporary committees. The council shall determine the representation, membership, terms, and organization of the committees and appoint their members.

NEW SECTION. Sec. 8. The invasive species council account is created in the custody of the state treasurer. All receipts from appropriations, gifts, grants, and donations must be deposited into the account. Expenditures from the account may be used only to carry out the purposes of the council. The account is subject to allotment procedures under chapter 43.88 RCW and the approval of the director of the committee is required for expenditures. All expenditures must be directed by the council.

Sec. 9. RCW 79A.25.010 and 1989 c 237 s 2 are each amended to read as follows:

Definitions: As used in this chapter:

(1) "Marine recreation land" means any land with or without improvements which (a) provides access to, or in whole or in part borders on, fresh or salt water suitable for recreational use by watercraft, or (b) may be used to create, add to, or make more usable, bodies of water, waterways, or land, for recreational use by watercraft.

(2) "Public body" means any county, city, town, port district, park and recreation district, metropolitan park district, or other municipal corporation which is authorized to acquire or improve public outdoor recreation land, and shall also mean Indian tribes now or hereafter recognized as such by the federal government for participation in the land and water conservation program.

(3) "Tax on marine fuel" means motor vehicle fuel tax which is (a) tax on fuel used in, or sold or distributed for use in, any watercraft, (b) refundable pursuant to chapter 82.36 RCW, and (c) paid to the director of licensing with respect to taxable sales, distributions, or uses occurring on or after December 3, 1964.

(4) "Watercraft" means any boat, vessel, or other craft used for navigation on or through water.

(5) "Committee" means the interagency committee for outdoor recreation.

(6) "Director" means the director of the interagency committee for outdoor recreation.

(7) "Council" means the Washington invasive species council created in section 2 of this act.

NEW SECTION. Sec. 10. Section 8 of this act expires December 31, 2011.

NEW SECTION. Sec. 11. Sections 1 through 8 of this act are each added to chapter 79A.25 RCW.

Passed by the Senate March 4, 2006.

Passed by the House March 2, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 153

[Substitute Senate Bill 6223]

DERELICT, ABANDONED VESSELS

AN ACT Relating to derelict or abandoned vessels; amending RCW 79.100.010, 79.100.040, 79.100.060, and 79.100.100; adding new sections to chapter 79.100 RCW; repealing RCW 79.100.090; and prescribing penalties.

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

NEW SECTION. Sec. 1. A new section is added to chapter 79.100 RCW to read as follows:

A person who causes a vessel to become abandoned or derelict upon aquatic lands is guilty of a misdemeanor.

Sec. 2. RCW 79.100.010 and 2002 c 286 s 2 are each amended to read as follows:

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

(1) "Abandoned vessel" means the vessel's owner is not known or cannot be located, or if the vessel's owner is known and located but is unwilling to take

control of the vessel, and the vessel has been left, moored, or anchored in the same area without the express consent, or contrary to the rules, of the owner, manager, or lessee of the aquatic lands below or on which the vessel is located for either a period of more than thirty consecutive days or for more than a total of ninety days in any three hundred sixty-five day period. For the purposes of this subsection (1) only, "in the same area" means within a radius of five miles of any location where the vessel was previously moored or anchored on aquatic lands.

(2) "Aquatic lands" means all tidelands, shorelands, harbor areas, and the beds of navigable waters, including lands owned by the state and lands owned by other public or private entities.

(3) "Authorized public entity" includes any of the following: The department of natural resources; the department of fish and wildlife; the parks and recreation commission; a metropolitan park district; a port district; and any city, town, or county with ownership, management, or jurisdiction over the aquatic lands where an abandoned or derelict vessel is located.

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

(5) "Derelict vessel" means the vessel's owner is known and can be located, and exerts control of a vessel that:

(a) Has been moored, anchored, or otherwise left in the waters of the state or on public property contrary to RCW ((79.01.760)) 79.02.300 or rules adopted by an authorized public entity;

(b) Has been left on private property without authorization of the owner; or

(c) Has been left for a period of seven consecutive days, and:

(i) Is sunk or in danger of sinking;

(ii) Is obstructing a waterway; or

(iii) Is endangering life or property.

(6) "Owner" means any natural person, firm, partnership, corporation, association, government entity, or organization that has a lawful right to possession of a vessel by purchase, exchange, gift, lease, inheritance, or legal action whether or not the vessel is subject to a security interest.

(7) "Vessel" has the same meaning as defined in RCW 53.08.310.

Sec. 3. RCW 79.100.040 and 2002 c 286 s 5 are each amended to read as follows:

(1) Prior to exercising the authority granted in RCW 79.100.030, the authorized public entity must first obtain custody of the vessel. To do so, the authorized public entity must:

(a) Mail notice of its intent to obtain custody, at least twenty days prior to taking custody, to the last known address of the previous owner to register the vessel in any state or with the federal government and to any lien holders or secured interests on record. A notice need not be sent to the purported owner or any other person whose interest in the vessel is not recorded with a state or federal agency;

(b) Post notice of its intent clearly on the vessel for thirty days and publish its intent at least once, more than ten days but less than twenty days prior to taking custody, in a newspaper of general circulation for the county in which the vessel is located; and

(c) Post notice of its intent on the department's internet web site on a page specifically designated for such notices. If the authorized public entity is not the department, the department must facilitate the internet posting.

(2) All notices sent, posted, or published in accordance with this section must, at a minimum, explain the intent of the authorized public entity to take custody of the vessel, the rights of the authorized public entity after taking custody of the vessel as provided in RCW 79.100.030, the procedures the owner must follow in order to avoid custody being taken by the authorized public entity, the procedures the owner must follow in order to reclaim possession after custody is taken by the authorized public entity, and the financial liabilities that the owner may incur as provided for in RCW 79.100.060.

(3) If a vessel is in immediate danger of sinking, breaking up, or blocking navigational channels, and the owner of the vessel cannot be located or is unwilling or unable to assume immediate responsibility for the vessel, ~~((an))~~ any authorized public entity may tow, beach, or otherwise take temporary possession of the vessel. Before taking temporary possession of the vessel, the authorized public entity must make reasonable attempts to consult with the department ~~((and))~~ or the United States coast guard to ensure that other remedies are not available. The basis for taking temporary possession of the vessel must be set out in writing by the authorized public entity within seven days of taking action and be submitted to the owner, if known, as soon thereafter as is reasonable. If the authorized public entity has not already provided the required notice, immediately after taking possession of the vessel, the authorized public entity must initiate the notice provisions in subsection (1) of this section. The authorized public entity must complete the notice requirements of subsection (1) of this section before using or disposing of the vessel as authorized in RCW 79.100.050.

Sec. 4. RCW 79.100.060 and 2002 c 286 s 7 are each amended to read as follows:

(1) The owner of an abandoned or derelict vessel is responsible for reimbursing an authorized public entity for all reasonable and auditable costs associated with the removal or disposal of the owner's vessel under this chapter. These costs include, but are not limited to, costs incurred exercising the authority granted in RCW 79.100.030, all administrative costs incurred by the authorized public entity during the procedure set forth in RCW 79.100.040, removal and disposal costs, and costs associated with environmental damages directly or indirectly caused by the vessel. An authorized public entity that has taken temporary possession of a vessel may require that all reasonable and auditable costs associated with the removal of the vessel be paid before the vessel is released to the owner.

(2) Reimbursement for costs may be sought from an owner who is identified subsequent to the vessel's removal and disposal.

(3) If the full amount of all costs due to the authorized public entity under this chapter is not paid to the authorized public entity within thirty days after first notifying the responsible parties of the amounts owed, the authorized public entity or the department may bring an action in any court of competent jurisdiction to recover the costs, plus reasonable attorneys' fees and costs incurred by the authorized public entity.

NEW SECTION. Sec. 5. A new section is added to chapter 79.100 RCW to read as follows:

(1) A person seeking to contest an authorized public entity's decision to take temporary possession or custody of a vessel under this chapter, or to contest the amount of reimbursement owed to an authorized public entity under this chapter, may request a hearing in accordance with this section.

(2)(a) If the contested decision or action was undertaken by a state agency, a written request for a hearing related to the decision or action must be filed with the aquatic resources division of the department within twenty days of the date the authorized public entity acquires custody of the vessel under RCW 79.100.040, or if the vessel is redeemed before the authorized public entity acquires custody, the date of redemption, or the right to a hearing is deemed waived and the vessel's owner is liable for any costs owed the authorized public entity. In the event of litigation, the prevailing party is entitled to reasonable attorneys' fees and costs.

(b) Upon receipt of a timely hearing request, the department shall proceed to hear and determine the validity of the decision to take the vessel into temporary possession or custody and the reasonableness of any towing, storage, or other charges permitted under this chapter. Within five business days after the request for a hearing is filed, the department shall notify the vessel owner requesting the hearing and the authorized public entity of the date, time, and location for the hearing. Unless the vessel is redeemed before the request for hearing is filed, the department shall set the hearing on a date that is within ten business days of the filing of the request for hearing. If the vessel is redeemed before the request for a hearing is filed, the department shall set the hearing on a date that is within sixty days of the filing of the request for hearing.

(3)(a) If the contested decision or action was undertaken by a metropolitan park district, port district, city, town, or county, which has adopted rules or procedures for contesting decisions or actions pertaining to derelict or abandoned vessels, those rules or procedures must be followed in order to contest a decision to take temporary possession or custody of a vessel, or to contest the amount of reimbursement owed.

(b) If the metropolitan park district, port district, city, town, or county has not adopted rules or procedures for contesting decisions or actions pertaining to derelict or abandoned vessels, then a person requesting a hearing under this section must follow the procedure established in RCW 53.08.320(5) for contesting the decisions or actions of moorage facility operators.

Sec. 6. RCW 79.100.100 and 2002 c 286 s 11 are each amended to read as follows:

(1) The derelict vessel removal account is created in the state treasury. All receipts from RCW 79.100.050 and 79.100.060 and those moneys specified in RCW 88.02.030 and 88.02.050 must be deposited into the account. The account is authorized to receive gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of this chapter and expend the same or any income according to the terms of the gifts, grants, or endowments provided those terms do not conflict with any provisions of this section or any guidelines developed to prioritize reimbursement of removal projects associated with this chapter. Moneys in the account may only be spent after appropriation. Expenditures

from the account shall be used by the department to reimburse authorized public entities for ~~((seventy-five))~~ up to ninety percent of the total reasonable and auditable administrative, removal, disposal, and environmental damage costs of abandoned or derelict vessels when the previous owner is either unknown after a reasonable search effort or insolvent. ~~((During the 2001-2003 biennium, up to forty percent of the expenditures from the account may be used for administrative expenses of the department of licensing and department of natural resources in implementing this chapter.))~~ Costs associated with removal and disposal of an abandoned or derelict vessel under the authority granted in RCW 53.08.320 also qualify for reimbursement from the derelict vessel removal account. In each ~~((subsequent))~~ biennium, up to twenty percent of the expenditures from the account may be used for administrative expenses of the department of licensing and department of natural resources in implementing this chapter.

(2) If the balance of the account reaches one million dollars as of March 1st of any year, the department must notify the department of licensing and the collection of any fees associated with this account must be suspended for the following fiscal year.

(3) Priority for use of this account is for the removal of derelict and abandoned vessels that are in danger of sinking, breaking up, or blocking navigation channels, or that present environmental risks such as leaking fuel or other hazardous substances. The department must develop criteria, in the form of informal guidelines, to prioritize removal projects associated with this chapter, but may not consider whether the applicant is a state or local entity when prioritizing. The guidelines must also include guidance to the authorized public entities as to what removal activities and associated costs are reasonable and eligible for reimbursement.

(4) The department must keep all authorized public entities apprized of the balance of the derelict vessel removal account and the funds available for reimbursement. The guidelines developed by the department must also be made available to the other authorized public entities. This subsection (4) must be satisfied by utilizing the least costly method, including maintaining the information on the department's internet web site, or any other cost-effective method.

(5) An authorized public entity may contribute its ~~((twenty-five))~~ ten percent of costs that are not eligible for reimbursement by using in-kind services, including the use of existing staff, equipment, and volunteers.

(6) This chapter does not guarantee reimbursement for an authorized public entity. Authorized public entities seeking certainty in reimbursement prior to taking action under this chapter may first notify the department of their proposed action and the estimated total costs. Upon notification by an authorized public entity, the department must make the authorized public entity aware of the status of the fund and the likelihood of reimbursement being available. The department may offer technical assistance and assure reimbursement for up to two years following the removal action if an assurance is appropriate given the balance of the fund and the details of the proposed action.

NEW SECTION. Sec. 7. RCW 79.100.090 (Contest custody/reimbursement—Lawsuit) and 2002 c 286 s 10 are each repealed.

Passed by the Senate March 6, 2006.
Passed by the House March 1, 2006.
Approved by the Governor March 20, 2006.
Filed in Office of Secretary of State March 20, 2006.

CHAPTER 154

[Senate Bill 6264]

WORKERS' COMPENSATION—PERMANENT TOTAL DISABILITY OPTIONS

AN ACT Relating to allowing an injured worker to change total permanent disability pension options under certain circumstances; and amending RCW 51.32.067.

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

Sec. 1. RCW 51.32.067 and 1986 c 58 s 4 are each amended to read as follows:

(1) After a worker elects one of the options in (a), (b), or (c) of this subsection, that option shall apply only if the worker dies during a period of permanent total disability from a cause unrelated to the injury, leaving a surviving spouse, child, children, or other dependent. If, after making an election under this subsection, a worker dies from a cause related to the injury during a period of permanent total disability, his or her beneficiaries shall receive benefits under RCW 51.32.050 (2) through (5).

(a) **Option I.** An injured worker selecting this option shall receive the benefits provided by RCW 51.32.060, with no benefits being paid to the worker's surviving spouse, children, or others.

(b) **Option II.** An injured worker selecting this option shall receive an actuarially reduced benefit which upon death shall be continued throughout the life of and paid to the surviving spouse, child, or other dependent as the worker has nominated by written designation duly executed and filed with the department.

(c) **Option III.** An injured worker selecting this option shall receive an actuarially reduced benefit and, upon death, one-half of the reduced benefit shall be continued throughout the life of and paid to the surviving spouse, child, or other dependent as the worker has nominated by written designation duly executed and filed with the department.

(2) The worker shall make the election in writing and the worker's spouse, if any, shall consent in writing as a prerequisite to the election of Option I.

(3) If the worker's nominated beneficiary is the worker's spouse, and the worker and spouse enter into a dissolution of marriage after the nomination has been made, the worker may apply to receive benefits as calculated under Option I. This change is effective the date of the decree of dissolution of marriage, but no more than one year prior to the date application for the change is received in the department, provided the worker submits legally certified documentation of the decree of dissolution of marriage.

(4) If the worker's nominated beneficiary dies, the worker may apply to receive benefits as calculated under Option I. This change is effective the date of death, but no more than one year prior to the date application for the change is received in the department, provided the worker submits a certified copy of the death certificate.

(5) The change in benefits authorized by subsections (3) and (4) of this section is a one-time adjustment and will be permanent for the life of the worker.

(6) The department shall adopt such rules as may be necessary to implement this section.

Passed by the Senate February 7, 2006.

Passed by the House March 3, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 155

[Senate Bill 6371]

LIVESTOCK DISPOSAL

AN ACT Relating to dead animal disposal; amending RCW 16.68.020; adding a new section to chapter 16.36 RCW; and recodifying RCW 16.68.020.

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

Sec. 1. RCW 16.68.020 and 1949 c 100 s 2 are each amended to read as follows:

Every person owning or having in charge any ~~((animal))~~ livestock that has died ~~((or been killed on account))~~ because of disease shall ~~((immediately bury))~~ dispose of the carcass ~~((thereof to such a depth that no part of the carcass shall be nearer than three feet from the surface of the ground))~~ within a time frame and in a manner prescribed in rule by the director, which may include, but is not limited to, burial, composting, incinerating, landfilling, natural decomposition, or rendering. Any ~~((animal))~~ livestock found dead ~~((shall be))~~ from an unknown cause is presumed to have died ~~((from and on account))~~ because of disease.

NEW SECTION. Sec. 2. RCW 16.68.020 is recodified as a section in chapter 16.36 RCW.

Passed by the Senate February 8, 2006.

Passed by the House February 28, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 156

[Engrossed Senate Bill 6376]

LIVESTOCK INSPECTION FEES

AN ACT Relating to livestock inspection fees; amending RCW 16.57.220, 16.58.130, and 16.57.160; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 16.57.220 and 2003 c 326 s 24 are each amended to read as follows:

(1) Except as provided for in RCW 16.65.090 and ~~((subsection (2), (3), or (4) of))~~ otherwise in this section, the fee for livestock inspection is ~~((eighty-five))~~ one dollar and sixty cents per head for cattle and three dollars and fifty cents for horses or ~~((fifteen dollars per hour and the current mileage rate set by~~

~~the office of financial management~~) the time and mileage fee, whichever is greater.

(2) When cattle are identified with the owner's brand or other form of identification specified by the director by rule, the fee for livestock inspection is one dollar and ten cents per head or the time and mileage fee, whichever is greater. This fee does not apply for inspection of cattle when documenting a change of ownership with a self-inspection certificate.

(3) No inspection fee is charged for a calf that is inspected before moving out-of-state under an official temporary grazing permit if the calf is part of a cow-calf unit and the calf is identified with the owner's Washington-recorded brand or other form of identification specified by the director by rule.

(4) The fee for inspection of cattle at a processing plant with a daily capacity of no more than five hundred head of cattle where the United States department of agriculture maintains a meat inspection program is four dollars per head.

(5) When a single inspection certificate issued for thirty or more horses belonging to one person, the fee for livestock inspection is two dollars per head or ~~((fifteen dollars per hour and the current mileage rate set by the office of financial management))~~ the time and mileage fee, whichever is greater.

~~((3))~~ (6) The fee for individual identification certificates is twenty dollars for an annual certificate and sixty dollars for a lifetime certificate or ~~((fifteen dollars per hour and the current mileage rate set by the office of financial management))~~ the time and mileage fee, whichever is greater. However, the fee for an annual certificate listing thirty or more animals belonging to one person is five dollars per head or ~~((fifteen dollars per hour and the current mileage rate set by the office of financial management))~~ the time and mileage fee, whichever is greater. A lifetime certificate shall not be issued until the fee has been paid to the director.

~~((4))~~ (7) The minimum fee for the issuance of an inspection certificate by the director is five dollars. The minimum fee does not apply to livestock consigned to a public livestock market or special sale or inspected at a cattle processing plant.

(8) For purposes of this section, "the time and mileage fee" means seventeen dollars per hour and the current mileage rate set by the office of financial management.

Sec. 2. RCW 16.58.130 and 2003 c 326 s 56 are each amended to read as follows:

Each licensee shall pay to the director a fee of ~~((seventeen))~~ twenty-five cents for each head of cattle handled through the licensee's feed lot. Payment of the fee shall be made by the licensee on a monthly basis. Failure to pay as required shall be grounds for suspension or revocation of a certified feed lot license. The director shall not renew a certified feed lot license if a licensee has failed to make prompt and timely payments.

Sec. 3. RCW 16.57.160 and 2003 c 326 s 18 are each amended to read as follows:

The director may adopt rules:

(1) Designating any point for mandatory inspection of cattle or horses or the furnishing of proof that cattle or horses passing or being transported through the point have been inspected or identified and are lawfully being transported;

(2) Providing for self-inspection of ~~((fifteen))~~ twenty-five head or less of cattle;

(3) Providing for issuance of individual horse and cattle identification certificates or other means of horse and cattle identification; and

(4) Designating the documents that constitute other satisfactory proof of ownership for cattle and horses. A bill of sale may not be designated as documenting satisfactory proof of ownership for cattle.

NEW SECTION. Sec. 4. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 1, 2006.

Passed by the Senate February 14, 2006.

Passed by the House February 28, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 157

[Substitute Senate Bill 6377]

MILK OR MILK PRODUCTS

AN ACT Relating to regulation of milk and milk products; amending RCW 15.36.012, 15.36.111, and 15.36.511; adding new sections to chapter 15.36 RCW; creating new sections; and prescribing penalties.

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

NEW SECTION. Sec. 1. The legislature finds that chapter 15.36 RCW includes the regulation of raw milk and raw milk products including arrangements known as "cow shares" in which one or more individuals purchase one or more shares in a milk-producing animal in return for a portion of the milk that is produced. The legislature also finds that the agencies charged with protecting public health and safety need to have strong enforcement mechanisms and be able to respond rapidly, comprehensively, and effectively. It is not the intent of this act to prohibit either the sale of raw milk or cow share or similar arrangements by producers and processors who are properly licensed under chapter 15.36 RCW.

Sec. 2. RCW 15.36.012 and 1999 c 291 s 1 are each amended to read as follows:

For the purpose of this chapter:

"Adulterated milk" means milk that is deemed adulterated under appendix L of the PMO.

"Colostrum milk" means milk produced within ten days before or until practically colostrum free after parturition.

"DMO" means supplement I, the recommended sanitation ordinance for grade A condensed and dry milk products and condensed and dry whey, to the PMO published by the United States public health service, food and drug administration.

"Dairy farm" means a place or premises where one or more cows, goats, or other mammals are kept, a part or all of the milk or milk products from which is sold or offered for sale ~~((to a milk processing plant, transfer station, or receiving station))~~.

"Dairy technician" means any person who takes samples of milk or cream or fluid derivatives thereof, on which sample tests are to be made as a basis of payment, or who grades, weighs, or measures milk or cream or the fluid derivatives thereof, the grade, weight, or measure to be used as a basis of payment, or who operates equipment wherein milk or products thereof are pasteurized.

"Degrade" means the lowering in grade from grade A to grade C.

"Department" means the state department of agriculture.

"Director" means the director of agriculture of the state of Washington or the director's duly authorized representative.

"Grade A milk processing plant" means any milk processing plant that meets all of the standards of the PMO to process grade A pasteurized milk or milk products.

"Grade A pasteurized milk" means grade A raw milk that has been pasteurized.

"Grade A raw milk" means raw milk produced upon dairy farms conforming with all of the items of sanitation contained in the PMO, in which the bacterial plate count does not exceed twenty thousand per milliliter and the coliform count does not exceed ten per milliliter as determined in accordance with RCW 15.36.201.

"Grade A raw milk for pasteurization" means raw milk produced upon dairy farms conforming with all of the same items of sanitation contained in the PMO of grade A raw milk, and the bacterial plate count, as delivered from the farm, does not exceed eighty thousand per milliliter as determined in accordance with RCW 15.36.201.

"Grade C milk" is milk that violates any of the requirements for grade A milk but that is not deemed to be adulterated.

"Milk" means the lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy cows, goats, or other mammals.

"Milk hauler" means a person who transports milk or milk products in bulk to or from a milk processing plant, receiving station, or transfer station.

"Milk processing" means the handling, preparing, packaging, or processing of milk in any manner in preparation for sale as food, as defined in chapter 69.04 RCW. Milk processing does not include milking or producing milk on a dairy farm that is shipped to a milk processing plant for further processing.

"Milk processing plant" means a place, premises, or establishment where milk or milk products are collected, handled, processed, stored, bottled, pasteurized, aseptically processed, bottled, or prepared for distribution, except an establishment that merely receives the processed milk products and serves them or sells them at retail.

"Milk products" means the product of a milk manufacturing process.

"Misbranded milk" means milk or milk products that carries a grade label unless such grade label has been awarded by the director and not revoked, or that fails to conform in any other respect with the statements on the label.

"Official laboratory" means a biological, chemical, or physical laboratory that is under the direct supervision of the state or a local regulatory agency.

"Officially designated laboratory" means a commercial laboratory authorized to do official work by the department, or a milk industry laboratory officially designated by the department for the examination of grade A raw milk

for pasteurization and commingled milk tank truck samples of raw milk for antibiotic residues and bacterial limits.

"PMO" means the grade "A" pasteurized milk ordinance published by the United States public health service, food and drug administration.

"Pasteurized" means the process of heating every particle of milk or milk product in properly designed and operated equipment to the temperature and time standards specified in the PMO.

"Person" means an individual, partnership, firm, corporation, company, trustee, or association.

"Producer" means a person or organization who operates a dairy farm and provides, sells, or offers milk for sale (~~(to a milk processing plant, receiving station, or transfer station)~~).

"Receiving station" means a place, premises, or establishment where raw milk is received, collected, handled, stored, or cooled and prepared for further transporting.

"Sale" means selling, offering for sale, holding for sale, preparing for sale, distributing, dispensing, delivering, supplying, trading, bartering, offering a gift as an inducement for sale of, and advertising for sale in any media.

"Transfer station" means any place, premises, or establishment where milk or milk products are transferred directly from one milk tank truck to another.

"Wash station" means a place, facility, or establishment where milk tanker trucks are cleaned in accordance with the standards of the PMO.

Sec. 3. RCW 15.36.111 and 1999 c 291 s 6 are each amended to read as follows:

(1) The director shall inspect all dairy farms and all milk processing plants prior to issuance of a license under this chapter and at a frequency determined by the director by rule: PROVIDED, That the director may accept the results of periodic industry inspections of producer dairies if such inspections have been officially checked periodically and found satisfactory. In case the director discovers the violation of any item of grade requirement, he or she shall make a second inspection after a lapse of such time as he or she deems necessary for the defect to be remedied, but not before the lapse of three days, and the second inspection shall be used in determining compliance with the grade requirements of this chapter. Whenever there is any violation of the same requirement of this chapter on the second inspection, the director may initiate proceedings to degrade, suspend the license, or assess a civil penalty.

(2) One copy of the inspection report detailing the grade requirement violations shall be posted by the director in a conspicuous place upon an inside wall of the milk tank room or a mutually agreed upon location on a dairy farm or given to an operator of the milk processing plant, and said inspection report shall not be defaced or removed by any person except the director. Another copy of the inspection report shall be filed with the records of the director.

(3) Every milk producer and milk processing plant shall permit the director access to all parts of the establishment during the working hours of the producer or milk processing plant, which shall at a minimum include the hours from 8 a.m. to 5 p.m., and every milk processing plant shall furnish the director, upon his or her request, for official use only, samples of any milk product for laboratory analysis, and a true statement of the actual quantities of milk and milk

products of each grade purchased and sold(~~(, together with a list of all sources, records of inspections and tests, and recording thermometer charts)~~).

(4) The director shall have access to all parts of a dairy farm or facility that is not licensed as a milk producer or milk processing plant if the director has information that the dairy farm or facility is engaged in activities that require a license under this chapter. The director shall have access during the working hours of the dairy farm or facility, which shall at a minimum include the hours from 8 a.m. to 5 p.m. The director shall have the authority to take samples of milk or any milk products and water and environmental samples for laboratory analysis. For all establishments subject to this subsection and subsection (3) of this section, the director shall have access to records including, but not limited to, customer lists, milk production records, temperature records, and records of inspections and tests.

(5) If the director is denied access to a dairy farm or milk processing plant, the director may apply to a court of competent jurisdiction for a search warrant authorizing access to the property and facilities for purposes of conducting tests and inspections, taking samples, and examining records. To show that access is denied, the director shall file with the court an affidavit or declaration containing a description of his or her attempts to notify and locate the owner or the owner's agent and to secure consent. Upon application, the court may issue a search warrant for the purposes requested.

Sec. 4. RCW 15.36.511 and 1999 c 291 s 24 are each amended to read as follows:

(1) It is unlawful for any person to:

~~((1))~~ (a) Interfere with or obstruct any person in the performance of official duties under this chapter;

~~((2))~~ (b) Employ a tester, sampler, weigher, grader, or pasteurizer who is not licensed as a dairy technician;

~~((3))~~ (c) Alter or tamper with a seal placed by the director; ~~(or~~

~~(4))~~ (d) Alter or tamper with a sample of milk or milk products taken or sealed by the director; or

(e) Operate as a milk producer or milk processing plant without obtaining a license from the director.

(2) Except as provided under RCW ~~((15.35.131))~~ 15.36.131, it is unlawful for a milk processing plant to accept milk from a person not licensed as a producer or milk processor.

NEW SECTION. Sec. 5. A new section is added to chapter 15.36 RCW to read as follows:

The director may issue a cease and desist order to any person whom the director has reason to believe is engaged in an activity for which a license is required by this chapter. The person to whom such notice is issued may request an adjudicative proceeding to contest the order.

NEW SECTION. Sec. 6. A new section is added to chapter 15.36 RCW to read as follows:

(1) When the director has probable cause to believe that milk or milk products are being sold, distributed, stored, or transported in violation of this chapter or rules adopted under this chapter, the director may issue and serve upon the owner or custodian of the milk or milk products a written notice of

embargo and order prohibiting the sale of the milk or milk products. If the owner or custodian is not available for service, the director may attach the notice of embargo and order prohibiting sale to the container holding the milk or milk products. The milk or milk products shall not be sold, used, or removed until this chapter has been complied with and the milk or milk products have been released from embargo under conditions specified by the director in writing.

(2) The department may issue a destruction and disposal order covering any embargoed milk or milk products. The destruction and disposal shall occur at the cost of the owner or custodian.

(3) The person to whom the notice of embargo and order prohibiting sale was issued or the person to whom a destruction or disposal order was issued may request an adjudicative proceeding to contest the order.

(4) A state court shall not allow the recovery of damages from an administrative action under this section if the court finds there was probable cause for the action.

NEW SECTION. Sec. 7. A new section is added to chapter 15.36 RCW to read as follows:

(1) It is unlawful for any person to sell raw milk from a dairy farm that is not licensed as a milk producer or a milk processing plant under this chapter.

(2) The sale of raw milk from a dairy farm that is not licensed as a milk producer and a milk processing plant under this chapter constitutes:

(a) For the first offense, a misdemeanor; and

(b) For the second and subsequent offenses, a gross misdemeanor punishable according to chapter 9A.20 RCW.

(3) Neither the issuance of a cease and desist order nor payment of a civil penalty relieves the person so selling raw milk from criminal prosecution, but the remedy of a cease and desist order or civil penalty is in addition to any criminal liability.

NEW SECTION. Sec. 8. (1) The legislature finds that small-scale dairies have varying degrees of familiarity with statutory and regulatory requirements and the range of acceptable methods they can use to meet those requirements. The legislature therefore directs the department of agriculture to convene a work group to identify and help resolve obstacles faced by small-scale dairies in their efforts to become licensed as milk producers and milk processing plants.

(2) The director of the department of agriculture shall include in the work group representatives of small-scale and conventional dairies, public health officials, the cooperative extension, industry associations, consumers, and other stakeholders as the director deems appropriate. Representatives from the department's food safety and small farms direct marketing programs shall staff the work group.

(3) The work group shall:

(a) Identify barriers to small-scale dairies in achieving licensing;

(b) Examine potential solutions to those barriers that are size-appropriate and economically feasible;

(c) Identify sources of technical assistance and information on best management practices; and

(d) Recommend other actions that will assist small-scale dairies to become licensed.

(4) By December 1, 2006, the department of agriculture and representatives of the work group shall report on their work and recommendations to appropriate standing committees of the legislature.

Passed by the Senate March 4, 2006.

Passed by the House March 1, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 158

[Substitute House Bill 2382]

BOVINE HANDLING FACILITIES

AN ACT Relating to bovine handling facilities; and adding a new section to chapter 4.24 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 4.24 RCW to read as follows:

(1) Except as provided in subsection (2) of this section, an owner, operator, or manager of a bovine handling facility, and the owner of bovine handled at or processed through a bovine handling facility, are not liable for an injury to or the death of a person who knowingly and voluntarily participates in bovine handling activities at a bovine handling facility or knowingly and voluntarily enters onto the premises of a bovine handling facility as a spectator of bovine handling activities.

(2) Nothing in subsection (1) of this section prevents or limits the liability of an owner, operator, or manager of a bovine handling facility, or an owner of bovine handled at or processed through a bovine handling facility, if the owner, operator, or manager of the bovine handling facility, or the bovine owner:

(a) Intentionally injures the participant or spectator or commits an act or omission that constitutes willful or wanton disregard for the safety of the participant or spectator and that act or omission caused the injury;

(b) Owns, leases, rents, or otherwise is in lawful possession and control of the land or facilities upon which the participant or spectator sustained injuries because of a dangerous latent condition which was known to or should have been known to the owner, operator, or manager of the bovine handling facility, or the bovine owner, and for which warning signs have not been conspicuously posted; or

(c) Is liable under chapter 16.04 or 16.24 RCW.

(3) As used in this section:

(a) "Bovine" means beef cattle, dairy cattle, and bison.

(b) "Bovine handling facility" means a cooperative not-for-profit outdoor facility, such as a corral, that is used for the normal and customary handling and husbandry of bovines, whether on a daily or periodic basis, and does not include commercial slaughter facilities.

(c) "Bovine handling activities" means normal and customary activities associated with the handling and husbandry of bovines.

Passed by the House March 4, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 159

[Substitute Senate Bill 6439]

DUNGENESS CRAB-COASTAL FISHERY LICENSES

AN ACT Relating to coastal crab fisheries licenses; and amending RCW 77.70.350.

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

Sec. 1. RCW 77.70.350 and 1994 c 260 s 10 are each amended to read as follows:

(1) The following restrictions apply to vessel designations and substitutions on Dungeness crab-coastal fishery licenses (~~(and Dungeness crab coastal class B fishery licenses)~~):

(a) The holder of the license may not:

(i) ~~Designate on the license a vessel the hull length of which exceeds ninety-nine feet~~~~((nor may the holder))~~; or

(ii) Change vessel designation if the hull length of the vessel proposed to be designated exceeds the hull length ((of the currently designated vessel)) designated on the license on the effective date of this section by more than ten feet. However, if such vessel designation is the result of an emergency transfer, the applicable vessel length would be the most recent permanent vessel designation on the license prior to the effective date of this section;

(b) If the hull length of the vessel proposed to be designated is comparable to or exceeds by up to one foot the hull length of the currently designated vessel, the department may change the vessel designation no more than once in any two consecutive Washington state coastal crab seasons unless the currently designated vessel is lost or in disrepair such that it does not safely operate, in which case the department may allow a change in vessel designation;

(c) If the hull length of the vessel proposed to be designated exceeds by between one and ten feet the hull length of the ~~((currently))~~ designated vessel on the effective date of this section, the department may change the vessel designation no more than once ~~((in any five consecutive Washington state coastal crab seasons))~~ on or after the effective date of this section, unless a request is made by the license holder during a Washington state coastal crab season for an emergency change in vessel designation. If such an emergency request is made, the director may allow a temporary change in designation to another vessel, if the hull length of the other vessel does not exceed by more than ten feet the hull length of the currently designated vessel.

(2) For the purposes of this section, "hull length" means the length overall of a vessel's hull as shown by ~~((United States coast guard documentation or))~~ marine survey~~((;))~~ or ~~((for vessels that do not require United States coast guard documentation,))~~ by manufacturer's specifications ~~((or marine survey))~~.

(3) By December 31, 2010, the department must, in cooperation with the coastal crab fishing industry, evaluate the effectiveness of this section and, if necessary, recommend any statutory changes to the appropriate committees of the senate and house of representatives.

Passed by the Senate March 4, 2006.
 Passed by the House February 28, 2006.
 Approved by the Governor March 20, 2006.
 Filed in Office of Secretary of State March 20, 2006.

CHAPTER 160

[Substitute Senate Bill 6527]

MILWAUKEE ROAD CROSS-STATE TRAIL

AN ACT Relating to the Milwaukee Road cross-state trail; amending RCW 79A.05.115, 79A.05.120, 79A.05.125, and 79A.05.130; and providing contingent expiration dates.

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

Sec. 1. RCW 79A.05.115 and 1999 c 301 s 1 are each amended to read as follows:

(1) The commission shall develop and maintain a cross-state trail facility with appropriate appurtenances.

(2) This section expires July 1, ~~((2006))~~ 2009, if the department of transportation does not enter into a franchise agreement for a rail line over the portions of the Milwaukee Road corridor between Ellensburg and Lind by July 1, ~~((2006))~~ 2009.

Sec. 2. RCW 79A.05.120 and 1999 c 301 s 2 are each amended to read as follows:

(1) To facilitate completion of a cross-state trail under the management of the parks and recreation commission, management and control of lands known as the Milwaukee Road corridor shall be transferred between state agencies as follows on the date a franchise agreement is entered into for a rail line over portions of the Milwaukee Road corridor:

(a) Portions owned by the state between Ellensburg and the Columbia river that are managed by the parks and recreation commission are transferred to the department of transportation;

(b) Portions owned by the state between the west side of the Columbia river and Royal City Junction and between Warden and Lind that are managed by the department of natural resources are transferred to the department of transportation; and

(c) Portions owned by the state between Lind and the Idaho border that are managed by the department of natural resources are transferred to the parks and recreation commission as of the effective date of this act.

(2) The department of natural resources ~~((and the parks and recreation commission))~~ may, by mutual agreement with the parks and recreation commission, transfer ~~((the))~~ management authority over portions of the Milwaukee Road corridor ~~((between their two respective agencies without legislative approval if the portion transferred does not exceed ten miles in length))~~ to the state parks and recreation commission, at any time prior to the department of transportation entering into a franchise agreement.

(3) This section expires July 1, ~~((2006))~~ 2009, and no transfers shall occur if the department of transportation does not enter into a franchise agreement for a rail line over the portions of the Milwaukee Road corridor between Ellensburg and Lind by July 1, ~~((2006))~~ 2009.

Sec. 3. RCW 79A.05.125 and 2005 c 319 s 134 are each amended to read as follows:

(1) The department of transportation shall negotiate a franchise with a rail carrier to establish and maintain a rail line over portions of the Milwaukee Road corridor owned by the state between Ellensburg and Lind. The department of transportation may negotiate such a franchise with any qualified rail carrier. Criteria for negotiating the franchise and establishing the right of way include:

(a) Assurances that resources from the franchise will be sufficient to compensate the state for use of the property, including completion of a cross-state trail between Easton and the Idaho border;

(b) Types of payment for use of the franchise, including payment for the use of federally granted trust lands in the transportation corridor;

(c) Standards for maintenance of the line;

(d) Provisions ensuring that both the conventional and intermodal rail service needs of local shippers are met. Such accommodations may comprise agreements with the franchisee to offer or maintain adequate service or to provide service by other carriers at commercially reasonable rates;

(e) Provisions requiring the franchisee, upon reasonable request of any other rail operator, to provide rail service and interchange freight over what is commonly known as the Stampede Pass rail line from Cle Elum to Auburn at commercially reasonable rates;

(f) If any part of the franchise agreement is invalidated by actions or rulings of the federal surface transportation board or a court of competent jurisdiction, the remaining portions of the franchise agreement are not affected;

(g) Compliance with environmental standards; and

(h) Provisions for insurance and the coverage of liability.

(2) The franchise may provide for periodic review of financial arrangements under the franchise.

(3) The department of transportation, in consultation with the parks and recreation commission and the senate and house transportation committees, shall negotiate the terms of the franchise, and shall present the agreement to the parks and recreation commission for approval of as to terms and provisions affecting the cross-state trail or affecting the commission.

(4) This section expires July 1, (~~2006~~) 2009, if the department of transportation does not enter into a franchise agreement for a rail line over portions of the Milwaukee Road corridor by July 1, (~~2006~~) 2009.

Sec. 4. RCW 79A.05.130 and 1999 c 301 s 4 are each amended to read as follows:

(1) The cross-state trail account is created in the custody of the state treasurer. Eleven million five hundred thousand dollars is provided to the state parks and recreation commission to acquire, construct, and maintain a cross-state trail. This amount may consist of: (a) Legislative appropriations intended for trail development; (b) payments for the purchase of federally granted trust lands; and (c) franchise fees derived from use of the rail corridor. The legislature intends that any amounts provided from the transportation fund are to be repaid to the transportation fund from franchise fees.

(2) The department shall deposit franchise fees from use of the rail corridor according to the following priority: (a) To the department of transportation for actual costs incurred in administering the franchise; (b) to the department of

natural resources as compensation for use of federally granted trust lands in the rail corridor; (c) to the transportation fund to reimburse any amounts transferred or appropriated from that fund by the legislature for trail development; (d) to the cross-state trail account, not to exceed eleven million five hundred thousand dollars, provided that this amount shall be reduced proportionate with any funds transferred or appropriated by the 1996 legislature or paid from franchise fees for the purchase of federally granted trust lands or for trail development; and (e) the remainder to the essential rail assistance account, created under RCW 47.76.250. Expenditures from the cross-state trail account may be used only for the acquisition, development, operation, and maintenance of the cross-state trail. Only the director of the state parks and recreation commission or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

(3) The commission may acquire land from willing sellers for the cross-state trail, but not by eminent domain.

(4) The commission shall adopt rules describing the cross-state trail.

(5) This section expires July 1, (~~2006~~) 2009, if the department of transportation does not enter into a franchise agreement for a rail line over portions of the Milwaukee Road corridor by July 1, (~~2006~~) 2009.

Passed by the Senate March 4, 2006.

Passed by the House March 2, 2006.

Approved by the Governor March 20, 2006.

Filed in Office of Secretary of State March 20, 2006.

CHAPTER 161

[Second Substitute House Bill 2789]

APPRENTICESHIPS—SECONDARY SCHOOL STUDENTS

AN ACT Relating to expanding opportunities for graduating secondary school students to enter apprenticeships; amending RCW 28B.15.067; adding new sections to chapter 49.04 RCW; adding a new section to chapter 28C.04 RCW; providing an effective date; providing an expiration date; and declaring an emergency.

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

NEW SECTION. Sec. 1. A new section is added to chapter 49.04 RCW to read as follows:

(1) The legislature finds that it is in the public interest of the state to encourage and facilitate the formation of cooperative relationships between business and labor and educational institutions that provide for the development and expansion of programs of educational skills training consistent with employment needs.

(2) Further, the legislature finds that it is in the state's interest to make students aware of the educational training programs and career employment opportunities.

(3) Therefore, the following shall be implemented to expand opportunities for secondary school students to prepare for technical careers and related apprenticeships:

(a) Centers of excellence and other colleges with a high density of apprenticeship programs shall act as brokers of relevant information and resources as provided for in section 2 of this act;

(b) An educational outreach program coordinated by the Washington state apprenticeship and training council as provided for in section 3 of this act; and

(c) The development of direct-entry programs for graduating secondary students, approved and overseen by the Washington state apprenticeship and training council as provided for in section 4 of this act.

NEW SECTION. Sec. 2. A new section is added to chapter 49.04 RCW to read as follows:

(1) Centers of excellence, as designated by the state board for community and technical colleges, and other colleges identified by the state board for community and technical colleges in consultation with the Washington state apprenticeship and training council as having a high density of apprenticeship programs, shall act as a broker of relevant information and resources on available grants, scholarship opportunities, job openings, and industries of growth.

(2) The Washington state apprenticeship and training council, in conjunction with the office of the superintendent of public instruction, shall aid all local school districts in meeting the goals of this act.

NEW SECTION. Sec. 3. A new section is added to chapter 49.04 RCW to read as follows:

(1) Within existing resources, the Washington state apprenticeship and training council, in conjunction with individual state-approved apprenticeship training programs and the office of the superintendent of public instruction, shall lead and coordinate an educational outreach program for middle and secondary school students, parents, and educators about apprenticeship and career opportunities and communicate work force projections to the office of the superintendent of public instruction for distribution to all local school districts.

(2) Appropriate activities of the Washington state apprenticeship and training council under this section include assistance with curriculum development, the establishment of practical learning opportunities for students, and seeking the advice and participation of industry and labor interests.

NEW SECTION. Sec. 4. A new section is added to chapter 49.04 RCW to read as follows:

(1) Within existing resources, the Washington state apprenticeship and training council shall approve and oversee direct-entry programs for graduating secondary students into building and construction-related apprenticeships by:

(a) Assisting individual school districts in using and leveraging existing resources; and

(b) Developing guidelines, including guidelines that ensure that graduating secondary school students will receive appropriate education and training and will have the opportunity to transition to local apprenticeship programs. The guidelines must be developed with input from apprenticeship coordinators, the office of the superintendent of public instruction, the state board for community and technical colleges, the work force training and education coordinating board, and other interested stakeholders for direct-entry programs.

(2) The Washington state apprenticeship and training council shall award up to ten incentive grants for the 2006-07 school year, based on guidelines established under subsection (1)(b) of this section, to school districts statewide solely for personnel to negotiate and implement agreements with local apprenticeship programs based upon state apprenticeship use requirements, as described in RCW 39.04.320, to accept graduating secondary school students with appropriate training into apprenticeship programs. The council shall make every effort to award the grants evenly across the state.

(3) Beginning December 1, 2006, the Washington state apprenticeship and training council shall provide an annual report to the governor and the education and commerce and labor committees of the legislature. The report shall include:

- (a) The guidelines established under subsection (1)(b) of this section;
- (b) The names of the school districts receiving incentive grants under subsection (2) of this section;
- (c) The results of negotiations between school districts receiving incentive grants and local apprenticeship programs;
- (d) A list of apprenticeship programs that have agreed, pursuant to negotiated agreements, to accept qualified graduating secondary students; and
- (e) The number of qualified graduating secondary students entering into apprenticeship programs each year through direct-entry programs.

NEW SECTION. Sec. 5. A new section is added to chapter 28C.04 RCW to read as follows:

(1) Subject to funding provided for the purposes of this section, the superintendent of public instruction and the state board for community and technical colleges, in consultation with the Washington state apprenticeship and training council, shall allocate grants on a competitive basis to up to four pilot projects to expand enrollment of secondary school students in career and technical programs that enable them to enter apprenticeships, particularly building and construction apprenticeships, upon graduation. The purpose of the pilot projects is to develop new collaborations among K-12 education and work force education providers and try new approaches to delivering instruction and career and technical education to secondary school students.

(a) Two of the pilot projects shall involve skill centers or high schools working collaboratively with local or regional apprenticeship programs and the Washington state apprenticeship and training council to design and offer the programs.

(b) Two of the pilot projects shall involve community or technical colleges working collaboratively with local high schools, local or regional apprenticeship programs, and the Washington state apprenticeship and training council to design and offer the programs.

(c) At least one of the pilot projects is encouraged to involve small or rural high schools.

(d) In reviewing the grant applications, the superintendent of public instruction and the Washington state apprenticeship and training council shall convene a review committee representing the state board for community and technical colleges, the work force training and education coordinating board, business and labor interests with ties to apprenticeship fields, apprenticeship program coordinators, and career and technical educators in the public schools. Grant award recipients must be notified by June 1, 2006.

(e) Pilot projects must be ready to enroll students for the 2006-07 school year.

(f) The pilot projects shall operate for a three-year period.

(2) In addition to enrolling students in career and technical programs that enable them to enter apprenticeships upon graduation, the pilot projects under this section may engage in but are not limited to the following activities:

(a) Developing or modifying curriculum to align with apprenticeship entry requirements and skill expectations or to adjust curriculum to the secondary level;

(b) Negotiating agreements for nonmonetary consideration or for no consideration to use local or regional apprenticeship program training facilities to offer programs;

(c) Negotiating agreements with local or regional apprenticeship programs, community or technical colleges, or other contractors to provide specialized instruction within the program;

(d) Based on guidelines and assistance from the Washington state apprenticeship and training council, negotiating direct-entry agreements with local or regional apprenticeship programs to accept pilot project graduates into the programs;

(e) In conjunction with educational outreach efforts by the Washington state apprenticeship and training council and local or regional apprenticeship programs, conducting marketing, advertising, and communication about the pilot project to area teachers, counselors, students, and parents;

(f) Providing tutoring and other academic support services to ensure students have the necessary academic skills for the program and for high school graduation; and

(g) Offering other support services such as counseling, community service referral, and assistance for low-income students such as tools, supplies, books, or transportation to nonschool facilities.

(3) To the maximum extent possible, students enrolled in a pilot project shall receive both high school and college credit for their courses through tech-prep agreements or the high school program created in RCW 28A.600.300 through 28A.600.400 (running start).

(4) Beginning December 1, 2007, recipients of grants under this section shall report annually to the Washington state apprenticeship and training council: The number of students participating in programs developed under this section, the number of qualified graduating secondary students entering into apprenticeship programs each year, the apprenticeship programs into which the students entered, and lessons learned by the grant recipients that might lead to improvements in the development and implementation of additional preapprenticeship programs. The Washington state apprenticeship and training council shall provide an annual summary of the reports to the governor and the education and commerce and labor committees of the legislature.

(5) Funding for a student enrolled in a community or technical college pilot project under this section shall be provided under RCW 28A.320.015 and 28A.320.035 and rules adopted for the provision of instruction under contract.

(6) Using existing resources the superintendent of public instruction shall convene a work group to identify barriers and opportunities for further expansion of secondary career and technical programs that enable graduates to

enter apprenticeships, including building and construction-related apprenticeships, beyond the pilot project stage. The work group shall include representatives from the Washington state apprenticeship and training council, local or regional apprenticeship programs, the work force training and education coordinating board, community and technical colleges, high schools, and skill centers. The superintendent shall submit a report with recommendations to the governor and the education and commerce and labor committees of the legislature by December 1, 2006. Issues to be considered by the work group may include:

(a) Expanding participation and opportunities in running start for career and technical students, particularly in apprenticeship preparation programs, including the role of using parent involvement in guidance and counseling for students to expand participation;

(b) Addressing highly qualified teacher requirements under the federal no child left behind act;

(c) Cross-crediting of career and technical and core academic courses;

(d) The funding model for skill centers;

(e) Creating benchmarks to measure outcomes from the pilot projects and from possible expansion of the projects; and

(f) The impact of current student assessment and achievement requirements on student participation in apprenticeship preparation programs and opportunities for developing alternative assessment and achievement requirements.

(7) This section expires August 31, 2009.

Sec. 6. RCW 28B.15.067 and 2003 c 232 s 4 are each amended to read as follows:

(1) Tuition fees shall be established under the provisions of this chapter.

(2) Beginning with the 2003-04 academic year and ending with the 2008-09 academic year, reductions or increases in full-time tuition fees for resident undergraduates shall be as provided in the omnibus appropriations act.

(3) Beginning with the 2003-04 academic year and ending with the 2008-09 academic year, the governing boards of the state universities, the regional universities, The Evergreen State College, and the state board for community and technical colleges may reduce or increase full-time tuition fees for all students other than resident undergraduates, including summer school students and students in other self-supporting degree programs. Percentage increases in full-time tuition fees may exceed the fiscal growth factor. Reductions or increases may be made for all or portions of an institution's programs, campuses, courses, or students.

(4) Academic year tuition for full-time students at the state's institutions of higher education beginning with 2009-10, other than summer term, shall be as charged during the 2008-09 academic year unless different rates are adopted by the legislature.

(5) The tuition fees established under this chapter shall not apply to high school students enrolling in participating institutions of higher education under RCW 28A.600.300 through 28A.600.400.

(6) The tuition fees established under this chapter shall not apply to eligible students enrolling in a community or technical college under section 5 of this act.

(7) For the academic years 2003-04 through 2008-09, the University of Washington shall use an amount equivalent to ten percent of all revenues received as a result of law school tuition increases beginning in academic year 2000-01 through academic year 2008-09 to assist needy low and middle income resident law students.

~~((7))~~ (8) For the academic years 2003-04 through 2008-09, institutions of higher education shall use an amount equivalent to ten percent of all revenues received as a result of graduate academic school tuition increases beginning in academic year 2003-04 through academic year 2008-09 to assist needy low and middle-income resident graduate academic students.

NEW SECTION. Sec. 7. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect April 1, 2006.

Passed by the House March 4, 2006.

Passed by the Senate February 28, 2006.

Approved by the Governor March 21, 2006.

Filed in Office of Secretary of State March 21, 2006.

CHAPTER 162

[Substitute House Bill 2596]

COSMETOLOGY—APPRENTICESHIPS

AN ACT Relating to the cosmetology apprenticeship program; amending RCW 18.16.280; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that direct-entry apprenticeship programs can be very beneficial to both students and employers. However, there is also concern that apprenticeship programs may reduce the number of students who enroll in traditional cosmetology school. The advisory committee is to update the legislature on the program with an updated final report by December 31, 2008, and is to include an evaluation of the effectiveness of the apprenticeship program, including but not limited to the number of apprentices who complete the program, the number of apprentices who take and pass the licensing examination, and a formal review of any impact the expansion of such an apprenticeship program may have on the enrollment of traditional cosmetology schools, including but not limited to whether the enrollment of traditional cosmetology schools is negatively impacted by the direct-entry apprenticeship programs.

Sec. 2. RCW 18.16.280 and 2003 c 400 s 1 are each amended to read as follows:

A cosmetology apprenticeship pilot program is hereby created.

(1) An advisory committee is created that may consist of representatives from individuals and businesses licensed under chapter 18.16 RCW; cosmetology, barbering, esthetics, and manicuring advisory board members; department of labor and industries; department of licensing; United States department of labor apprenticeship; and other interested parties.

(a) The advisory committee shall meet to review progress of the cosmetology apprenticeship pilot program.

(b) The department of labor and industries apprenticeship council shall coordinate the activities of the advisory committee. The advisory committee shall issue annual reports on the progress of the apprenticeship program to interested parties and shall issue a final report regarding the outcome of the apprenticeship program to be presented to the appropriate committees of the house of representatives and senate by December 31, 2005. The advisory committee shall submit an updated report, including an evaluation of the effectiveness of the apprenticeship program, to the appropriate committees of the house of representatives and senate by December 31, 2007.

(2) Up to twenty salons approved by the department of labor and industries apprenticeship council may participate in the apprenticeship program. The participating salons shall proportionately represent the geographic diversity of Washington state, including rural and urban areas, and salons located in both eastern and western Washington.

(3) The department of licensing shall adopt rules, including a mandatory requirement that apprentices complete in-classroom theory courses as a part of their training, to provide for the licensure of participants of the apprenticeship program.

(4) The cosmetology apprenticeship pilot program expires July 1, ~~((2006))~~ 2008.

Passed by the House March 4, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 21, 2006.

Filed in Office of Secretary of State March 21, 2006.

CHAPTER 163

[House Bill 3134]

WORKERS' COMPENSATION—TEMPORARY OR PERMANENT DISABILITY

AN ACT Relating to compensation for temporary or permanent total disability; and amending RCW 51.32.225.

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

Sec. 1. RCW 51.32.225 and 1986 c 59 s 5 are each amended to read as follows:

(1) For persons receiving compensation for temporary or permanent total disability under this title, the compensation shall be reduced by the department to allow an offset for social security retirement benefits payable under the federal social security, old age survivors, and disability insurance act, 42 U.S.C. This reduction shall not apply to any worker who is receiving permanent total disability benefits prior to July 1, 1986.

(2) Reductions for social security retirement benefits under this section shall comply with the procedures in RCW 51.32.220 (1) through (6) ~~((, except those that relate to computation,))~~ and with any other procedures established by the department to administer this section. For any worker whose entitlement to social security retirement benefits is immediately preceded by an entitlement to social security disability benefits, the offset shall be based on the formulas provided under 42 U.S.C. Sec. 424a. For all other workers entitled to social security retirement benefits, the offset shall be based on procedures established

and determined by the department to most closely follow the intent of RCW 51.32.220.

(3) Any reduction in compensation made under chapter 58, Laws of 1986, shall be made before the reduction established in this section.

Passed by the House February 14, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 21, 2006.

Filed in Office of Secretary of State March 21, 2006.

CHAPTER 164

[Substitute House Bill 3178]

COLLECTIVE BARGAINING—FERRY EMPLOYEES

AN ACT Relating to collective bargaining by state ferry employees; amending RCW 47.64.011, 47.64.120, 47.64.130, 47.64.140, 47.64.170, 47.64.200, 47.64.210, 47.64.220, 47.64.230, 47.64.270, and 47.64.280; adding new sections to chapter 47.64 RCW; creating a new section; repealing RCW 47.64.180, 47.64.190, and 47.64.240; providing an effective date; providing an expiration date; and declaring an emergency.

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

Sec. 1. RCW 47.64.011 and 1983 c 15 s 2 are each amended to read as follows:

As used in this chapter, unless the context otherwise requires, the definitions in this section shall apply.

(1) (~~"Arbitration" means the procedure whereby the parties involved in an impasse submit their differences to a third party for a final and binding decision or as provided in this chapter.~~

(2) ~~"Arbitrator" means either a single arbitrator or a panel of three arbitrators as provided in RCW 47.64.240.~~

(3) ~~"Collective bargaining representative" means the persons designated by the ((secretary of transportation))~~ governor and employee organizations to be the exclusive representatives during collective bargaining negotiations.

~~((4))~~ (2) "Commission" means the marine employees' commission created in RCW 47.64.280.

(3) "Department of transportation" means the department as defined in RCW 47.01.021.

(4) "Employer" means the state of Washington.

(5) "Ferry employee" means any employee of the marine transportation division of the department of transportation who is a member of a collective bargaining unit represented by a ferry employee organization and does not include an exempt employee pursuant to RCW 41.06.079.

(6) "Ferry employee organization" means any labor organization recognized to represent a collective bargaining unit of ferry employees.

(7) (~~"Ferry system management" means those management personnel of the marine transportation division of the department of transportation who have been vested with the day-to-day management responsibilities of the Washington state ferry system by the transportation commission and who are not members of a collective bargaining unit represented by a ferry employee organization.~~

(8) ~~"Lockout" means the refusal of ((ferry system management))~~ the employer to furnish work to ferry employees in an effort to get ferry employee

organizations to make concessions during collective bargaining, grievance, or other labor relation negotiations. Curtailment of employment of ferry employees due to lack of work resulting from a strike or work stoppage(~~(as defined in subsection (11) of this section.)~~) shall not be considered a lockout.

~~((9) "Marine employees' commission" means the commission created in RCW 47.64.280.~~

~~(10))~~ (8) "Office of financial management" means the office as created in RCW 43.41.050.

~~((11))~~ (9) "Strike or work stoppage" means a ferry employee's refusal, in concerted action with others, to report to duty, or his or her willful absence from his or her position, or his or her stoppage or slowdown of work, or his or her abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing, or coercing a change in conditions, compensation, rights, privileges, or obligations of his, her, or any other ferry employee's employment. A refusal, in good faith, to work under conditions which pose an endangerment to the health and safety of ferry employees or the public, as determined by the master of the vessel, shall not be considered a strike for the purposes of this chapter.

~~((12) "Transportation commission" means the commission as defined in RCW 47.01.021.)~~

NEW SECTION. Sec. 2. A new section is added to chapter 47.64 RCW to read as follows:

(1) For the purpose of negotiating collective bargaining agreements under this chapter, the employer shall be represented by the governor or governor's designee.

(2) Two or more ferry employee organizations may, upon agreement of the parties, negotiate, as a coalition with the employer representative as designated in subsection (1) of this section, a multiunion collective bargaining agreement on behalf of all the employees in ferry employee organization bargaining units that the exclusive bargaining representatives represent. The coalition shall bargain for a multiunion collective bargaining agreement covering all of the employees represented by the coalition. The governor's designee and the exclusive bargaining representative or representatives are authorized to enter into supplemental bargaining of bargaining unit-specific issues for inclusion in or as an addendum to the multiunion collective bargaining agreement, subject to the parties' agreement regarding the issues and procedures for supplemental bargaining. Nothing in this section impairs the right of each ferry employee organization to negotiate a collective bargaining agreement exclusive to the bargaining unit it represents.

Sec. 3. RCW 47.64.120 and 1997 c 436 s 1 are each amended to read as follows:

(1) ~~((Ferry system management))~~ 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.

(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. 4. RCW 47.64.130 and 1983 c 15 s 4 are each amended to read as follows:

(1) It is an unfair labor practice for ~~((ferry system management))~~ the employer or its representatives:

(a) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by this chapter;

(b) To dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it(~~(= PROVIDED, That)~~). However, subject to rules made by the commission pursuant to RCW 47.64.280, an employer shall not be prohibited from permitting employees to confer with it or its representatives or agents during working hours without loss of time or pay;

(c) To encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure of employment, or any term or condition of employment, but nothing contained in this subsection prevents an employer from requiring, as a condition of continued employment, payment of periodic dues and fees uniformly required to an exclusive bargaining representative pursuant to RCW 47.64.160(~~(= PROVIDED, That)~~). However, nothing prohibits ~~((ferry system management))~~ the employer from agreeing to obtain employees by referral from a lawful hiring hall operated by or participated in by a labor organization;

(d) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this chapter;

(e) To refuse to bargain collectively with the representatives of its employees.

(2) It is an unfair labor practice for an employee organization:

(a) To restrain or coerce (i) employees in the exercise of the rights guaranteed by this chapter(~~(= PROVIDED, That this paragraph)~~). However, this subsection does not impair the right of an employee organization to prescribe its

own rules with respect to the acquisition or retention of membership therein, or (ii) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(b) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (1)(c) of this section;

(c) To refuse to bargain collectively with an employer(~~(, when it is the representative of its employees subject to RCW 47.64.170)~~).

(3) The expression of any view, argument, or opinion, or the dissemination thereof to the public, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this chapter, if the expression contains no threat of reprisal or force or promise of benefit.

Sec. 5. RCW 47.64.140 and 1989 c 373 s 25 are each amended to read as follows:

(1) It is unlawful for any ferry system employee or any employee organization, directly or indirectly, to induce, instigate, encourage, authorize, ratify, or participate in a strike or work stoppage against the ferry system.

(2) It is unlawful for (~~(ferry system management)~~) the employer to authorize, consent to, or condone a strike or work stoppage; or to conduct a lockout; or to pay or agree to pay any ferry system employee for any day in which the employee participates in a strike or work stoppage; or to pay or agree to pay any increase in compensation or benefits to any ferry system employee in response to or as a result of any strike or work stoppage or any act that violates subsection (1) of this section. It is unlawful for any official, director, or representative of the ferry system to authorize, ratify, or participate in any violation of this subsection. Nothing in this subsection prevents new or renewed bargaining and agreement within the scope of negotiations as defined by this chapter, at any time. No collective bargaining agreement provision regarding suspension or modification of any court-ordered penalty provided in this section is binding on the courts.

(3) In the event of any violation or imminently threatened violation of subsection (1) or (2) of this section, any citizen domiciled within the jurisdictional boundaries of the state may petition the superior court for Thurston county for an injunction restraining the violation or imminently threatened violation. Rules of civil procedure regarding injunctions apply to the action. However, the court shall grant a temporary injunction if it appears to the court that a violation has occurred or is imminently threatened; the plaintiff need not show that the violation or threatened violation would greatly or irreparably injure him or her; and no bond may be required of the plaintiff unless the court determines that a bond is necessary in the public interest. Failure to comply with any temporary or permanent injunction granted under this section is a contempt of court as provided in chapter 7.21 RCW. The court may impose a penalty of up to ten thousand dollars for an employee organization or the ferry system, for each day during which the failure to comply continues. The sanctions for a ferry employee found to be in contempt shall be as provided in chapter 7.21 RCW. An individual or an employee organization which makes an active good faith effort to comply fully with the injunction shall not be deemed to be in contempt.

(4) The right of ferry system employees to engage in strike or work slowdown or stoppage is not granted and nothing in this chapter may be construed to grant such a right.

(5) Each of the remedies and penalties provided by this section is separate and several, and is in addition to any other legal or equitable remedy or penalty.

(6) In addition to the remedies and penalties provided by this section the successful litigant is entitled to recover reasonable attorney fees and costs incurred in the litigation.

(7) Notwithstanding the provisions of chapter 88.04 RCW and chapter 88.08 RCW, the department of transportation shall ~~((promulgate))~~ adopt rules ~~((and regulations))~~ allowing vessels, as defined in RCW ~~((88.04.300))~~ 88.04.015, as well as other watercraft, to engage in emergency passenger service on the waters of Puget Sound in the event ferry employees engage in a work slowdown or stoppage. Such emergency rules ~~((and regulations))~~ shall allow emergency passenger service on the waters of Puget Sound within seventy-two hours following a work slowdown or stoppage. Such rules ~~((and regulations))~~ that are ~~((promulgated))~~ adopted shall give due consideration to the needs and the health, safety, and welfare of the people of the state of Washington.

Sec. 6. RCW 47.64.170 and 1983 c 15 s 8 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 ~~((secretary of transportation))~~ governor may each designate any individual as its representative to engage in collective bargaining negotiations.

(3) Negotiating sessions, including strategy meetings of ~~((ferry system management))~~ 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. ~~((Any meeting of the transportation commission, during which a collective bargaining agreement is subject to ratification, shall be open to the public.))~~

(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 ~~((a member of the transportation commission if the commission has))~~ 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 ~~((, unless the member of the commission is the designated bargaining representative of the ferry system))~~.

(6)(a) The negotiation of a proposed collective bargaining agreement by representatives of ~~((ferry system management))~~ the employer and a ferry employee organization shall commence ~~((in each odd-numbered year immediately following adoption by the legislature and approval by the governor of the biennial budget))~~ on or about September 1st of every odd-numbered year. However, negotiations for the 2007-2009 biennial agreements may commence at any time after the effective date of this section. Negotiations for agreements

pertaining to the 2009-2011 biennium and all subsequent negotiations must conclude on or about April 1st of the year following the year in which the negotiations commence. If negotiations are not concluded by April 1st, the parties shall be deemed to be at impasse and shall proceed to mediation under RCW 47.64.230 and sections 12 through 14 of this act.

(b) For negotiations covering the 2009-2011 biennium and subsequent biennia, the time periods specified in this section, and in RCW 47.64.210 and sections 12 through 14 of this act, must ensure conclusion of all agreements on or before September 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 September 1st of each even-numbered year. Negotiations for the 2007-2009 biennium must be concluded on or before October 1, 2006.

(7) Until a new collective bargaining agreement is ((negotiated, or until an award is made by the arbitrator)) in effect, the terms and conditions of the previous collective bargaining agreement shall remain in force. ((The wage and benefit provisions of any collective bargaining agreement, or arbitrator's award in lieu thereof, that is concluded after July 1st of an odd-numbered year shall be retroactive to July 1st.)) 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 September 1st of the even-numbered year before the commencement of the biennial budget year during which the agreements are to be in effect.

(8) ((Any ferry union contract terminating before July 1, 1983, shall, with the agreement of the parties, remain in effect until a contract can be concluded under RCW 47.64.006, 47.64.011, and 47.64.120 through 47.64.280. The contract may be retroactive to the expiration date of the prior contract, and the cost to the department of three months retroactive compensation and benefits for this 1983 contract negotiation only shall not be included in calculating the limitation imposed by RCW 47.64.180. If the parties cannot agree to contract extension, any increase agreed to for the three-month period shall be included in calculating the limit imposed by RCW 47.64.180.

(9) Any ferry union contract which would terminate after July 1, 1983, may, by agreement of the parties, be terminated as of July 1, 1983, and a new contract concluded pursuant to RCW 47.64.006, 47.64.011, and 47.64.120 through 47.64.280. Any contract terminating after July 1, 1983, is subject to this chapter only upon its expiration and shall not be renewed for a period beyond July 1, 1985.)) (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.

(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 section 12 of this act.

(9) If, after the compensation and fringe benefit provisions of an agreement 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.

Sec. 7. RCW 47.64.200 and 1983 c 15 s 11 are each amended to read as follows:

As the first step in the performance of their duty to bargain, ~~((ferry system management))~~ the employer and the employee organization shall endeavor to agree upon impasse procedures. ~~((The agreement shall provide for implementation of these impasse procedures not later than July 1st in each odd-numbered year following enactment of the biennial budget.))~~ 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 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 ~~((through))~~ and 47.64.230 and sections 12 through 14 of this act apply. It is unlawful for either party to refuse to participate in the impasse procedures provided in RCW 47.64.210 ~~((through))~~ and 47.64.230 and sections 12 through 14 of this act.

Sec. 8. RCW 47.64.210 and 1983 c 15 s 12 are each amended to read as follows:

In the absence of an impasse agreement between the parties or the failure of either party to utilize its procedures by ~~((August))~~ April 1st in ~~((each odd-numbered year, the marine employees' commission shall, upon the request of either party,))~~ the even-numbered year preceding the biennium, either party may request the commission to appoint an impartial and disinterested person to act as mediator ~~((pursuant to RCW 47.64.280))~~. It is the function of the mediator to bring the parties together to effectuate a settlement of the dispute, but the mediator shall not compel the parties to agree.

Sec. 9. RCW 47.64.220 and 1999 c 256 s 1 are each amended to read as follows:

(1) Prior to collective bargaining and for purposes of collective bargaining and arbitration, the ~~((marine employees'))~~ commission shall conduct a salary survey. The results of the survey shall be published in a report which shall be a public document comparing wages, hours, employee benefits, and conditions of employment of involved ferry employees with those of public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia doing directly comparable but not necessarily identical work, giving consideration to factors peculiar to the area and the classifications involved. Such survey report shall be for the purpose of disclosing generally prevailing levels of compensation, benefits, and conditions of employment. It shall be used to guide generally but not to define or limit collective bargaining between the parties. ~~((The commission shall make such other findings of fact as the parties may request during bargaining or impasse.))~~

(2) ~~((Except as provided in subsection (3) of this section,))~~ Salary and employee benefit information collected from private employers that identifies a specific employer with the salary and employee benefit rates which that employer pays to its employees is not subject to public disclosure under chapter 42.17 RCW.

~~((3) A person or entity, having reason to believe that the salary survey results are inaccurate, may submit a petition to the state auditor requesting an audit of the data upon which the salary survey results are based. The state auditor shall review and analyze all data collected for the salary survey, including proprietary information, but is prohibited from disclosing the salary survey data to any other person or entity, except by court order.))~~

Sec. 10. RCW 47.64.220 and 2005 c 274 s 308 are each amended to read as follows:

(1) Prior to collective bargaining and for purposes of collective bargaining and arbitration, the ~~((marine employees'))~~ commission shall conduct a salary survey. The results of the survey shall be published in a report which shall be a public document comparing wages, hours, employee benefits, and conditions of employment of involved ferry employees with those of public and private sector employees in states along the west coast of the United States, including Alaska, and in British Columbia doing directly comparable but not necessarily identical work, giving consideration to factors peculiar to the area and the classifications involved. Such survey report shall be for the purpose of disclosing generally prevailing levels of compensation, benefits, and conditions of employment. It shall be used to guide generally but not to define or limit collective bargaining

between the parties. ~~((The commission shall make such other findings of fact as the parties may request during bargaining or impasse.))~~

(2) ~~((Except as provided in subsection (3) of this section,))~~ Salary and employee benefit information collected from private employers that identifies a specific employer with the salary and employee benefit rates which that employer pays to its employees is not subject to public disclosure under chapter 42.56 RCW.

~~((3) A person or entity, having reason to believe that the salary survey results are inaccurate, may submit a petition to the state auditor requesting an audit of the data upon which the salary survey results are based. The state auditor shall review and analyze all data collected for the salary survey, including proprietary information, but is prohibited from disclosing the salary survey data to any other person or entity, except by court order.))~~

Sec. 11. RCW 47.64.230 and 1983 c 15 s 14 are each amended to read as follows:

By mutual agreement, the parties may waive mediation ~~((and fact finding, as provided for in RCW 47.64.210 and 47.64.220,))~~ and proceed with binding arbitration as provided for in ~~((RCW 47.64.240))~~ the impasse procedures agreed to under RCW 47.64.200 or in sections 12 through 14 of this act, as applicable. The waiver shall be in writing and be signed by the representatives of the parties.

NEW SECTION. Sec. 12. A new section is added to chapter 47.64 RCW to read as follows:

(1) If an agreement has not been reached following a reasonable period of negotiations and, when applicable, mediation, but in either event by April 15th, upon the recommendation of the assigned mediator that the parties remain at impasse, all impasse items shall be submitted to arbitration under this section. The issues for arbitration shall be limited to the issues certified by the commission.

(2) The parties may agree to submit the dispute to a single arbitrator, whose authority and duties shall be the same as those of an arbitration panel. If the parties cannot agree on the arbitrator within five working days, the selection shall be made under subsection (3) of this section. The full costs of arbitration under this section shall be shared equally by the parties to the dispute.

(3) Within seven days following the issuance of the determination of the commission, each party shall name one person to serve as its arbitrator on the arbitration panel. The two members so appointed shall meet within seven days following the appointment of the later appointed member to attempt to choose a third member to act as the neutral chair of the arbitration panel. Upon the failure of the arbitrators to select a neutral chair within seven days, either party may apply to the federal mediation and conciliation service, or the American arbitration association to provide a list of five qualified arbitrators from which the neutral chair shall be chosen. Each party shall pay the fees and expenses of its arbitrator, and the fees and expenses of the neutral chair shall be shared equally between the parties.

(4) In consultation with the parties, the arbitrator or arbitration panel shall promptly establish a date, time, and place for a hearing and shall provide reasonable notice thereof to the parties to the dispute. The parties shall exchange final positions in writing, with copies to the arbitrator or arbitration panel, with

respect to every issue to be arbitrated, on a date mutually agreed upon, but in no event later than ten working days before the date set for hearing. A hearing, which shall be informal, shall be held, and each party shall have the opportunity to present evidence and make argument. No member of the arbitration panel may present the case for a party to the proceedings. The rules of evidence prevailing in judicial proceedings may be considered, but are not binding, and any oral testimony or documentary evidence or other data deemed relevant by the chair of the arbitration panel may be received in evidence. A recording of the proceedings shall be taken. The arbitration panel has the power to administer oaths, require the attendance of witnesses, and require the production of such books, papers, contracts, agreements, and documents as may be deemed by the panel to be material to a just determination of the issues in dispute. If any person refuses to obey a subpoena issued by the arbitration panel, or refuses to be sworn or to make an affirmation to testify, or any witness, party, or attorney for a party is guilty of any contempt while in attendance at any hearing held hereunder, the arbitration panel may invoke the jurisdiction of the superior court in the county where the labor dispute exists, and the court has jurisdiction to issue an appropriate order. Any failure to obey the order may be punished by the court as a contempt thereof.

(5) The neutral chair shall consult with the other members of the arbitration panel, if a panel has been created. Within thirty days following the conclusion of the hearing, the neutral chair shall make written findings of fact and a written determination of the issues in dispute, based on the evidence presented. A copy thereof shall be served on each of the other members of the arbitration panel, and on each of the parties to the dispute. That determination is final and binding upon both parties, subject to review by the superior court upon the application of either party solely upon the question of whether the decision of the panel was arbitrary or capricious.

NEW SECTION. Sec. 13. A new section is added to chapter 47.64 RCW to read as follows:

An interest arbitration proceeding under section 12 of this act exercises a state function and is, for the purposes of this chapter, functioning as a state agency. Chapter 34.05 RCW does not apply to an interest arbitration proceeding under this chapter.

NEW SECTION. Sec. 14. A new section is added to chapter 47.64 RCW to read as follows:

(1) The mediator, arbitrator, or arbitration panel may consider only matters that are subject to bargaining under this chapter.

(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) Past collective bargaining contracts between the parties including the bargaining that led up to the contracts;
- (b) The constitutional and statutory authority of the employer;
- (c) 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) Changes in any of the foregoing circumstances during the pendency of the proceedings;
- (g) The limitations on ferry toll increases and operating subsidies as may be imposed by the legislature; and
- (h) 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. 15. A new section is added to chapter 47.64 RCW to read as follows:

Collective bargaining under this act may not be for the purposes of making a collective bargaining agreement take effect before July 1, 2007. No party may engage in collective bargaining under this act to amend a collective bargaining agreement in effect on the effective date of this section. A collective bargaining agreement or amendment thereto entered into under this act shall not be effective before July 1, 2007, and may not have any retroactive effect.

NEW SECTION. Sec. 16. (1) This act applies prospectively only and not retroactively. It applies to collective bargaining agreements, the negotiations of collective bargaining agreements, mediations, arbitrations, and other actions under this act that arise or are commenced on or after the effective date of this section.

(2) This act does not apply to collective bargaining agreements, either in effect or for which the negotiations have begun, or mediations and arbitrations that arose or commenced under this chapter before the effective date of this section. Such collective bargaining agreements and related proceedings must be administered in accordance with the authorities, rules, and procedures that were established under this chapter as it existed before the effective date of this section. The repealers in section 19 of this act do not affect any existing right acquired, or liability or obligation incurred, under the statutes repealed or under any rule or order adopted under those statutes, nor do they affect any proceeding instituted under them.

Sec. 17. RCW 47.64.270 and 1995 1st sp.s. c 6 s 6 are each amended to read as follows:

Absent a collective bargaining agreement to the contrary, the department of transportation shall provide contributions to insurance and health care plans for ferry system employees and dependents, as determined by the state health care authority, under chapter 41.05 RCW; and the ~~((ferry system management))~~ employer and employee organizations may collectively bargain for other insurance and health care plans, and employer contributions may exceed that of

other state agencies as provided in RCW 41.05.050(~~(, subject to RCW 47.64.180)~~). To the extent that ferry employees by bargaining unit have absorbed the required offset of wage increases by the amount that the employer's contribution for employees' and dependents' insurance and health care plans exceeds that of other state general government employees in the 1985-87 fiscal biennium, employees shall not be required to absorb a further offset except to the extent the differential between employer contributions for those employees and all other state general government employees increases during any subsequent fiscal biennium. If such differential increases in the 1987-89 fiscal biennium or the 1985-87 offset by bargaining unit is insufficient to meet the required deduction, the amount available for compensation shall be reduced by bargaining unit by the amount of such increase or the 1985-87 shortage in the required offset. Compensation shall include all wages and employee benefits.

Sec. 18. RCW 47.64.280 and 1984 c 287 s 95 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 (~~(chairman)~~) 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 (~~(marine employees')~~) 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; (c) (~~(conduct fact finding and)~~) provide salary surveys as required in RCW 47.64.220; and (d) (~~(provide for the selection of an impartial arbitrator as)~~) perform those duties required in (~~(RCW 47.64.240(5))~~) section 12 of this act.

(3)(a) In adjudicating all complaints, grievances, and disputes, the party claiming labor disputes shall, in writing, notify the (~~(marine employees')~~) 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.

NEW SECTION. Sec. 19. The following acts or parts of acts are each repealed:

(1) RCW 47.64.180 (Agreements and awards limited by appropriation) and 1983 c 15 s 9;

(2) RCW 47.64.190 (Marine employees' commission review for compliance with fiscal limitations—Effective date of agreements and arbitration orders) and 1983 c 15 s 10; and

(3) RCW 47.64.240 (Binding arbitration) and 1989 c 327 s 3 & 1983 c 15 s 15.

NEW SECTION. Sec. 20. Section 9 of this act expires July 1, 2006.

NEW SECTION. Sec. 21. Except for section 10 of this act which takes effect July 1, 2006, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House March 4, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 21, 2006.

Filed in Office of Secretary of State March 21, 2006.

CHAPTER 165

[Engrossed Substitute House Bill 1672]

HEALTH CARE WORKERS—SAFE PATIENT HANDLING

AN ACT Relating to reducing injuries among patients and health care workers; adding a new section to chapter 70.41 RCW; adding a new section to chapter 72.23 RCW; adding a new section to chapter 51.16 RCW; adding a new section to chapter 82.04 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that:

(1) Patients are not at optimum levels of safety while being lifted, transferred, or repositioned manually. Mechanical lift programs can reduce skin tears suffered by patients by threefold. Nurses, thirty-eight percent of whom have previous back injuries, can drop patients if their pain thresholds are triggered.

(2) According to the bureau of labor statistics, hospitals in Washington have a nonfatal employee injury incidence rate that exceeds the rate of construction, agriculture, manufacturing, and transportation.

(3) The physical demands of the nursing profession lead many nurses to leave the profession. Research shows that the annual prevalence rate for nursing back injury is over forty percent and many nurses who suffer a back injury do not return to nursing. Considering the present nursing shortage in Washington, measures must be taken to protect nurses from disabling injury.

(4) Washington hospitals have made progress toward implementation of safe patient handling programs that are effective in decreasing employee injuries. It is not the intent of this act to place an undue financial burden on hospitals.

NEW SECTION. Sec. 2. A new section is added to chapter 70.41 RCW to read as follows:

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Lift team" means hospital employees specially trained to conduct patient lifts, transfers, and repositioning using lifting equipment when appropriate.

(b) "Safe patient handling" means the use of engineering controls, lifting and transfer aids, or assistive devices, by lift teams or other staff, instead of manual lifting to perform the acts of lifting, transferring, and repositioning health care patients and residents.

(c) "Musculoskeletal disorders" means conditions that involve the nerves, tendons, muscles, and supporting structures of the body.

(2) By February 1, 2007, each hospital must establish a safe patient handling committee either by creating a new committee or assigning the functions of a safe patient handling committee to an existing committee. The purpose of the committee is to design and recommend the process for implementing a safe patient handling program. At least half of the members of the safe patient handling committee shall be frontline nonmanagerial employees who provide direct care to patients unless doing so will adversely affect patient care.

(3) By December 1, 2007, each hospital must establish a safe patient handling program. As part of this program, a hospital must:

(a) Implement a safe patient handling policy for all shifts and units of the hospital. Implementation of the safe patient handling policy may be phased-in with the acquisition of equipment under subsection (4) of this section;

(b) Conduct a patient handling hazard assessment. This assessment should consider such variables as patient-handling tasks, types of nursing units, patient populations, and the physical environment of patient care areas;

(c) Develop a process to identify the appropriate use of the safe patient handling policy based on the patient's physical and medical condition and the availability of lifting equipment or lift teams. The policy shall include a means to address circumstances under which it would be medically contraindicated to use lifting or transfer aids or assistive devices for particular patients;

(d) Conduct an annual performance evaluation of the program to determine its effectiveness, with the results of the evaluation reported to the safe patient handling committee. The evaluation shall determine the extent to which implementation of the program has resulted in a reduction in musculoskeletal

disorder claims and days of lost work attributable to musculoskeletal disorder caused by patient handling, and include recommendations to increase the program's effectiveness; and

(e) When developing architectural plans for constructing or remodeling a hospital or a unit of a hospital in which patient handling and movement occurs, consider the feasibility of incorporating patient handling equipment or the physical space and construction design needed to incorporate that equipment at a later date.

(4) By January 30, 2010, each hospital must complete, at a minimum, acquisition of their choice of: (a) One readily available lift per acute care unit on the same floor unless the safe patient handling committee determines a lift is unnecessary in the unit; (b) one lift for every ten acute care available inpatient beds; or (c) equipment for use by lift teams. Hospitals must train staff on policies, equipment, and devices at least annually.

(5) Nothing in this section precludes lift team members from performing other duties as assigned during their shift.

(6) A hospital shall develop procedures for hospital employees to refuse to perform or be involved in patient handling or movement that the hospital employee believes in good faith will expose a patient or a hospital employee to an unacceptable risk of injury. A hospital employee who in good faith follows the procedure developed by the hospital in accordance with this subsection shall not be the subject of disciplinary action by the hospital for the refusal to perform or be involved in the patient handling or movement.

NEW SECTION. Sec. 3. A new section is added to chapter 72.23 RCW to read as follows:

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Lift team" means hospital employees specially trained to conduct patient lifts, transfers, and repositioning using lifting equipment when appropriate.

(b) "Safe patient handling" means the use of engineering controls, lifting and transfer aids, or assistive devices, by lift teams or other staff, instead of manual lifting to perform the acts of lifting, transferring, and repositioning health care patients and residents.

(c) "Musculoskeletal disorders" means conditions that involve the nerves, tendons, muscles, and supporting structures of the body.

(2) By February 1, 2007, each hospital must establish a safe patient handling committee either by creating a new committee or assigning the functions of a safe patient handling committee to an existing committee. The purpose of the committee is to design and recommend the process for implementing a safe patient handling program. At least half of the members of the safe patient handling committee shall be frontline nonmanagerial employees who provide direct care to patients unless doing so will adversely affect patient care.

(3) By December 1, 2007, each hospital must establish a safe patient handling program. As part of this program, a hospital must:

(a) Implement a safe patient handling policy for all shifts and units of the hospital. Implementation of the safe patient handling policy may be phased-in with the acquisition of equipment under subsection (4) of this section;

(b) Conduct a patient handling hazard assessment. This assessment should consider such variables as patient-handling tasks, types of nursing units, patient populations, and the physical environment of patient care areas;

(c) Develop a process to identify the appropriate use of the safe patient handling policy based on the patient's physical and medical condition and the availability of lifting equipment or lift teams;

(d) Conduct an annual performance evaluation of the program to determine its effectiveness, with the results of the evaluation reported to the safe patient handling committee. The evaluation shall determine the extent to which implementation of the program has resulted in a reduction in musculoskeletal disorder claims and days of lost work attributable to musculoskeletal disorder caused by patient handling, and include recommendations to increase the program's effectiveness; and

(e) When developing architectural plans for constructing or remodeling a hospital or a unit of a hospital in which patient handling and movement occurs, consider the feasibility of incorporating patient handling equipment or the physical space and construction design needed to incorporate that equipment at a later date.

(4) By January 30, 2010, hospitals must complete acquisition of their choice of: (a) One readily available lift per acute care unit on the same floor, unless the safe patient handling committee determines a lift is unnecessary in the unit; (b) one lift for every ten acute care available inpatient beds; or (c) equipment for use by lift teams. Hospitals must train staff on policies, equipment, and devices at least annually.

(5) Nothing in this section precludes lift team members from performing other duties as assigned during their shift.

(6) A hospital shall develop procedures for hospital employees to refuse to perform or be involved in patient handling or movement that the hospital employee believes in good faith will expose a patient or a hospital employee to an unacceptable risk of injury. A hospital employee who in good faith follows the procedure developed by the hospital in accordance with this subsection shall not be the subject of disciplinary action by the hospital for the refusal to perform or be involved in the patient handling or movement.

NEW SECTION. Sec. 4. A new section is added to chapter 51.16 RCW to read as follows:

(1) By January 1, 2007, the department shall develop rules to provide a reduced workers' compensation premium for hospitals that implement a safe patient handling program. The rules shall include any requirements for obtaining the reduced premium that must be met by hospitals.

(2) The department shall complete an evaluation of the results of the reduced premium, including changes in claim frequency and costs, and shall report to the appropriate committees of the legislature by December 1, 2010, and 2012.

NEW SECTION. Sec. 5. A new section is added to chapter 82.04 RCW to read as follows:

(1) In computing the tax imposed under this chapter, a hospital may take a credit for the cost of purchasing mechanical lifting devices and other equipment that are primarily used to minimize patient handling by health care providers,

consistent with a safe patient handling program developed and implemented by the hospital in compliance with section 2 of this act. The credit is equal to one hundred percent of the cost of the mechanical lifting devices or other equipment.

(2) No application is necessary for the credit, however, a hospital taking a credit under this section must maintain records, as required by the department, necessary to verify eligibility for the credit under this section. The hospital is subject to all of the requirements of chapter 82.32 RCW. A credit earned during one calendar year may be carried over to be credited against taxes incurred in a subsequent calendar year. No refunds shall be granted for credits under this section.

(3) The maximum credit that may be earned under this section for each hospital is limited to one thousand dollars for each acute care available inpatient bed.

(4) Credits are available on a first in-time basis. The department shall disallow any credits, or portion thereof, that would cause the total amount of credits claimed statewide under this section to exceed ten million dollars. If the ten million dollar limitation is reached, the department shall notify hospitals that the annual statewide limit has been met. In addition, the department shall provide written notice to any hospital that has claimed tax credits after the ten million dollar limitation in this subsection has been met. The notice shall indicate the amount of tax due and shall provide that the tax be paid within thirty days from the date of such notice. The department shall not assess penalties and interest as provided in chapter 82.32 RCW on the amount due in the initial notice if the amount due is paid by the due date specified in the notice, or any extension thereof.

(5) Credit may not be claimed under this section for the acquisition of mechanical lifting devices and other equipment if the acquisition occurred before the effective date of this section.

(6) Credit may not be claimed under this section for any acquisition of mechanical lifting devices and other equipment that occurs after December 30, 2010.

(7) The department shall issue an annual report on the amount of credits claimed by hospitals under this section, with the first report due on July 1, 2008.

(8) For the purposes of this section, "hospital" has the meaning provided in RCW 70.41.020.

Passed by the House March 7, 2006.

Passed by the Senate March 8, 2006.

Approved by the Governor March 22, 2006.

Filed in Office of Secretary of State March 22, 2006.

CHAPTER 166

[Substitute House Bill 2867]

WASHINGTON STATE UNIVERSITY—TRI-CITIES BRANCH

AN ACT Relating to expanding access to baccalaureate degree programs at Washington State University Tri-Cities; and amending RCW 28B.45.030.

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

Sec. 1. RCW 28B.45.030 and 2005 c 258 s 4 are each amended to read as follows:

(1) Washington State University is responsible for providing baccalaureate and graduate level higher education programs to the citizens of the Tri-Cities area, under rules or guidelines adopted by the higher education coordinating board and in accordance with proportionality agreements emphasizing access for transfer students developed with the state board for community and technical colleges. Washington State University shall meet that responsibility through the operation of a branch campus in the Tri-Cities area. The branch campus shall replace and supersede the Tri-Cities university center. All land, facilities, equipment, and personnel of the Tri-Cities university center shall be transferred from the University of Washington to Washington State University.

(2) In 2005, the legislature authorized the expansion on a limited basis of Washington State University's branch campus in the Tri-Cities area. The legislature authorized the Tri-Cities branch campus to continue providing innovative coadmission and coenrollment options with Columbia Basin College, and to expand its upper-division capacity for transfer students and graduate capacity and programs. The branch campus was given authority beginning in fall 2006 to offer lower-division courses linked to specific majors in fields not addressed at the local community colleges. The campus was also authorized to directly admit freshmen and sophomores for a bachelor's degree program in biotechnology subject to approval by the higher education coordinating board. The legislature finds that the Tri-Cities community is very engaged in and committed to exploring the further expansion of Washington State University Tri-Cities branch campus into a four-year institution and considers this issue to be a top priority for the larger Tri-Cities region.

(3) Washington State University Tri-Cities shall continue providing innovative coadmission and coenrollment options with Columbia Basin College, and expand its upper division capacity for transfer students and graduate capacity and programs. The campus shall also seek additional opportunities to collaborate with the Pacific Northwest national laboratory. Beginning in the fall of 2006, the campus may offer lower division courses linked to specific majors in fields not addressed at local community colleges. The campus may admit lower division students through coadmission or coenrollment agreements with a community college, or through direct transfer for students who have accumulated approximately one year of transferable college credits. In addition to offering lower division courses linked to specific majors as addressed above, the campus may also directly admit freshmen and sophomores for a bachelor's degree program in biotechnology subject to approval by the higher education coordinating board. ~~((The campus may not directly admit freshmen and sophomores for degree programs other than biotechnology, however this topic shall be the subject of further study and recommendations by the higher education coordinating board.))~~

(4) The Washington State University Tri-Cities branch campus shall develop a plan for expanding into a four-year institution and shall identify new degree programs and course offerings focused on areas of specific need in higher education that exist in southeastern Washington. The branch campus's plan should examine the resources and talent available in the Tri-Cities area, including but not limited to resources and talent available at the Pacific

Northwest national laboratory, and how these resources and talent may best be used by the Tri-Cities branch campus to expand into a four-year institution. The branch campus shall submit its plan to the legislature and the higher education coordinating board by November 30, 2006.

(5) Beginning in the fall of 2007, the Washington State University Tri-Cities branch campus may begin, subject to approval by the higher education coordinating board, admitting lower-division students directly into programs beyond the biotechnology field that are identified in its plan as being in high need in southeastern Washington. Such fields may include but need not be limited to science, engineering and technology, biomedical sciences, alternative energy, and computational and information sciences. By gradually and deliberately admitting freshmen and sophomores in accordance with its plan, increasing transfer enrollment, and coadmitting transfer students, the campus shall develop into a four-year institution serving the southeastern Washington region.

Passed by the House February 9, 2006.

Passed by the Senate March 3, 2006.

Approved by the Governor March 22, 2006.

Filed in Office of Secretary of State March 22, 2006.

CHAPTER 167

[Engrossed Substitute House Bill 3316]

GENERAL OBLIGATION BONDS

AN ACT Relating to authorizing state general obligation bonds for correctional facilities, Hood Canal and Puget Sound rehabilitation, and the Columbia river basin water supply development program; adding new chapters to Title 43 RCW; and declaring an emergency.

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

PART 1

NEW SECTION. Sec. 101. For the purpose of providing funds for state correctional facilities, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of fifty-nine million three hundred thousand dollars, or as much thereof as may be required, to finance the projects and all costs incidental thereto. Bonds authorized in this section may be sold at such price as the state finance committee shall determine. No bonds authorized in this section may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds.

NEW SECTION. Sec. 102. The proceeds from the sale of the bonds authorized in section 101 of this act shall be deposited in the state building construction account created in RCW 43.83.020. If the state finance committee deems it necessary to issue the bonds authorized in section 101 of this act as taxable bonds in order to comply with federal internal revenue service rules and regulations pertaining to the use of nontaxable bond proceeds, the proceeds of such taxable bonds shall be transferred to the state taxable building construction account in lieu of any deposit otherwise provided by this section. The state treasurer shall submit written notice to the director of financial management if it is determined that any such transfer to the state taxable building construction

account is necessary. Moneys in the account may be spent only after appropriation. The proceeds shall be used exclusively for the purposes specified in section 101 of this act and for the payment of expenses incurred in the issuance and sale of the bonds. These proceeds shall be administered by the office of financial management, subject to legislative appropriation.

NEW SECTION. Sec. 103. The debt-limit general fund bond retirement account shall be used for the payment of the principal of and interest on the bonds authorized in section 101 of this act.

The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet the bond retirement and interest requirements. On each date on which any interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the debt-limit general fund bond retirement account an amount equal to the amount certified by the state finance committee to be due on the payment date.

Bonds issued under section 101 of this act shall state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay the principal and interest as the same shall become due.

The owner and holder of each of the bonds or the trustee for the owner and holder of any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section.

NEW SECTION. Sec. 104. The legislature may provide additional means for raising moneys for the payment of the principal of and interest on the bonds authorized in section 101 of this act, and section 103 of this act shall not be deemed to provide an exclusive method for the payment.

NEW SECTION. Sec. 105. The bonds authorized in section 101 of this act shall be a legal investment for all state funds or funds under state control and for all funds of any other public body.

PART 2

NEW SECTION. Sec. 201. For the purpose of providing funds for the Columbia river basin water supply development program, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of two hundred million dollars, or as much thereof as may be required, to finance the projects and all costs incidental thereto. Bonds authorized in this section may be sold at such price as the state finance committee shall determine. No bonds authorized in this section may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds.

NEW SECTION. Sec. 202. It is the intent of the legislature that the proceeds of the new bonds authorized in section 201 of this act will be appropriated in phases over five biennia, beginning with the 2005-2007 biennium. This is not intended to limit the legislature's ability to appropriate bond proceeds if the full amount authorized in section 201 of this act has not

been appropriated after five biennia. The authorization to issue bonds contained in section 201 of this act does not expire until the full authorization has been appropriated and issued.

NEW SECTION. Sec. 203. The proceeds from the sale of the bonds authorized in section 201 of this act shall be deposited in the Columbia river basin water supply development account created in chapter ... (Engrossed Second Substitute House Bill No. 2860), Laws of 2006. If the state finance committee deems it necessary to issue the bonds authorized in section 201 of this act as taxable bonds in order to comply with federal internal revenue service rules and regulations pertaining to the use of nontaxable bond proceeds, the proceeds of such taxable bonds shall be transferred to the state taxable building construction account in lieu of any deposit otherwise provided by this section. The state treasurer shall submit written notice to the director of financial management if it is determined that any such transfer to the state taxable building construction account is necessary. Moneys in the account may be spent only after appropriation. The proceeds shall be used exclusively for the purposes specified in section 201 of this act and for the payment of expenses incurred in the issuance and sale of the bonds. These proceeds shall be administered by the office of financial management, subject to legislative appropriation.

NEW SECTION. Sec. 204. The debt-limit general fund bond retirement account shall be used for the payment of the principal of and interest on the bonds authorized in section 201 of this act.

The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet the bond retirement and interest requirements. On each date on which any interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the debt-limit general fund bond retirement account an amount equal to the amount certified by the state finance committee to be due on the payment date.

Bonds issued under section 201 of this act shall state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay the principal and interest as the same shall become due.

The owner and holder of each of the bonds or the trustee for the owner and holder of any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section.

NEW SECTION. Sec. 205. The legislature may provide additional means for raising moneys for the payment of the principal of and interest on the bonds authorized in section 201 of this act, and section 204 of this act shall not be deemed to provide an exclusive method for the payment.

NEW SECTION. Sec. 206. The bonds authorized in section 201 of this act shall be a legal investment for all state funds or funds under state control and for all funds of any other public body.

PART 3

NEW SECTION. Sec. 301. For the purpose of providing funds for the Hood Canal aquatic rehabilitation program, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of six million nine hundred twenty thousand dollars, or as much thereof as may be required, to finance the projects and all costs incidental thereto. Bonds authorized in this section may be sold at such price as the state finance committee shall determine. No bonds authorized in this section may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds.

NEW SECTION. Sec. 302. (1) It is the intent of the legislature that the proceeds of the new bonds authorized in section 301 of this act will be appropriated in the 2005-2007 biennium.

(2) A portion of the bonds issued under section 301 of this act are intended to be used for wastewater and clean water improvement projects at state parks as part of the Hood Canal aquatic rehabilitation program. State parks intended to be improved by the bond proceeds authorized in section 301 of this act include, but are not limited to, the following:

- (a) Approximately one hundred thousand dollars for Twanoh state park;
- (b) Approximately one million two hundred thousand dollars for Dosewallips state park;
- (c) Approximately seven hundred thousand dollars for Belfair state park;
- (d) Approximately one million fifty thousand dollars for Potlatch state park;
- (e) Approximately five hundred thousand dollars for Kitsap Memorial state park;
- (f) Approximately nine hundred thousand dollars for Scenic Beach state park;
- (g) Approximately three hundred thousand dollars for Twanoh and Triton Cove state parks;
- (h) Approximately eight hundred fifty thousand dollars for Shine Tidelands state park;
- (i) Approximately one hundred fifty thousand dollars for Pleasant Harbor state park; and
- (j) Approximately one hundred seventy thousand dollars for Triton Cove state park.

NEW SECTION. Sec. 303. The proceeds from the sale of the bonds authorized in section 301 of this act shall be deposited in the Hood Canal aquatic rehabilitation bond account created in section 307 of this act. If the state finance committee deems it necessary to issue the bonds authorized in section 301 of this act as taxable bonds in order to comply with federal internal revenue service rules and regulations pertaining to the use of nontaxable bond proceeds, the proceeds of such taxable bonds shall be transferred to the state taxable building construction account in lieu of any deposit otherwise provided by this section. The state treasurer shall submit written notice to the director of financial management if it is determined that any such transfer to the state taxable building construction account is necessary. Moneys in the account may be spent only after appropriation. The proceeds shall be used exclusively for the purposes specified in section 301 of this act and for the payment of expenses

incurred in the issuance and sale of the bonds. These proceeds shall be administered by the office of financial management, subject to legislative appropriation.

NEW SECTION. Sec. 304. The debt-limit general fund bond retirement account shall be used for the payment of the principal of and interest on the bonds authorized in section 301 of this act.

The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet the bond retirement and interest requirements. On each date on which any interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the debt-limit general fund bond retirement account an amount equal to the amount certified by the state finance committee to be due on the payment date.

Bonds issued under section 301 of this act shall state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay the principal and interest as the same shall become due.

The owner and holder of each of the bonds or the trustee for the owner and holder of any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section.

NEW SECTION. Sec. 305. The legislature may provide additional means for raising moneys for the payment of the principal of and interest on the bonds authorized in section 301 of this act, and section 304 of this act shall not be deemed to provide an exclusive method for the payment.

NEW SECTION. Sec. 306. The bonds authorized in section 301 of this act shall be a legal investment for all state funds or funds under state control and for all funds of any other public body.

NEW SECTION. Sec. 307. The Hood Canal aquatic rehabilitation bond account is created in the state treasury. All receipts from proceeds from the bonds issued under section 301 of this act must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for programs and projects to protect and restore Hood Canal, including implementing RCW 90.88.020 and 90.88.030.

PART 4

NEW SECTION. Sec. 401. For the purpose of providing funds for the rehabilitation of Puget Sound, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of seven million three hundred seventy-five thousand dollars, or as much thereof as may be required, to finance the projects and all costs incidental thereto. Bonds authorized in this section may be sold at such price as the state finance committee shall determine. No bonds authorized in this section may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds.

NEW SECTION. Sec. 402. (1) It is the intent of the legislature that the proceeds of the new bonds authorized in section 401 of this act will be appropriated in the 2005-2007 biennium.

(2) The bonds issued under section 401 of this act are intended to be used for wastewater and clean water improvement projects at state parks as part of the rehabilitation of Puget Sound. State parks intended to be improved by the bond proceeds authorized in section 401 of this act include, but are not limited to, the following:

(a) Approximately one hundred twenty-five thousand dollars for Sequim Bay state park;

(b) Approximately seven hundred fifty thousand dollars for Fort Flagler state park;

(c) Approximately seven hundred fifty thousand dollars for Larabee state park;

(d) Approximately three hundred thousand dollars for Fort Worden state park;

(e) Approximately three hundred thousand dollars for Camano Island state park;

(f) Approximately three hundred fifty thousand dollars for Deception Pass state park;

(g) Approximately two hundred fifty thousand dollars for Possession Point;

(h) Approximately one million one hundred thousand dollars for Illahee state park;

(i) Approximately one million two hundred thousand dollars for Kopachuck state park;

(j) Approximately seven hundred thousand dollars for Penrose Point state park;

(k) Approximately two hundred fifty thousand dollars for Blake Island state park; and

(l) Approximately one million three hundred thousand dollars for Fay Bainbridge state park.

NEW SECTION. Sec. 403. The proceeds from the sale of the bonds authorized in section 401 of this act shall be deposited in the state building construction account created in RCW 43.83.020. If the state finance committee deems it necessary to issue the bonds authorized in section 401 of this act as taxable bonds in order to comply with federal internal revenue service rules and regulations pertaining to the use of nontaxable bond proceeds, the proceeds of such taxable bonds shall be transferred to the state taxable building construction account in lieu of any deposit otherwise provided by this section. The state treasurer shall submit written notice to the director of financial management if it is determined that any such transfer to the state taxable building construction account is necessary. Moneys in the account may be spent only after appropriation. The proceeds shall be used exclusively for the purposes specified in section 401 of this act and for the payment of expenses incurred in the issuance and sale of the bonds. These proceeds shall be administered by the office of financial management, subject to legislative appropriation.

NEW SECTION. Sec. 404. The debt-limit general fund bond retirement account shall be used for the payment of the principal of and interest on the bonds authorized in section 401 of this act.

The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet the bond retirement and interest requirements. On each date on which any interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the debt-limit general fund bond retirement account an amount equal to the amount certified by the state finance committee to be due on the payment date.

Bonds issued under section 401 of this act shall state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay the principal and interest as the same shall become due.

The owner and holder of each of the bonds or the trustee for the owner and holder of any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section.

NEW SECTION. Sec. 405. The legislature may provide additional means for raising moneys for the payment of the principal of and interest on the bonds authorized in section 401 of this act, and section 404 of this act shall not be deemed to provide an exclusive method for the payment.

NEW SECTION. Sec. 406. The bonds authorized in section 401 of this act shall be a legal investment for all state funds or funds under state control and for all funds of any other public body.

PART 5

NEW SECTION. Sec. 501. Sections 101 through 105 of this act constitute a new chapter in Title 43 RCW.

NEW SECTION. Sec. 502. Sections 201 through 206 of this act constitute a new chapter in Title 43 RCW.

NEW SECTION. Sec. 503. Sections 301 through 307 of this act constitute a new chapter in Title 43 RCW.

NEW SECTION. Sec. 504. Sections 401 through 406 of this act constitute a new chapter in Title 43 RCW.

NEW SECTION. Sec. 505. 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. 506. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House February 28, 2006.

Passed by the Senate March 8, 2006.

Approved by the Governor March 22, 2006.

Filed in Office of Secretary of State March 22, 2006.

CHAPTER 168

[Engrossed Substitute Senate Bill 6151]

WATER—AQUIFER LEVELS

AN ACT Relating to water policy in regions with regulated reductions in aquifer levels; adding a new section to chapter 90.44 RCW; creating a new section; providing an expiration date; and declaring an emergency.

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

NEW SECTION. Sec. 1. (1) The legislature finds that the department of ecology adopted ground water management subarea rules to manage aquifer depletions in the Odessa subarea, which includes undeveloped portions of the federal Columbia basin project.

(2) The legislature also finds that deep well agricultural irrigation was permitted within the Odessa subarea under the expectation that federal Columbia basin project water would be delivered to replace the temporary ground water withdrawals in time to stabilize aquifer levels.

(3) The legislature further finds that because federal project water has not been delivered as anticipated, aquifer levels have continued to decline despite department of ecology and community efforts to manage ground water withdrawals in a sustainable manner.

(4) The legislature further finds that, because substantial project expansion and aquifer recharge is a long-term effort, the continued availability of ground water for domestic, municipal, industrial, and agricultural uses in the region is in great jeopardy.

(5) The legislature therefore declares that immediate relief is needed to encourage more efficient use of water and to protect the region's citizens from economic hardships and public health and safety risks that can result from declining aquifer levels.

NEW SECTION. Sec. 2. A new section is added to chapter 90.44 RCW to read as follows:

(1) In order to encourage more efficient use of water, where the source of water is an aquifer within the Odessa ground water subarea as defined in chapter 173-128A WAC:

(a) Any period of nonuse of a right to withdraw ground water from the aquifer is deemed to be involuntary due to a drought or low flow period under RCW 90.14.140(2)(b); and

(b) Such unused water is deemed a standby or reserve water supply that may again be used after the period of nonuse, as long as: (i) Reductions in water use are a result of conservation practices, irrigation or water use efficiencies, long or short-term changes in the types or rotations of crops grown, economic hardship, pumping or system infrastructure costs, unavailability or unsuitability of water, or willing and documented participation in cooperative efforts to reduce aquifer depletion and optimize available water resources; (ii) withdrawal or diversion facilities are maintained in good operating condition; and (iii) the department has not issued a superseding water right permit or certificate to designate a portion of the ground water right replaced by federal Columbia basin project water as a standby or reserve right under RCW 90.44.510.

(2)(a) A water right holder choosing to not exercise a water right in accordance with the provisions of this section must provide notice to the department in writing within one hundred eighty days of such choice. The notice shall include the name of the water right holder and the number of the permit, certificate, or claim.

(b) When a water right holder chooses to discontinue nonuse under the provisions of this section, notice of such action must be provided to the department in writing. Notice is not required under this subsection (2)(b) for seasonal fluctuations in use if the right is not fully exercised as reflected in the notice provided under (a) of this subsection.

(3) The provisions of this section relating to the nonuse of all or a portion of a water right are in addition to any other provisions relating to such nonuse under existing law.

(4) If water from the federal Columbia basin project has been delivered to a place of use authorized under a right to withdraw ground water from the aquifer, the provisions of RCW 90.44.510 apply and supersede the provisions of this section.

(5) Portions of rights protected under this section may not be transferred outside Odessa subarea boundaries as defined in WAC 173-128A-040. Transfers within Odessa subarea boundaries remain subject to the provisions of RCW 90.03.380, 90.03.390, 90.44.100, and WAC 173-130A-200.

(6) The department shall submit a report to the legislature as to the status of the aquifer, participation in the nonuse program set forth in this section, and the outcome of the United States bureau of reclamation's study on feasible alternatives to Odessa groundwater use. This report must be submitted six months after completion of the United States bureau of reclamation's study, which is expected to be completed in February 2011. The department's report must also suggest viable solutions and the actions needed by the state to move forward with such solutions.

NEW SECTION. Sec. 3. Section 2 of this act expires July 1, 2021.

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

Passed by the Senate March 7, 2006.

Passed by the House March 3, 2006.

Approved by the Governor March 22, 2006.

Filed in Office of Secretary of State March 22, 2006.

CHAPTER 169

[Engrossed Second Substitute Senate Bill 6581]

HANFORD REACH—INSTREAM FLOWS STUDY

AN ACT Relating to a study of the instream flows of the Hanford Reach; and amending 2005 c 488 s 330 (uncodified).

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

Sec. 1. 2005 c 488 s 330 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF ECOLOGY

Watershed Plan Implementation and Flow Achievement (06-2-003)

The appropriation in this section is subject to the following conditions and limitations: \$12,000,000 of the appropriation is provided solely for projects and water right acquisitions to support watershed planning efforts and achieving instream flows subject to the following project types, conditions, and limitations:

(1) Up to \$1,353,172 of the appropriation is provided to improve irrigation efficiency and to achieve associated flow improvements in the Twisp and Methow rivers by providing for cleaning and lining and/or piping of 30,943 linear feet of the irrigation canal within the lower (downstream) seven miles of the Methow Valley irrigation district's west canal. Of this amount, up to \$100,000 is provided for a neutral independent consultant to provide management assistance to the Methow Valley irrigation district for purposes of identifying structural and operational improvements to increase overall system water use efficiency.

(2) Up to \$200,000 of the appropriation is provided for a portion of the costs of the project level environmental impact statement for the Ahtanum creek watershed restoration program, including construction of the Pine Hollow reservoir, provided there is agreement among the Yakama nation, Ahtanum irrigation district, and other jurisdictional federal, state, and local agencies and entities to proceed with the environmental impact statement.

(3) Up to \$75,000 of the appropriation is provided to formalize the Ahtanum creek watershed restoration program, including identification of site specific habitat improvement projects and determination of the most appropriate restoration program alternative to implement.

(4) Up to \$1,500,000 of the appropriation is provided to reduce diversions from the Dungeness river through pipeline projects identified in the Dungeness river comprehensive irrigation district management plan. For at least one year from the effective date of this section, while the parties seek resolution of the court action filed in Thurston county superior court, No. 04-2-00078-2, none of these funds may be allocated to any projects in the Dungeness river basin that are within the area that is the zone of contribution for ground and surface water infiltration to the existing Graysmarsh wetland.

(5) \$100,000 of the appropriation is provided solely to the city of Normandy Park to implement the basin plan for the Miller/Walker and Salmon creek basins.

(6) Water storage grants for the development of plans, engineering and financing reports, acquiring lands and facilities, and other preconstruction activities associated with the development of water storage and groundwater storage and recovery projects. Proposed projects should be consistent with the recommendations of the water storage task force. The department of ecology would issue grants in consultation with the departments of agriculture and fish and wildlife.

(7) Infrastructure improvement projects and other water management actions that benefit stream flows and enhance water supply to resolve conflicts among water needs for municipal water supply, agriculture water supply, and fish restoration. The stream flow improvements and other public benefits secured from these projects should be commensurate with the investment of state funds.

(8) Projects for planning, acquisition, construction, and improvement of agriculture water supply facilities and achieving water conservation and water use efficiency improvements.

(9) Financial assistance to purchase and install water measuring devices at points of diversion and withdrawal. Preference would be given to fish-critical basins, to areas participating in the department of fish and wildlife fish screening and cooperative compliance programs, and to basins where watershed planning has determined additional water diversion and withdrawal information is needed.

(10) Funding for acquisition of either water or water rights, or both, for instream flow achievement and establishment of water accounts. The appropriation is provided for either the purchase or lease, or both, of water rights. It is also provided for the purpose of improving stream and river flows in fish critical basins under the trust water rights program under chapters 90.42 and 90.38 RCW.

(11) The department shall provide small grants to watershed councils that have completed watershed plans. The grants are intended to support periodic meetings of the councils so that they can monitor the implementation of watershed plans.

(12) \$250,000 of the state building construction account—state appropriation for fiscal year 2007 is provided solely to the department of ecology to work with interested parties to study instream flows in the Hanford Reach and their impact on the ecological condition of the Hanford Reach especially as it relates to the needs of salmon and steelhead in the Hanford Reach. The department shall submit to the office of the governor and to the appropriate fiscal and policy committees of the legislature a report of its findings by July 1, 2007.

Appropriation:

State Building Construction Account—State	\$12,000,000
Prior Biennia (Expenditures)	\$0
Future Biennia (Projected Costs)	\$48,000,000
TOTAL	\$60,000,000

Passed by the Senate March 8, 2006.

Passed by the House March 8, 2006.

Approved by the Governor March 22, 2006.

Filed in Office of Secretary of State March 22, 2006.

CHAPTER 170

[Senate Bill 6861]

SURFACE WATER USES—REPORT

AN ACT Relating to studying the competing interests of domestic water users and other water users in regards to limited water supplies where a curtailment of domestic water right use has been enacted; and creating a new section.

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

NEW SECTION. Sec. 1. (1) The department of ecology shall, by December 31, 2006, study and prepare a report to the appropriate committees of

the legislature on ways that the department and other stakeholders can better understand the competing interests of domestic surface water users and other surface water users in regards to limited water supplies who are affected by a curtailment of domestic water right use that has been enacted by a court order.

(2) The study conducted under this section shall be limited to basins currently involved in a water rights adjudication and must:

(a) Provide a summary of the circumstances that have contributed to the competition between domestic water users and other water users;

(b) Include a survey involving the owners of the residences; and

(c) Recommend suggested legislation or other solutions for resolving conflicts between competing interests for a limited water resource.

(3) The study shall focus on seasonal residential uses; however, other permanent residences may be included if the owners are experiencing similar problems.

(4) When surveying residents under this section, the department shall make a reasonable attempt to contact all property owners and obtain, at a minimum, the following information:

(a) The location of the seasonal or permanent residence and the number of days that the residence is in use;

(b) The months that the residence is occupied;

(c) The amount of water needed for the residence when it is occupied;

(d) The specific use of the water used by the property owner;

(e) The location of the permanent residence of the property owner; and

(f) Any other relevant information that the department determines is necessary for the survey.

Passed by the Senate February 14, 2006.

Passed by the House March 1, 2006.

Approved by the Governor March 22, 2006.

Filed in Office of Secretary of State March 22, 2006.

CHAPTER 171

[Engrossed Third Substitute House Bill 2939]

ENERGY FREEDOM PROGRAM

AN ACT Relating to creation of the energy freedom program; amending RCW 42.56.270 and 43.84.092; reenacting and amending RCW 43.84.092; adding a new chapter to Title 15 RCW; creating new sections; providing an effective date; and providing expiration dates.

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

NEW SECTION. Sec. 1. The legislature finds that:

(1) Washington's dependence on energy supplied from outside the state and volatile global energy markets makes its economy and citizens vulnerable to unpredictable and high energy prices;

(2) Washington's dependence on petroleum-based fuels increases energy costs for citizens and businesses;

(3) Diesel soot from diesel engines ranks as the highest toxic air pollutant in Washington, leading to hundreds of premature deaths and increasing rates of asthma and other lung diseases;

(4) The use of biodiesel results in significantly less air pollution than traditional diesel fuels;

(5) Improper disposal and treatment of organic waste from farms and livestock operations can have a significant negative impact on water quality;

(6) Washington has abundant supplies of organic wastes from farms that can be used for energy production and abundant farmland where crops could be grown to supplement or supplant petroleum-based fuels;

(7) The use of energy and fuel derived from these sources can help citizens and businesses conserve energy and reduce the use of petroleum-based fuels, would improve air and water quality in Washington, reduce environmental risks from farm wastes, create new markets for farm products, and provide new industries and jobs for Washington citizens;

(8) The bioenergy industry is a new and developing industry that is, in part, limited by the availability of capital for the construction of facilities for converting farm and forest products into energy and fuels;

(9) Instead of leaving our economy at the mercy of global events, and the policies of foreign nations, Washington state should adopt a policy of energy independence; and

(10) The energy freedom program is meant to lead Washington state towards energy independence.

Therefore, the legislature finds that it is in the public interest to encourage the rapid adoption and use of bioenergy, to develop a viable bioenergy industry within Washington state, to promote public research and development in bioenergy sources and markets, and to support a viable agriculture industry to grow bioenergy crops. To accomplish this, the energy freedom program is established to promote public research and development in bioenergy, and to stimulate the construction of facilities in Washington to generate energy from farm sources or convert organic matter into fuels.

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

(1) "Applicant" means any political subdivision of the state, including port districts, counties, cities, towns, special purpose districts, and other municipal corporations or quasi-municipal corporations. "Applicant" may also include federally recognized tribes and state institutions of higher education with appropriate research capabilities.

(2) "Assistance" includes loans, leases, product purchases, or other forms of financial or technical assistance.

(3) "Department" means the department of agriculture.

(4) "Director" means the director of the department of agriculture.

(5) "Peer review committee" means a board, appointed by the director, that includes bioenergy specialists, energy conservation specialists, scientists, and individuals with specific recognized expertise.

(6) "Project" means the construction of facilities, including the purchase of equipment, to convert farm products or wastes into electricity or gaseous or liquid fuels or other coproducts associated with such conversion. These specifically include fixed or mobile facilities to generate electricity or methane from the anaerobic digestion of organic matter, and fixed or mobile facilities for extracting oils from canola, rape, mustard, and other oilseeds. "Project" may also include the construction of facilities associated with such conversion for the distribution and storage of such feedstocks and fuels.

(7) "Research and development project" means research and development, by an institution of higher education as defined in subsection (1) of this section, relating to:

- (a) Bioenergy sources including but not limited to biomass and associated gases; or
- (b) The development of markets for bioenergy coproducts.

NEW SECTION. Sec. 3. (1) The energy freedom program is established within the department. The director may establish policies and procedures necessary for processing, reviewing, and approving applications made under this chapter.

(2) When reviewing applications submitted under this program, the director shall consult with those agencies having expertise and knowledge to assess the technical and business feasibility of the project and probability of success. These agencies may include, but are not limited to, Washington State University, the University of Washington, the department of ecology, the department of community, trade, and economic development, and the Washington state conservation commission.

(3) The director, in cooperation with the department of community, trade, and economic development, may approve an application only if the director finds:

- (a) The project will convert farm products or wastes directly into electricity or into gaseous or liquid fuels or other coproducts associated with such conversion;
- (b) The project demonstrates technical feasibility and directly assists in moving a commercially viable project into the marketplace for use by Washington state citizens;
- (c) The facility will produce long-term economic benefits to the state, a region of the state, or a particular community in the state;
- (d) The project does not require continuing state support;
- (e) The assistance will result in new jobs, job retention, or higher incomes for citizens of the state;
- (f) The state is provided an option under the assistance agreement to purchase a portion of the fuel or feedstock to be produced by the project, exercisable by the department of general administration;
- (g) The project will increase energy independence or diversity for the state;
- (h) The project will use feedstocks produced in the state, if feasible, except this criterion does not apply to the construction of facilities used to distribute and store fuels that are produced from farm products or wastes;
- (i) Any product produced by the project will be suitable for its intended use, will meet accepted national or state standards, and will be stored and distributed in a safe and environmentally sound manner;
- (j) The application provides for adequate reporting or disclosure of financial and employment data to the director, and permits the director to require an annual or other periodic audit of the project books; and
- (k) For research and development projects, the application has been independently reviewed by a peer review committee as defined in section 2 of this act and the findings delivered to the director.

(4) The director may approve an application for assistance up to five million dollars. In no circumstances shall this assistance constitute more than fifty percent of the total project cost.

(5) The director shall enter into agreements with approved applicants to fix the terms and rates of the assistance to minimize the costs to the applicants, and to encourage establishment of a viable bioenergy industry. The agreement shall include provisions to protect the state's investment, including a requirement that a successful applicant enter into contracts with any partners that may be involved in the use of any assistance provided under this program, including services, facilities, infrastructure, or equipment. Contracts with any partners shall become part of the application record.

(6) The director may defer any payments for up to twenty-four months or until the project starts to receive revenue from operations, whichever is sooner.

NEW SECTION. Sec. 4. (1) Upon written notice to the recipient of any assistance under this program, the director may suspend or cancel the assistance if any of the following occur:

(a) The recipient fails to make satisfactory and reasonable progress to complete the project, or the director concludes the recipient will be unable to complete the project or any portion of it; or

(b) The recipient has made misrepresentations in any information furnished to the director in connection with the project.

(2) In the event that any assistance has been awarded to the recipient under this program at the time of breach, or failure of the recipient to satisfactorily perform, the director may require that the full amount or value of the assistance, or a portion thereof, be repaid within a period specified by the director.

NEW SECTION. Sec. 5. If the total requested dollar amount of assistance exceeds the amount available in the energy freedom account created in section 6 of this act, the applications must be prioritized based upon the following criteria:

(1) The extent to which the project will help reduce dependence on petroleum fuels and imported energy either directly or indirectly;

(2) The extent to which the project will reduce air and water pollution either directly or indirectly;

(3) The extent to which the project will establish a viable bioenergy production capacity in Washington;

(4) The benefits to Washington's agricultural producers; and

(5) The number and quality of jobs and economic benefits created by the project.

NEW SECTION. Sec. 6. The energy freedom account is created in the state treasury. All receipts from appropriations made to the account and any loan payments of principal and interest derived from loans made under this chapter must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for assistance for projects consistent with this chapter. Administrative costs of the department may not exceed three percent of the total funds available for this program.

NEW SECTION. Sec. 7. The director shall report to the legislature and governor on the status of the energy freedom program created under this chapter, on or before December 1, 2006, and annually thereafter. This report must

include information on the projects that have been funded, the status of these projects, and their environmental, energy savings, and job creation benefits.

Sec. 8. RCW 42.56.270 and 2005 c 274 s 407 are each amended to read as follows:

The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

(2) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070;

(3) Financial and commercial information and records supplied by private persons pertaining to export services provided under chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects under RCW 43.23.035;

(4) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.— (sections 2 through 7, 11, and 15 of this act), 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency;

(5) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW;

(6) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information;

(7) Financial and valuable trade information under RCW 51.36.120;

(8) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW;

(9) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010;

(10) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a liquor license, gambling license, or lottery retail license;

(11) Proprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011; and

(12)(a) When supplied to and in the records of the department of community, trade, and economic development:

(i) Financial and proprietary information collected from any person and provided to the department of community, trade, and economic development pursuant to RCW 43.330.050(8) and 43.330.080(4); and

(ii) Financial or proprietary information collected from any person and provided to the department of community, trade, and economic development or the office of the governor in connection with the siting, recruitment, expansion, retention, or relocation of that person's business and until a siting decision is made, identifying information of any person supplying information under this subsection and the locations being considered for siting, relocation, or expansion of a business;

(b) When developed by the department of community, trade, and economic development based on information as described in (a)(i) of this subsection, any work product is not exempt from disclosure;

(c) For the purposes of this subsection, "siting decision" means the decision to acquire or not to acquire a site;

(d) If there is no written contact for a period of sixty days to the department of community, trade, and economic development from a person connected with siting, recruitment, expansion, retention, or relocation of that person's business, information described in (a)(ii) of this subsection will be available to the public under this chapter.

Sec. 9. RCW 43.84.092 and 2005 c 514 s 1105, 2005 c 353 s 3, 2005 c 339 s 22, 2005 c 314 s 109, 2005 c 312 s 7, and 2005 c 94 s 1 are each reenacted and amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the common school construction fund, the county criminal justice assistance account, the county sales and use tax equalization account, the data processing building construction account, the deferred compensation administrative account, the deferred compensation principal account, the department of retirement systems expense account, the developmental disabilities community trust account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the education construction fund, the education legacy trust account, the election account, the emergency reserve fund, the energy freedom account, The Evergreen State College capital projects account, the federal forest revolving account, the freight mobility investment account, the health services account, the public health services account, the health system capacity account, the personal health services account, the state higher education construction account, the higher education construction account, the highway infrastructure account, the high-occupancy toll lanes operations account, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the medical aid account, the mobile home park relocation fund, the multimodal transportation account, the municipal criminal justice assistance account, the municipal sales and use tax equalization account, the natural resources deposit account, the oyster reserve land account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the Puyallup tribal settlement account, the real estate appraiser commission account, the regional transportation investment district account, the resource management cost account, the rural Washington loan fund, the site closure account, the small city pavement and sidewalk account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the transportation infrastructure account, the transportation partnership account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer fire fighters' and reserve officers' relief and pension principal fund, the volunteer

fire fighters' and reserve officers' administrative fund, the Washington fruit express account, the Washington judicial retirement system account, the Washington law enforcement officers' and fire fighters' system plan 1 retirement account, the Washington law enforcement officers' and fire fighters' system plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts. All earnings to be distributed under this subsection (4)(a) shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(b) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the county arterial preservation account, the department of licensing services account, the essential rail assistance account, the ferry bond retirement fund, the grade crossing protective fund, the high capacity transportation account, the highway bond retirement fund, the highway safety account, the motor vehicle fund, the motorcycle safety education account, the pilotage account, the public transportation systems account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the recreational vehicle account, the rural arterial trust account, the safety and education account, the special category C account, the state patrol highway account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, and the urban arterial trust account.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

Sec. 10. RCW 43.84.092 and 2006 c 6 s 8 are each amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The

office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the Columbia river basin water supply development account, the common school construction fund, the county criminal justice assistance account, the county sales and use tax equalization account, the data processing building construction account, the deferred compensation administrative account, the deferred compensation principal account, the department of retirement systems expense account, the developmental disabilities community trust account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the education construction fund, the education legacy trust account, the election account, the emergency reserve fund, the energy freedom account, The Evergreen State College capital projects account, the federal forest revolving account, the freight mobility investment account, the health services account, the public health services account, the health system capacity account, the personal health services account, the state higher education construction account, the higher education construction account, the highway infrastructure account, the high-occupancy toll lanes operations account, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the medical aid account, the mobile home park relocation fund, the multimodal transportation account, the municipal criminal justice assistance account, the municipal sales and use tax equalization account, the natural resources deposit account, the oyster reserve land account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public works assistance account, the Puyallup tribal settlement account, the real estate appraiser commission account, the regional

transportation investment district account, the resource management cost account, the rural Washington loan fund, the site closure account, the small city pavement and sidewalk account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the transportation infrastructure account, the transportation partnership account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer fire fighters' and reserve officers' relief and pension principal fund, the volunteer fire fighters' and reserve officers' administrative fund, the Washington fruit express account, the Washington judicial retirement system account, the Washington law enforcement officers' and fire fighters' system plan 1 retirement account, the Washington law enforcement officers' and fire fighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts. All earnings to be distributed under this subsection (4)(a) shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(b) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the county arterial preservation account, the department of licensing services account, the essential rail assistance account, the ferry bond retirement fund, the grade crossing protective fund, the high capacity transportation account, the highway bond retirement fund, the highway safety account, the motor vehicle fund, the motorcycle safety education account, the pilotage account, the public transportation systems account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the recreational vehicle account, the rural arterial trust account, the safety and education account, the special category C account, the state patrol highway account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, and the urban arterial trust account.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

NEW SECTION. Sec. 11. Sections 1 through 7 of this act expire June 30, 2016. Any moneys in the energy freedom account on that date and any moneys received pursuant to assistance made under this chapter must be deposited in the general fund.

NEW SECTION. Sec. 12. Sections 2 through 7, 11, and 15 of this act constitute a new chapter in Title 15 RCW.

NEW SECTION. Sec. 13. Sections 8 and 10 of this act take effect July 1, 2006.

NEW SECTION. Sec. 14. Section 9 of this act expires July 1, 2006.

NEW SECTION. Sec. 15. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed by the House March 4, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 22, 2006.

Filed in Office of Secretary of State March 22, 2006.

CHAPTER 172

[Substitute House Bill 2457]

EXCISE TAX EXEMPTION—FARM EQUIPMENT

AN ACT Relating to excise tax relief for farm machinery and equipment; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; and providing an effective date.

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

NEW SECTION. Sec. 1. A new section is added to chapter 82.08 RCW to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to the sale to an eligible farmer of replacement parts for qualifying farm machinery and equipment.

(2) Notwithstanding anything to the contrary in this chapter, if replacement parts are installed by the seller during the course of repairing, cleaning, altering, or improving qualifying farm machinery and equipment and the seller makes a separate charge for the parts, the tax levied by RCW 82.08.020 does not apply to the separately stated charge to an eligible farmer for replacement parts but only if the separately stated charge does not exceed either the seller's current publicly stated retail price for the parts or, if no separately stated retail price is available, the seller's cost for the parts. However, the exemption provided by this section shall not apply if replacement parts are installed by the seller during the course of repairing, cleaning, altering, or improving qualifying farm machinery and equipment and the seller makes a single nonitemized charge for providing the parts and service.

(3)(a) A person claiming an exemption under this section must keep records necessary for the department to verify eligibility under this section. An exemption is available only when the buyer provides the seller with an exemption certificate issued by the department containing such information as the department requires. The exemption certificate shall be in a form and

manner prescribed by the department. The seller shall retain a copy of the certificate for the seller's files.

(b) The department shall provide an exemption certificate to an eligible farmer or renew an exemption certificate, upon application by that eligible farmer. The application must be in a form and manner prescribed by the department and shall contain the following information as required by the department:

- (i) The name and address of the applicant;
- (ii) The uniform business identifier or tax reporting account number of the applicant, if the applicant is required to be registered with the department;
- (iii) The type of farming engaged in;
- (iv) A copy of the applicant's Schedule F of Form 1040, Form 1120, or other applicable form filed with the internal revenue service indicating the gross sales of agricultural products by the applicant in the calendar year immediately preceding the year that the application was made to the department. If application is made before the due date of the applicant's federal income tax return for the prior calendar year, or any extension of the due date, the applicant shall provide a copy of the appropriate federal income tax form that was due for the second calendar year immediately preceding the year that the application is made to the department. If the applicant is not required to file federal income tax returns, the department may require the applicant to provide copies of other documents establishing the amount of the applicant's gross sales of agricultural products for the relevant calendar year;
- (v) The name of the individual authorized to sign the certificate, printed in a legible fashion;
- (vi) The signature of the authorized individual; and
- (vii) Other information the department may require to verify the applicant's eligibility for the exemption.

(c)(i) Except as otherwise provided in this section, exemption certificates issued by the department are not transferable and are valid for the calendar year in which the certificate is issued and the following four calendar years. The department shall attempt to notify holders of exemption certificates of the impending expiration of the certificate at least sixty days before the certificate expires and shall provide an application for renewal of the certificate.

(ii) When a certificate holder merely changes identity or form of ownership of an entity and there is no change in beneficial ownership, the exemption certificate shall be transferred to the new entity upon notice to the department by the transferor or transferee.

(d)(i) Exemption certificates issued to persons who are eligible farmers under subsection (4)(b)(iii) of this section are conditioned on the person making at least ten thousand dollars of gross sales of agricultural products grown, raised, or produced by that person in the first full calendar year that the person engages in business as a farmer.

(ii) A person who is issued a conditional exemption certificate must provide the department with a copy of the person's Schedule F of Form 1040, Form 1120, or other applicable form filed with the internal revenue service indicating the gross sales of agricultural products by the person in the first full calendar year that the person engaged in business as a farmer. If a person is not required to file federal income tax returns, the person shall provide copies of other documents

establishing the amount of the person's gross sales of agricultural products for the first full calendar year that the person engaged in business as a farmer. The documentation required in this subsection (3)(d)(ii) is due no later than December 31st of the year immediately following the first full calendar year in which the person engaged in business as a farmer.

(iii) If a person fails to provide the required documentation to the department by the due date or any extension granted by the department, or if the condition in (d)(i) of this subsection is not met, the department shall revoke the exemption certificate. The department shall notify the person in writing of the revocation and the person's responsibility, and due date, for repayment of any taxes for which an exemption under this section was claimed. Any taxes for which an exemption under this section was claimed shall be due and payable within thirty days of the date of the notice revoking the certificate. The department shall assess interest on the taxes for which the exemption was claimed. Interest shall be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the exemption was claimed, and shall accrue until the taxes for which the exemption was claimed are repaid. Penalties shall not be imposed on any tax required to be repaid if full payment is received by the due date. Nothing in this subsection (3)(d) prohibits a person from reapplying for an exemption certificate.

(4) The definitions in this subsection apply to this section.

(a) "Agricultural products" has the meaning provided in RCW 82.04.213.

(b) "Eligible farmer" means:

(i) A farmer as defined in RCW 82.04.213 whose gross proceeds of sales of agricultural products grown, raised, or produced by that person is at least ten thousand dollars in the calendar year immediately preceding the year in which a claim of exemption is made under this section;

(ii) The transferee of an exemption certificate under subsection (3)(c)(ii) of this section where the transferred certificate expires before the transferee engages in farming operations for a full calendar year, if the combined gross proceeds of sales by the transferor and transferee of agricultural products that they have grown, raised, or produced meet the requirements of (b)(i) of this subsection;

(iii) A farmer as defined in RCW 82.04.213, who does not meet the definition of "eligible farmer" in (b)(i) or (ii) of this subsection, and who did not engage in farming for the entire calendar year immediately preceding the year in which application for exemption under this section is made and who did not engage in farming in any other year;

(iv) Anyone who otherwise meets the definition of "eligible farmer" in this subsection except that they are not a "person" as defined in RCW 82.04.030.

(c) "Qualifying farm machinery and equipment" means machinery and equipment used primarily for growing, raising, or producing agricultural products. "Qualifying farm machinery and equipment" does not include:

(i) Farm vehicles and other vehicles as those terms are defined in chapter 46.04 RCW, except farm tractors as defined in RCW 46.04.180 and other farm implements. For purposes of this subsection (4)(c)(i), "farm implement" does not include lawn tractors and all-terrain vehicles;

(ii) Aircraft;

(iii) Hand tools and hand-powered tools; and

(iv) Property with a useful life of less than one year.

(d) "Replacement parts" means those parts that replace an existing part, or which are essential to maintain the working condition, of a piece of qualifying farm machinery or equipment. However, "replacement parts" shall not include paint, fuel, oil, grease, hydraulic fluids, antifreeze, and similar items.

NEW SECTION. Sec. 2. A new section is added to chapter 82.12 RCW to read as follows:

(1) The provisions of this chapter do not apply in respect to the use by an eligible farmer of replacement parts for qualifying farm machinery and equipment.

(2) Notwithstanding anything to the contrary in this chapter, if replacement parts are installed by the seller during the course of repairing, cleaning, altering, or improving qualifying farm machinery and equipment and the seller makes a separate charge for the parts, the tax imposed by this chapter does not apply to the separately stated charge to an eligible farmer for replacement parts but only if the separately stated charge does not exceed either the seller's current publicly stated retail price for the parts or, if no separately stated retail price is available, the seller's cost for the parts. However, the exemption provided by this section shall not apply if replacement parts are installed by the seller during the course of repairing, cleaning, altering, or improving qualifying farm machinery and equipment and the seller makes a single nonitemized charge for providing the parts and service.

(3) The definitions and recordkeeping requirements in section 1 of this act, other than the exemption certificate requirement, apply to this section.

NEW SECTION. Sec. 3. This act takes effect July 1, 2006.

Passed by the House March 4, 2006.

Passed by the Senate March 3, 2006.

Approved by the Governor March 22, 2006.

Filed in Office of Secretary of State March 22, 2006.

CHAPTER 173

[Substitute Senate Bill 6257]

PRIVATE SECURITY GUARDS

AN ACT Relating to security guard licenses; and amending RCW 18.170.020.

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

Sec. 1. RCW 18.170.020 and 1991 c 334 s 2 are each amended to read as follows:

The requirements of this chapter do not apply to:

(1) A person who is employed exclusively or regularly by one employer and performs the functions of a private security guard solely in connection with the affairs of that employer, if the employer is not a private security company;

(2) A sworn peace officer while engaged in the performance of the officer's official duties; (~~(3)~~)

(3) A sworn peace officer while employed by any person to engage in off-duty employment as a private security guard, but only if the employment is approved by the chief law enforcement officer of the jurisdiction where the employment takes place and the sworn peace officer does not employ, contract

with, or broker for profit other persons to assist him or her in performing the duties related to his or her private employer; or

(4) Guest services or crowd management employees who do not perform the duties of a private security guard.

Passed by the Senate March 8, 2006.

Passed by the House March 7, 2006.

Approved by the Governor March 22, 2006.

Filed in Office of Secretary of State March 22, 2006.

CHAPTER 174

[Substitute Senate Bill 6382]

HORSE RACING COMMISSION—AUTHORIZED EXPENDITURES

AN ACT Relating to authorizing the Washington horse racing commission to expend a statutorily limited amount of its operating funds for the development of the equine industry, improvement of racing facilities, and equine health research; and amending RCW 67.16.280 and 67.16.101.

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

Sec. 1. RCW 67.16.280 and 2004 c 246 s 3 are each amended to read as follows:

(1) The Washington horse racing commission operating account is created in the custody of the state treasurer. All receipts collected by the commission under RCW 67.16.105(2) must be deposited into the account. Moneys in the account may be spent only after appropriation. Except as provided in subsection (2) of this section, expenditures from the account may be used only for operating expenses of the commission. Investment earnings from the account must be distributed to the Washington horse racing commission class C purse fund account, created in RCW 67.16.285, pursuant to RCW 43.79A.040.

(2) In order to provide funding in support of the legislative findings in RCW 67.16.101 (1) through (3), and to provide additional necessary support to the nonprofit race meets beyond the funding provided by RCW 67.16.101(4) and 67.16.102(2), the commission is authorized to spend up to three hundred thousand dollars per fiscal year from its operating account for the purpose of developing the equine industry, maintaining and upgrading racing facilities, and assisting equine health research. When determining how to allocate the funds available for these purposes, the commission shall give first consideration to uses that assist the nonprofit race meets and equine health research. These expenditures may occur only when sufficient funds remain for the continued operations of the horse racing commission.

Sec. 2. RCW 67.16.101 and 1977 ex.s. c 372 s 1 are each amended to read as follows:

The legislature finds that:

(1) A primary responsibility of the horse racing commission is the encouragement of the training and development of the equine industry in the state of Washington whether the result of this training and development results in legalized horse racing or in the recreational use of horses;

(2) The horse racing commission has a further major responsibility to assure that any facility used as a race course should be maintained and upgraded to

insure the continued safety of both the public and the horse at any time the facility is used for the training or contesting of these animals;

(3) ~~((Small race courses))~~ Nonprofit race meets within the state have difficulty in obtaining sufficient funds to provide the maintenance and upgrading necessary to assure this safety at these facilities, or to permit frequent use of these facilities by 4-H children or other horse owners involved in training; and

(4) The one percent of the parimutuel machine gross receipts used to pay a special purse to the licensed owners of Washington bred horses is available for the purpose of drawing interest, thereby obtaining ~~((sufficient))~~ funds to be disbursed to achieve the necessary support to these ~~((small race courses))~~ nonprofit race meets.

Passed by the Senate February 10, 2006.

Passed by the House February 28, 2006.

Approved by the Governor March 22, 2006.

Filed in Office of Secretary of State March 22, 2006.

CHAPTER 175

[Substitute House Bill 2414]

STUDENT ASSESSMENTS—LOCAL CONTROL

AN ACT Relating to local control of student assessments in grades three, five, six, and eight to meet federal requirements for Washington's academic assessment system; and creating a new section.

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

NEW SECTION. Sec. 1. (1) Before the beginning of the 2006-07 school year, the superintendent of public instruction shall request flexibility from the United States department of education to conduct a pilot project with a limited number of local school districts regarding the academic assessments administered for the purpose of complying with P.L. 107-110, the no child left behind act of 2001. The superintendent shall request the flexibility to pilot, with no more than six school districts and for a specified length of time, an assessment other than the Washington assessment of student learning in grades three, five, six, and eight for reading and mathematics. The purpose of the pilot project is to determine whether a different assessment provides greater local control and flexibility while maintaining the testing standards and continuity of student performance measurement expected by the federal law.

(2) In selecting the assessment for the pilot project and developing the request for flexibility, the superintendent of public instruction shall work with local school directors, district and school administrators, teachers, principals, other school staff, and parents. All districts in the pilot project shall use the same assessment.

(3) School districts in the pilot project shall be of varying sizes and geographic locations, including urban, suburban, and rural areas, and shall enroll ethnically and economically diverse student populations.

(4) If the request for flexibility is granted, the superintendent shall revise the Washington state accountability plan required under section 1111 of P.L. 107-110 to incorporate the pilot project into the plan, and school districts participating in the pilot project shall not be required to administer the Washington assessment of student learning in grades three, five, six, and eight in

reading and mathematics during the pilot project. At the end of the pilot project, the superintendent shall evaluate whether the assessment under the pilot project can be used on a statewide basis to comply with P.L. 107-110 and shall forward findings and recommendations to the legislature and to the United States department of education.

Passed by the House February 9, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 22, 2006.

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CHAPTER 176

[Second Substitute House Bill 1384]

JOINT OPERATING AGENCIES—ENERGY PROJECTS

AN ACT Relating to construction and operation of renewable energy projects by joint operating agencies; and adding a new section to chapter 43.52 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 43.52 RCW to read as follows:

(1) A joint operating agency with an executive board formed under RCW 43.52.374 may enter into contracts through competitive negotiation under subsection (3) of this section for materials, equipment, supplies, or work to be performed in support of siting, constructing, developing, or deploying a renewable electrical energy generation project, if the managing director or a designee determines in writing and the executive board finds that execution of a contract under this section will accomplish project completion or operation more economically than sealed bids.

(2) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Professional competence" means the totality of demonstrated experience, knowledge, skills, proficiency, and abilities required to successfully perform the contract.

(b) "Qualified hydropower" means the energy produced either: (i) As a result of modernizations or upgrades made after June 1, 1998, to hydropower facilities operating on May 8, 2001, that have been demonstrated to reduce the mortality of anadromous fish; or (ii) by run of the river or run of the canal hydropower facilities that are not responsible for obstructing the passage of anadromous fish.

(c) "Renewable electrical energy generation project" means electrical generation facilities that are fueled by: (i) Wind; (ii) solar energy; (iii) geothermal energy; (iv) landfill gas; (v) wave or tidal action; (vi) gas produced during the treatment of wastewater; (vii) qualified hydropower; or (viii) biomass energy based on animal waste or solid organic fuels from wood, forest, or field residues, or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic.

(d) "Responsible offerors" means offerors who possess necessary management and financial resources, experience, organization, and the ability, capacity, and skill to successfully perform the contract.

(3) The selection of a contractor shall be made in an open public meeting, as part of a public record, and in accordance with the following procedures:

(a) Proposals shall be solicited through a request for proposals, which shall state the requirements to be met. Responses shall describe the professional competence of the offeror, the technical merits of the offer, and the price.

(b) The request for proposals shall be given adequate public notice in the same manner as for sealed bids.

(c) As provided in the request for proposals, the joint operating agency shall specify at a preproposal conference specific contract requirements, which may include but are not limited to: Schedule, managerial, and staffing requirements, productivity and production levels, technical expertise, approved project quality assurance procedures, and time and place for submission of proposals. Any inquiries and responses thereto shall be confirmed in writing and shall be sent to all potential offerors.

(d) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be open for public inspection after contract award.

(e) As provided in the request for proposals, invitations shall be sent to all responsible offerors who submit proposals to attend discussions for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Any inquiries and responses thereto shall be confirmed in writing and shall be sent to all offerors. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(f) The joint operating agency shall execute a contract with the responsible offeror whose proposal is determined in writing to be the most advantageous to the joint operating agency and the state taking into consideration the requirements set forth in the request for proposals. The contract file shall contain the basis on which the successful offeror is selected. The joint operating agency shall conduct a briefing conference on the selection if requested by an offeror.

(g) The contract may be fixed price or cost-reimbursable, in whole or in part, but not cost-plus-percentage-of-cost.

(h) The joint operating agency shall retain authority and responsibility for inspection, testing, and compliance with applicable regulations or standards of any state or federal governmental agency.

Passed by the House February 4, 2006.

Passed by the Senate March 3, 2006.

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CHAPTER 177

[House Bill 2466]

TAX INCENTIVES—AEROSPACE INDUSTRY

AN ACT Relating to providing excise tax relief for aerospace businesses; amending RCW 82.04.250, 82.32.590, 82.32.600, and 82.04.4463; reenacting and amending RCW 82.32.330; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; adding a new section to chapter 82.04 RCW; adding new sections to chapter 82.32 RCW; creating a new section; providing effective dates; and providing expiration dates.

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

NEW SECTION. Sec. 1. A new section is added to chapter 82.08 RCW to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to sales of computer hardware, computer peripherals, or software, not otherwise eligible for exemption under RCW 82.08.02565 or 82.08.975, used primarily in the development, design, and engineering of commercial airplanes or components of such airplanes, or to sales of or charges made for labor and services rendered in respect to installing the computer hardware, computer peripherals, or software. The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller shall retain a copy of the certificate for the seller's files.

(2) As used in this section:

(a) "Commercial airplane" and "component" have the meanings in RCW 82.32.550.

(b) "Peripherals" includes keyboards, monitors, mouse devices, and other accessories that operate outside of the computer, excluding cables, conduit, wiring, and other similar property.

(3) This section expires July 1, 2024.

NEW SECTION. Sec. 2. A new section is added to chapter 82.12 RCW to read as follows:

(1) The provisions of this chapter do not apply in respect to the use of computer hardware, computer peripherals, or software, not otherwise eligible for exemption under RCW 82.12.02565 or 82.12.975, used primarily in the development, design, and engineering of commercial airplanes or components of such airplanes, or to the use of labor and services rendered in respect to installing the computer hardware, computer peripherals, or software.

(2) As used in this section:

(a) "Commercial airplane" and "component" have the meanings in RCW 82.32.550.

(b) "Peripherals" includes keyboards, monitors, mouse devices, and other accessories that operate outside of the computer, excluding cables, conduit, wiring, and other similar property.

(3) This section expires July 1, 2024.

NEW SECTION. Sec. 3. A new section is added to chapter 82.04 RCW to read as follows:

(1) In computing the tax imposed under this chapter, a credit is allowed for each person for qualified preproduction development expenditures occurring after the effective date of this section.

(2) The credit is equal to the amount of qualified preproduction development expenditures of a person, multiplied by the rate of 1.5 percent.

(3) The credit shall be taken against taxes due for the same calendar year in which the qualified preproduction development expenditures are incurred. Credits may not be carried over. The credit for each calendar year may not exceed the amount of tax otherwise due under this chapter for the calendar year. Refunds may not be granted in the place of a credit.

(4) Any person entitled to the credit in this section as a result of qualified preproduction development conducted under contract may assign all or any portion of the credit to the person contracting for the performance of the qualified preproduction development.

(5) The definitions in this subsection apply throughout this section.

(a) "Aeronautics" means the study of flight and the science of building and operating commercial aircraft.

(b) "Preproduction development" means research, design, and engineering activities performed in relation to the development of a product, product line, model, or model derivative, including prototype development, testing, and certification. The term includes the discovery of technological information, the translating of technological information into new or improved products, processes, techniques, formulas, or inventions, and the adaptation of existing products and models into new products or new models, or derivatives of products or models. The term does not include manufacturing activities or other production-oriented activities. The term does not include surveys and studies, social science and humanities research, market research or testing, quality control, sale promotion and service, computer software developed for internal use, and research in areas such as improved style, taste, and seasonal design.

(c) "Qualified preproduction development" means preproduction development performed within this state in the field of aeronautics.

(d) "Qualified preproduction development expenditures" means operating expenses, including wages, compensation of a proprietor or a partner in a partnership as determined by the department, benefits, supplies, and computer expenses, directly incurred in qualified preproduction development by a person claiming the credit provided in this section. The term does not include amounts paid to a person other than a public educational or research institution to conduct qualified preproduction development. The term does not include capital costs and overhead, such as expenses for land, structures, or depreciable property.

(6) Credit may not be claimed for expenditures for which a credit is claimed under RCW 82.04.4452 or 82.04.4461.

(7) This section expires July 1, 2024.

NEW SECTION. Sec. 4. A new section is added to chapter 82.32 RCW to read as follows:

(1) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how a tax incentive is used.

(2)(a) A person claiming the credit under section 3 of this act shall file a complete annual survey with the department. The survey is due by March 31st following any year in which a credit is claimed. The department may extend the due date for timely filing of annual surveys under this section as provided in

RCW 82.32.590. The survey shall include the amount of the tax credit claimed, the qualified preproduction development expenditures during the calendar year for which the credit is claimed, whether the credit has been assigned under section 3(4) of this act and who assigned the credit, the number of new products or research projects by general classification, and the number of trademarks, patents, and copyrights associated with the qualified preproduction development activities for which a credit was claimed. The survey shall also include the following information for employment positions in Washington:

- (i) The number of total employment positions;
- (ii) Full-time, part-time, and temporary employment positions as a percent of total employment;
- (iii) The number of employment positions according to the following wage bands: Less than thirty thousand dollars; thirty thousand dollars or greater, but less than sixty thousand dollars; and sixty thousand dollars or greater. A wage band containing fewer than three individuals may be combined with another wage band; and
- (iv) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands.

(b) As part of the annual survey, the department may request additional information necessary to measure the results of, or determine eligibility for, the tax credit program.

(c) All information collected under this section, except the amount of the tax credit claimed, is deemed taxpayer information under RCW 82.32.330. Information on the amount of tax credit claimed is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request, except as provided in (d) of this subsection. If the amount of the tax credit as reported on the survey is different than the amount actually claimed on the taxpayer's tax returns or otherwise allowed by the department, the amount actually claimed or allowed may be disclosed.

(d) Persons for whom the actual amount of the tax credit claimed on the taxpayer's returns or otherwise allowed by the department is less than ten thousand dollars during the period covered by the survey may request the department to treat the tax credit amount as confidential under RCW 82.32.330.

(3) If a person fails to submit a complete annual survey under subsection (2) of this section by the due date or any extension under RCW 82.32.590, the department shall declare the amount of taxes against which a credit was claimed for that year to be immediately due and payable. The department shall assess interest, but not penalties, on the taxes against which the credit was claimed. Interest shall be assessed at the rate provided for delinquent excise taxes under this chapter, retroactively to the date the credit was claimed, and shall accrue until the taxes against which the credit was claimed are repaid.

(4) The department shall use the information from the annual survey required under subsection (2) of this section to prepare summary descriptive statistics by category. No fewer than three taxpayers shall be included in any category. The department shall report these statistics to the legislature each year by September 1st.

(5) In conjunction with the reports due under RCW 82.32.545, by November 1, 2010, and November 1, 2023, the fiscal committees of the house of representatives and the senate, in consultation with the department, shall report

to the legislature on the effectiveness of the credit authorized in section 3 of this act in regard to keeping Washington competitive. The report shall measure the effect of the credit authorized in section 3 of this act on job retention, net jobs created for Washington residents, company growth, diversification of the state's economy, cluster dynamics, and other factors as the committees select. The reports shall include a discussion of principles to apply in evaluating whether the legislature should reenact the credit authorized in section 3 of this act.

(6) A person who is subject to the requirements in RCW 82.32.545 is not required to file a complete annual survey under this section if the person timely files the annual report required by RCW 82.32.545.

Sec. 5. RCW 82.04.250 and 2003 2nd sp.s. c 1 s 2 are each amended to read as follows:

(1) Upon every person (~~(except persons taxable under RCW 82.04.260 (5) or (13), 82.04.272, or subsection (2) of this section)~~) engaging within this state in the business of making sales at retail, except persons taxable as retailers under other provisions of this chapter, as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the business, multiplied by the rate of 0.471 percent.

(2) Upon every person engaging within this state in the business of making sales at retail that are exempt from the tax imposed under chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or 82.08.0263, ~~except persons taxable under RCW 82.04.260((13))~~ (11) or subsection (3) of this section, as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the business, multiplied by the rate of 0.484 percent.

(3) Upon every person engaging within this state in the business of making sales at retail that are exempt from the tax imposed under chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or 82.08.0263, that is classified by the federal aviation administration as a FAR part 145 certificated repair station with airframe and instrument ratings and limited ratings for nondestructive testing, radio, Class 3 Accessory, and specialized services, as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the business, multiplied by the rate of .2904 percent.

NEW SECTION. Sec. 6. A new section is added to chapter 82.32 RCW to read as follows:

(1) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources, the legislature needs information on how a tax incentive is used.

(2)(a) A person who reports taxes under RCW 82.04.250(3) shall file a complete annual survey with the department. The survey is due by March 31st following any year in which a person reports taxes under RCW 82.04.250(3). The department may extend the due date for timely filing of annual surveys under this section as provided in RCW 82.32.590. The survey shall include the amount of tax reduced under the preferential rate in RCW 82.04.250(3). The survey shall also include the following information for employment positions in Washington:

(i) The number of total employment positions;

(ii) Full-time, part-time, and temporary employment positions as a percent of total employment;

(iii) The number of employment positions according to the following wage bands: Less than thirty thousand dollars; thirty thousand dollars or greater, but less than sixty thousand dollars; and sixty thousand dollars or greater. A wage band containing fewer than three individuals may be combined with another wage band; and

(iv) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands.

(b) As part of the annual survey, the department may request additional information necessary to measure the results of, or determine eligibility for, the preferential tax rate in RCW 82.04.250(3).

(c) All information collected under this section, except the amount of the tax reduced under the preferential rate in RCW 82.04.250(3), is deemed taxpayer information under RCW 82.32.330. Information on the amount of tax reduced is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request, except as provided in (d) of this subsection. If the amount of the tax reduced as reported on the survey is different than the amount actually reduced based on the taxpayer's excise tax returns or otherwise allowed by the department, the amount actually reduced may be disclosed.

(d) Persons for whom the actual amount of the tax reduction is less than ten thousand dollars during the period covered by the survey may request the department to treat the amount of the tax reduction as confidential under RCW 82.32.330.

(3) If a person fails to submit a complete annual survey under subsection (2) of this section by the due date or any extension under RCW 82.32.590, the department shall declare the amount of taxes reduced under the preferential rate in RCW 82.04.250(3) for that year to be immediately due and payable. The department shall assess interest, but not penalties, on the taxes. Interest shall be assessed at the rate provided for delinquent excise taxes under this chapter, retroactively to the date the reduced taxes were due, and shall accrue until the amount of the reduced taxes is repaid.

(4) The department shall use the information from the annual survey required under subsection (2) of this section to prepare summary descriptive statistics by category. The department shall report these statistics to the legislature each year by September 1st.

(5) By November 1, 2010, the fiscal committees of the house of representatives and the senate, in consultation with the department, shall report to the legislature on the effectiveness of the preferential tax rate provided in RCW 82.04.250(3) in regard to keeping Washington competitive. The report shall measure the effect of the preferential tax rate provided in RCW 82.04.250(3) on job retention, net jobs created for Washington residents, company growth, diversification of the state's economy, cluster dynamics, and other factors as the committees select. The report shall include a discussion of principles to apply in evaluating whether the legislature should extend the preferential tax rate provided in RCW 82.04.250(3).

(6) This section expires December 31, 2012.

Sec. 7. RCW 82.32.330 and 2005 c 274 s 361 are each reenacted and amended to read as follows:

(1) For purposes of this section:

(a) "Disclose" means to make known to any person in any manner whatever a return or tax information;

(b) "Return" means a tax or information return or claim for refund required by, or provided for or permitted under, the laws of this state which is filed with the department of revenue by, on behalf of, or with respect to a person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists that are supplemental to, or part of, the return so filed;

(c) "Tax information" means (i) a taxpayer's identity, (ii) the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability deficiencies, overassessments, or tax payments, whether taken from the taxpayer's books and records or any other source, (iii) whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, (iv) a part of a written determination that is not designated as a precedent and disclosed pursuant to RCW 82.32.410, or a background file document relating to a written determination, and (v) other data received by, recorded by, prepared by, furnished to, or collected by the department of revenue with respect to the determination of the existence, or possible existence, of liability, or the amount thereof, of a person under the laws of this state for a tax, penalty, interest, fine, forfeiture, or other imposition, or offense: PROVIDED, That data, material, or documents that do not disclose information related to a specific or identifiable taxpayer do not constitute tax information under this section. Except as provided by RCW 82.32.410, nothing in this chapter shall require any person possessing data, material, or documents made confidential and privileged by this section to delete information from such data, material, or documents so as to permit its disclosure;

(d) "State agency" means every Washington state office, department, division, bureau, board, commission, or other state agency;

(e) "Taxpayer identity" means the taxpayer's name, address, telephone number, registration number, or any combination thereof, or any other information disclosing the identity of the taxpayer; and

(f) "Department" means the department of revenue or its officer, agent, employee, or representative.

(2) Returns and tax information shall be confidential and privileged, and except as authorized by this section, neither the department of revenue nor any other person may disclose any return or tax information.

(3) This section does not prohibit the department of revenue from:

(a) Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding:

(i) In respect of any tax imposed under the laws of this state if the taxpayer or its officer or other person liable under Title 82 RCW is a party in the proceeding; or

(ii) In which the taxpayer about whom such return or tax information is sought and another state agency are adverse parties in the proceeding;

(b) Disclosing, subject to such requirements and conditions as the director shall prescribe by rules adopted pursuant to chapter 34.05 RCW, such return or tax information regarding a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a request for, or consent to, such

disclosure, or to any other person, at the taxpayer's request, to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person: PROVIDED, That tax information not received from the taxpayer shall not be so disclosed if the director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the department that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court;

(c) Disclosing the name of a taxpayer with a deficiency greater than five thousand dollars and against whom a warrant under RCW 82.32.210 has been either issued or filed and remains outstanding for a period of at least ten working days. The department shall not be required to disclose any information under this subsection if a taxpayer: (i) Has been issued a tax assessment; (ii) has been issued a warrant that has not been filed; and (iii) has entered a deferred payment arrangement with the department of revenue and is making payments upon such deficiency that will fully satisfy the indebtedness within twelve months;

(d) Disclosing the name of a taxpayer with a deficiency greater than five thousand dollars and against whom a warrant under RCW 82.32.210 has been filed with a court of record and remains outstanding;

(e) Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;

(f) Disclosing such return or tax information, for official purposes only, to the governor or attorney general, or to any state agency, or to any committee or subcommittee of the legislature dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions;

(g) Permitting the department of revenue's records to be audited and examined by the proper state officer, his or her agents and employees;

(h) Disclosing any such return or tax information to a peace officer as defined in RCW 9A.04.110 or county prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax enforcement. A peace officer or county prosecuting attorney who receives the return or tax information may disclose that return or tax information only for use in the investigation and a related court proceeding, or in the court proceeding for which the return or tax information originally was sought;

(i) Disclosing any such return or tax information to the proper officer of the internal revenue service of the United States, the Canadian government or provincial governments of Canada, or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States, Canada or its provincial governments, or of such other state or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of this state;

(j) Disclosing any such return or tax information to the Department of Justice, including the Bureau of Alcohol, Tobacco ~~((and))~~, Firearms ~~((of the Department of the Treasury))~~ and Explosives within the Department of Justice,

the Department of Defense, the Immigration and Customs Enforcement and the Customs and Border Protection agencies of the United States (~~Customs Service~~) Department of Homeland Security, the Coast Guard of the United States, and the United States Department of Transportation, or any authorized representative thereof, for official purposes;

(k) Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent pursuant to RCW 82.32.410;

(l) Disclosing, in a manner that is not associated with other tax information, the taxpayer name, entity type, business address, mailing address, revenue tax registration numbers, North American industry classification system or standard industrial classification code of a taxpayer, and the dates of opening and closing of business. This subsection shall not be construed as giving authority to the department to give, sell, or provide access to any list of taxpayers for any commercial purpose;

(m) Disclosing such return or tax information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter 42.56 RCW or is a document maintained by a court of record not otherwise prohibited from disclosure;

(n) Disclosing such return or tax information to the United States department of agriculture for the limited purpose of investigating food stamp fraud by retailers;

(o) Disclosing to a financial institution, escrow company, or title company, in connection with specific real property that is the subject of a real estate transaction, current amounts due the department for a filed tax warrant, judgment, or lien against the real property;

(p) Disclosing to a person against whom the department has asserted liability as a successor under RCW 82.32.140 return or tax information pertaining to the specific business of the taxpayer to which the person has succeeded; (~~(or)~~)

(q) Disclosing such return or tax information in the possession of the department relating to the administration or enforcement of the real estate excise tax imposed under chapter 82.45 RCW, including information regarding transactions exempt or otherwise not subject to tax; or

(r) Disclosing the least amount of return or tax information necessary for the reports required in section 6 (4) and (5) of this act when the number of taxpayers included in the reports or any part of the reports cannot be classified to prevent the identification of taxpayers or particular returns, reports, tax information, or items in the possession of the department.

(4)(a) The department may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under investigation as provided in this subsection (4). The disclosure must be in connection with the department's official duties relating to an audit, collection activity, or a civil or criminal investigation. The disclosure may occur only when the person under investigation and the person in possession of data, materials, or documents are parties to the return or tax information to be disclosed. The department may disclose return or tax information such as invoices, contracts, bills, statements, resale or exemption certificates, or checks. However, the department may not disclose general

ledgers, sales or cash receipt journals, check registers, accounts receivable/payable ledgers, general journals, financial statements, expert's workpapers, income tax returns, state tax returns, tax return workpapers, or other similar data, materials, or documents.

(b) Before disclosure of any tax return or tax information under this subsection (4), the department shall, through written correspondence, inform the person in possession of the data, materials, or documents to be disclosed. The correspondence shall clearly identify the data, materials, or documents to be disclosed. The department may not disclose any tax return or tax information under this subsection (4) until the time period allowed in (c) of this subsection has expired or until the court has ruled on any challenge brought under (c) of this subsection.

(c) The person in possession of the data, materials, or documents to be disclosed by the department has twenty days from the receipt of the written request required under (b) of this subsection to petition the superior court of the county in which the petitioner resides for injunctive relief. The court shall limit or deny the request of the department if the court determines that:

(i) The data, materials, or documents sought for disclosure are cumulative or duplicative, or are obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) The production of the data, materials, or documents sought would be unduly burdensome or expensive, taking into account the needs of the department, the amount in controversy, limitations on the petitioner's resources, and the importance of the issues at stake; or

(iii) The data, materials, or documents sought for disclosure contain trade secret information that, if disclosed, could harm the petitioner.

(d) The department shall reimburse reasonable expenses for the production of data, materials, or documents incurred by the person in possession of the data, materials, or documents to be disclosed.

(e) Requesting information under (b) of this subsection that may indicate that a taxpayer is under investigation does not constitute a disclosure of tax return or tax information under this section.

(5) Any person acquiring knowledge of any return or tax information in the course of his or her employment with the department of revenue and any person acquiring knowledge of any return or tax information as provided under subsection (3)(f), (g), (h), (i), (j), or (n) of this section, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section, is guilty of a misdemeanor. If the person guilty of such violation is an officer or employee of the state, such person shall forfeit such office or employment and shall be incapable of holding any public office or employment in this state for a period of two years thereafter.

Sec. 8. RCW 82.32.590 and 2005 c 514 s 1001 are each amended to read as follows:

(1) If the department finds that the failure of a taxpayer to file an annual survey under RCW 82.04.4452, section 4 of this act, or section 6 of this act by the due date was the result of circumstances beyond the control of the taxpayer, the department shall extend the time for filing the survey. Such extension shall be for a period of thirty days from the date the department issues its written

notification to the taxpayer that it qualifies for an extension under this section. The department may grant additional extensions as it deems proper.

(2) In making a determination whether the failure of a taxpayer to file an annual survey by the due date was the result of circumstances beyond the control of the taxpayer, the department shall be guided by rules adopted by the department for the waiver or cancellation of penalties when the underpayment or untimely payment of any tax was due to circumstances beyond the control of the taxpayer.

Sec. 9. RCW 82.32.600 and 2005 c 514 s 1002 are each amended to read as follows:

(1) Persons required to file surveys under RCW 82.04.4452, section 4 of this act, or section 6 of this act must electronically file with the department all surveys, returns, and any other forms or information the department requires in an electronic format as provided or approved by the department (~~(, unless the department grants relief under subsection (2) of this section)~~). As used in this section, "returns" has the same meaning as "return" in RCW 82.32.050.

(2) (~~Upon request, the department may relieve a person of the obligations in subsection (1) of this section if the person's taxes have been reduced a cumulative total of less than one thousand dollars from all of the credits, exemptions, or preferential business and occupation tax rates, for which a person is required to file an annual survey under RCW 82.04.4452, 82.32.535, 82.32.545, 82.32.570, 82.32.560, 82.60.070, or 82.63.020.~~)

(3) ~~Persons who no longer qualify for relief under subsection (2) of this section will be notified in writing by the department and must comply with subsection (1) of this section by the date provided in the notice.~~

(4) Any survey, return, or any other form or information required to be filed in an electronic format under subsection (1) of this section is not filed until received by the department in an electronic format.

(3) The department may waive the electronic filing requirement in subsection (1) of this section for good cause shown.

Sec. 10. RCW 82.04.4463 and 2005 c 514 s 501 are each amended to read as follows:

(1) In computing the tax imposed under this chapter, a credit is allowed for property taxes and leasehold excise taxes paid during the calendar year.

(2) The credit is equal to:

(a)(i)(A) Property taxes paid on new buildings, and land upon which this property is located, built after December 1, 2003, and used exclusively in manufacturing commercial airplanes or components of such airplanes; and

(B) Leasehold excise taxes paid with respect to a building built after January 1, 2006, the land upon which the building is located, or both, if the building is used exclusively in manufacturing commercial airplanes or components of such airplanes; or

(ii) Property taxes attributable to an increase in assessed value due to the renovation or expansion, after December 1, 2003, of a building used exclusively in manufacturing commercial airplanes or components of such airplanes; and

(b) An amount equal to property taxes paid on machinery and equipment exempt under RCW 82.08.02565 or 82.12.02565 and acquired after December 1, 2003, multiplied by a fraction. The numerator of the fraction is the total taxable

amount subject to the tax imposed under RCW 82.04.260(~~((13))~~) (11) and the denominator of the fraction is the total taxable amount subject to the tax imposed under all manufacturing classifications in chapter 82.04 RCW, required to be reported on the person's returns for the calendar year before the calendar year in which the credit under this section is earned. No credit is available under this subsection (2)(b) if either the numerator or the denominator of the fraction is zero. If the fraction is greater than or equal to nine-tenths, then the fraction is rounded to one. For purposes of this subsection, "returns" means the combined excise tax returns for the calendar year.

(3) For the purposes of this section, "commercial passenger airplane" and "component" have the meanings given in RCW 82.32.550.

(4) A person taking the credit under this section is subject to all the requirements of chapter 82.32 RCW. In addition, the person must report as required under RCW 82.32.545. A credit earned during one calendar year may be carried over to be credited against taxes incurred in a subsequent calendar year, but may not be carried over a second year. No refunds may be granted for credits under this section.

(5) In addition to all other requirements under this title, a person taking the credit under this section must report as required under RCW 82.32.545.

(6) This section expires July 1, 2024.

NEW SECTION. Sec. 11. Section 10 of this act applies with respect to leasehold excise taxes paid on or after January 1, 2007.

NEW SECTION. Sec. 12. Sections 1 through 9 of this act take effect July 1, 2006.

NEW SECTION. Sec. 13. Sections 10 and 11 of this act take effect January 1, 2007.

NEW SECTION. Sec. 14. Section 5 of this act expires July 1, 2011.

Passed by the House March 7, 2006.

Passed by the Senate March 6, 2006.

Approved by the Governor March 23, 2006.

Filed in Office of Secretary of State March 23, 2006.

CHAPTER 178

[Substitute House Bill 2640]

TAX INCENTIVES—BIOTECHNOLOGY PRODUCTS

AN ACT Relating to biotechnology product and medical device manufacturing tax incentives; amending RCW 82.32.600; adding a new section to chapter 82.32 RCW; adding a new chapter to Title 82 RCW; providing an effective date; and providing an expiration date.

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

NEW SECTION. Sec. 1. The legislature finds that the state's economy is increasingly dependent on the expansion of knowledge-based sectors, including the life sciences. The legislature also finds that commercial enterprises in the life sciences create high-wage, high-skilled jobs that are part of the state's effort to encourage economic diversification and stability. However, the legislature also finds that commercial life sciences businesses, particularly in biotechnology product and medical device manufacturing, incur significant costs associated

with capital infrastructure and job training often years before a product is licensed for marketing or a facility is licensed for manufacturing by governmental agencies in the United States and abroad. The legislature also finds that current state tax policy discourages the growth of these companies in two ways: (1) Washington state's higher rate of taxation compared with other states and nations encourages the export of intellectual property and commercial operations out of Washington; and (2) taxing these businesses before facilities, or products produced therein, are licensed for marketing by regulatory agencies.

The legislature further finds that targeted tax incentives may encourage the formation, expansion, and retention of commercial operations within the life sciences sector. The legislature also finds that tax incentives should be subject to the same rigorous requirements for efficiency and accountability as are other expenditure programs, and that tax incentives should therefore be focused to provide the greatest possible return on the state's investment.

For these reasons, the legislature hereby establishes a tax deferral program for commercial manufacturing facilities in this sector. The legislature declares that these limited programs serve the vital public purposes of inciting expenditures in commercial life science operations and the development of employment opportunities in this state. The legislature further declares its intent to create a contract within the meaning of Article I, section 23 of the state Constitution as to those businesses that make capital investments in consideration of the tax deferral program established in this chapter.

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

(1) "Applicant" means a person applying for a tax deferral under this chapter.

(2) "Biotechnology" means a technology based on the science of biology, microbiology, molecular biology, cellular biology, biochemistry, or biophysics, or any combination of these, and includes, but is not limited to, recombinant DNA techniques, genetics and genetic engineering, cell fusion techniques, and new bioprocesses, using living organisms, or parts of organisms.

(3) "Biotechnology product" means any virus, therapeutic serum, antibody, protein, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or analogous product produced through the application of biotechnology that is used in the prevention, treatment, or cure of diseases or injuries to humans.

(4) "Department" means the department of revenue.

(5)(a) "Eligible investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project.

(b) The lessor or owner of a qualified building is not eligible for a deferral unless:

(i) The underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person; or

(ii)(A) The lessor by written contract agrees to pass the economic benefit of the deferral to the lessee;

(B) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual survey required under section 8 of this act; and

(C) The economic benefit of the deferral passed to the lessee is no less than the amount of tax deferred by the lessor and is evidenced by written documentation of any type of payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee.

(6)(a) "Initiation of construction" means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for:

(i) Construction of the qualified building, if the underlying ownership of the building vests exclusively with the person receiving the economic benefit of the deferral;

(ii) Construction of the qualified building, if the economic benefits of the deferral are passed to a lessee as provided in subsection (5)(b)(ii)(A) of this section; or

(iii) Tenant improvements for a qualified building, if the economic benefits of the deferral are passed to a lessee as provided in subsection (5)(b)(ii)(A) of this section.

(b) "Initiation of construction" does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated before the issuance of a building permit for the construction of the foundation of the building.

(c) If the investment project is a phased project, "initiation of construction" shall apply separately to each phase.

(7) "Manufacturing" has the meaning provided in RCW 82.04.120.

(8) "Medical device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, that is designed or developed and:

(a) Recognized in the national formulary, or the United States pharmacopeia, or any supplement to them;

(b) Intended for use in the diagnosis of disease, or in the cure, mitigation, treatment, or prevention of disease or other conditions in human beings or other animals; or

(c) Intended to affect the structure or any function of the body of man or other animals, and which does not achieve any of its primary intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

(9) "Person" has the meaning provided in RCW 82.04.030.

(10) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity used for biotechnology product manufacturing or medical device manufacturing activities, including plant offices, commercial laboratories for process development, quality assurance and quality control, and warehouses or other facilities for the storage of raw material or finished goods if the facilities are an essential or an integral part of a factory, plant, or laboratory used for biotechnology product manufacturing or medical device manufacturing. If a building is used partly for biotechnology product manufacturing or medical device manufacturing and partly for other purposes, the applicable tax deferral shall be determined by apportionment of the costs of construction under rules adopted by the department.

(11) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a biotechnology product manufacturing or medical device manufacturing operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; operating structures; and all equipment used to control or operate the machinery.

(12) "Recipient" means a person receiving a tax deferral under this chapter.

NEW SECTION. Sec. 3. Application for deferral of taxes under this chapter must be made and approved before initiation of the construction of the investment project or acquisition of equipment or machinery. The application shall be made to the department in a form and manner prescribed by the department. The application shall contain information regarding the location of the investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department shall rule on the application within sixty days.

NEW SECTION. Sec. 4. (1) The department shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW for each eligible investment project.

(2) No certificate may be issued for an investment project that has already received a deferral under chapter 82.60 or 82.63 RCW or this chapter.

(3) The department shall keep a running total of all deferrals granted under this chapter during each fiscal biennium.

(4) This section expires January 1, 2017.

NEW SECTION. Sec. 5. (1) Except as provided in subsection (2) of this section and section 8 of this act, taxes deferred under this chapter need not be repaid.

(2)(a) If, on the basis of the survey under section 8 of this act or other information, the department finds that an investment project is used for purposes other than qualified biotechnology product manufacturing or medical device manufacturing activities at any time during the calendar year in which the eligible investment project is certified by the department as having been operationally completed, or at any time during any of the seven succeeding calendar years, a portion of deferred taxes shall be immediately due and payable according to the following schedule:

Year in which use occurs	% of deferred taxes due
1	100%
2	87.5%
3	75%
4	62.5%
5	50%
6	37.5%

7	25%
8	12.5%

(b) If a recipient of the deferral fails to complete the annual survey required under section 8 of this act by the date due, the amount of deferred tax specified in section 8(6) of this act shall be immediately due and payable. If the economic benefits of the deferral are passed to a lessee as provided in section 2 of this act, the lessee is responsible for payment to the extent the lessee has received the economic benefit.

(3) For a violation of subsection (2)(a) of this section, the department shall assess interest at the rate provided for delinquent taxes, but not penalties, retroactively to the date of deferral. The debt for deferred taxes shall not be extinguished by insolvency or other failure of the recipient. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral.

(4) Notwithstanding subsection (2) of this section, deferred taxes on the following need not be repaid:

(a) Machinery and equipment, and sales of or charges made for labor and services, which at the time of purchase would have qualified for exemption under RCW 82.08.02565; and

(b) Machinery and equipment which at the time of first use would have qualified for exemption under RCW 82.12.02565.

NEW SECTION. Sec. 6. Chapter 82.32 RCW applies to the administration of this chapter.

NEW SECTION. Sec. 7. Applications received by the department under this chapter are not confidential and are subject to disclosure.

NEW SECTION. Sec. 8. A new section is added to chapter 82.32 RCW to read as follows:

(1) For the purposes of this section, "biotechnology product and medical device business tax incentive" or "tax incentive" means the sales and use tax deferrals under chapter 82.— RCW (sections 1 through 7 of this act).

(2) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources, the legislature needs information to evaluate whether the stated goals of legislation were achieved.

(3) The goals of the biotechnology product and medical device business tax incentives are to:

(a) Encourage the creation, expansion, and retention of commercial biotechnology product and medical device manufacturing operations and related job opportunities; and

(b) Fully mature the life sciences industry by creating a sustainable commercial sector.

(4)(a) A person who receives the benefit of a biotechnology product and medical device business tax incentive shall provide an annual survey to the department. The survey is due by March 31st following any year in which a tax incentive is claimed or used. The survey shall not include names of employees. The survey shall include the amount of the tax incentives claimed or used for the

reporting year. The survey shall also include the following information for employment positions in Washington:

- (i) The number of total employment positions;
 - (ii) Full-time, part-time, and temporary employment positions as a percent of total employment;
 - (iii) The number of employment positions according to the following wage bands: Less than thirty thousand dollars; thirty thousand dollars or greater, but less than sixty thousand dollars; and sixty thousand dollars or greater. A wage band containing fewer than three individuals may be combined with another wage band; and
 - (iv) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands.
- (b) The department may request additional information necessary to measure the results of the tax incentive, to be submitted at the same time as the survey.

(c) All information collected under this subsection, except the amount of the tax incentive claimed or used, is deemed taxpayer information under RCW 82.32.330 and is not disclosable. Information on the amount of tax incentive claimed or used is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(5) The department shall use the information from this section to prepare summary descriptive statistics by category. No fewer than three taxpayers shall be included in any category. The department shall report these statistics to the legislature each year by September 1st.

(6) If a person fails to submit an annual survey under subsection (4)(a) of this section by the due date of the survey, the department shall declare 12.5 percent of the deferred tax from the date of deferral to be immediately due and payable. Excise taxes payable under this subsection are subject to interest but not penalties, as provided under this chapter. This information is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(7) The department shall use the information to study the tax incentive specified in subsection (1) of this section. The department shall report to the legislature by December 1, 2009, and December 1, 2015. The reports shall measure the number of new biotechnology product and medical device manufacturing facilities established in Washington, the amount of investment in biotechnology product and medical device manufacturing facilities, the number of facilities and investment by firms that utilized the biotechnology product and medical device business tax incentive, the number of biotechnology product and medical device manufacturing jobs in these facilities, the wages and benefits paid for biotechnology product and medical device manufacturing jobs, and the wages and benefits of biotechnology product and medical device manufacturing jobs compared to wages and benefits of other manufacturing jobs and jobs in other economic sectors.

Sec. 9. RCW 82.32.600 and 2005 c 514 s 1002 are each amended to read as follows:

(1) Persons required to file surveys under RCW 82.04.4452 must electronically file with the department all surveys, returns, and any other forms or information the department requires in an electronic format as provided or

approved by the department, unless the department grants relief under subsection (2) of this section. As used in this section, "returns" has the same meaning as "return" in RCW 82.32.050.

(2) Upon request, the department may relieve a person of the obligations in subsection (1) of this section if the person's taxes have been reduced a cumulative total of less than one thousand dollars from all of the credits, exemptions, or preferential business and occupation tax rates, for which a person is required to file an annual survey under RCW 82.04.4452, 82.32.535, 82.32.545, 82.32.570, 82.32.560, 82.60.070, ~~(($\text{\textcircled{R}}$)) 82.63.020, or section 8 of this act.~~

(3) Persons who no longer qualify for relief under subsection (2) of this section will be notified in writing by the department and must comply with subsection (1) of this section by the date provided in the notice.

(4) Any survey, return, or any other form or information required to be filed in an electronic format under subsection (1) of this section is not filed until received by the department in an electronic format.

NEW SECTION. Sec. 10. This act takes effect July 1, 2006.

NEW SECTION. Sec. 11. Sections 1 through 7 of this act constitute a new chapter in Title 82 RCW.

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

Passed by the House February 10, 2006.

Passed by the Senate March 8, 2006.

Approved by the Governor March 23, 2006.

Filed in Office of Secretary of State March 23, 2006.

CHAPTER 179

[Substitute House Bill 3113]

HIGHER EDUCATION FUNDING—SNOHOMISH, ISLAND, SKAGIT COUNTIES

AN ACT Relating to expanding access to higher education in north Snohomish, Island, and Skagit counties using the university center model; creating new sections; and providing an effective date.

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

NEW SECTION. Sec. 1. (1) RCW 28B.50.901 assigns responsibility for the north Snohomish, Island, and Skagit counties higher education consortium to Everett Community College. Everett Community College submitted a report titled "Higher Education Opportunity in the NSIS Region" on December 1, 2005, to the appropriate committees of the legislature. The legislature accepts this report as representative of the needs for higher education in the North Snohomish, Island, and Skagit counties (NSIS) region. It is the intent of the legislature to support enrollment growth in the NSIS county regions of the state as represented in the report.

(2) The legislature finds that recent research by the state board for community and technical colleges indicates that the immediate needs of at least five hundred students are not being met in the NSIS region at the upper-division level.

(3) The legislature further finds that long-term unmet need in the Snohomish, Island, and Skagit county region is projected to reach four thousand one hundred forty-one upper-division full-time equivalents by the year 2025.

(4) Therefore, the legislature intends to provide funding for a minimum of two hundred fifty full-time equivalents at the upper-division and graduate levels for the fiscal year ending June 30, 2007. This funding shall be used to meet the higher education needs of the NSIS region.

(5) This funding shall be provided to support at least two hundred fifty full-time equivalents at the upper-division and graduate levels including but not limited to the following fields of study: Engineering, technology, nursing and health professions, environmental sciences, education, interdisciplinary studies, and other areas of study based on student and employer demand. These fields of study shall be offered using the university center model, centered on a community college campus with a single point of accountability, and hosted by the community colleges in Snohomish and Skagit counties. Enrollment in these fields shall begin no later than the fall term of 2006.

(6) Everett Community College, with the assistance of Edmonds Community College, Skagit Valley College, and the universities participating in offering the enrollment subject to this section shall submit a report to the appropriate committees of the legislature by July 1, 2007. The report shall describe the number of enrollments and degrees produced as a result of the funding provided in this act, as well as the effect of those enrollments and degrees on local communities.

NEW SECTION. Sec. 2. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2006, in the omnibus appropriations act, this act is null and void.

NEW SECTION. Sec. 3. Section 1 of this act takes effect July 1, 2006.

Passed by the House February 9, 2006.

Passed by the Senate March 3, 2006.

Approved by the Governor March 23, 2006.

Filed in Office of Secretary of State March 23, 2006.

CHAPTER 180

[Substitute House Bill 2817]

HIGHER EDUCATION—STATE PRIORITY

AN ACT Relating to establishing a state priority and state objectives for access, enrollment, delivery, and degree achievements in the fields of engineering, technology, biotechnology, science, computer science, and mathematics in higher education; and adding new sections to chapter 28B.10 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 28B.10 RCW to read as follows:

(1) The legislature recognizes the vital importance to the state's economic prosperity and the economic benefit of placing a priority on enrolling and conferring degrees upon students in the fields of engineering, technology, biotechnology, science, computer science, and mathematics.

(2) The legislature has significant concerns that other countries are outpacing the United States in graduating qualified engineers, and that major corporations within Washington state are searching out-of-state and even outside the United States to find the qualified and trained employees they need.

(3) Data compiled by the technology alliance shows that Washington state ranks thirty-fourth among the fifty states in the percentage of residents who have earned a science or engineering degree, per capita.

(4) Data collected by the office of financial management indicates that between the academic years of 1993-94 and 2003-04 at public four-year institutions of higher education in Washington state:

(a) There was a twelve percent decline in the number of full-time equivalents enrolled in the fields of engineering and related technologies; and

(b) There was nearly a nine percent decline in the number of bachelor's degrees conferred in the fields of engineering and related technologies.

(5) Data collected by the office of financial management also shows that for the 2003-04 academic year, only four percent of all full-time equivalents were enrolled in engineering and related technologies and just two percent of all full-time equivalents were enrolled in computer science studies at public four-year institutions of higher education in the state.

(6) Therefore, it is the intent of the legislature to promote increased access, delivery models, enrollment slots, and degree opportunities in the fields of engineering, technology, biotechnology, sciences, computer sciences, and mathematics. It is recognized that these areas of study and training are integrally linked to ensuring that Washington state's economy can compete nationally and globally in the twenty-first century marketplace. It is also recognized that community colleges play a unique role in supporting degree attainment in the fields of science, technology, engineering, and mathematics through the development of transferable curricula and the maintenance of viable articulation agreements with both public and private universities.

NEW SECTION. Sec. 2. A new section is added to chapter 28B.10 RCW to read as follows:

(1) A state priority is established for institutions of higher education, including community colleges, to encourage growing numbers of enrollments and degrees in the fields of engineering, technology, biotechnology, sciences, computer sciences, and mathematics.

(2) In meeting this state priority, the legislature understands and recognizes that the demands of the economic marketplace and the desires of students are not always on parallel tracks. Therefore, institutions of higher education shall determine local student demand for programs in the fields of engineering, technology, biotechnology, sciences, computer sciences, and mathematics and submit findings and proposed alternatives to meet demand to the higher education coordinating board and the legislature by November 1, 2008.

(3) While it is understood that these areas of emphasis should not be the sole focus of institutions of higher education. It is the intent of the legislature that steady progress in these areas occur. The higher education coordinating board shall track and report progress in the fields of engineering, technology, biotechnology, sciences, computer sciences, and mathematics including, but not limited to, the following information:

(a) The number of students enrolled in these fields on a biennial basis;

(b) The number of associate, bachelor's, and master's degrees conferred in these fields on a biennial basis;

(c) The amount of expenditures in enrollment and degree programs in these fields; and

(d) The number and type of public-private partnerships established relating to these fields among institutions of higher education, including community colleges, and leading corporations in Washington state.

(4) Institutions of higher education, including community colleges, shall be provided discretion and flexibility in achieving the objectives under this section. Examples of the types of institutional programs that may help achieve these objectives include, but are not limited to, establishment of institutes of technology, new polytechnic-based institutions, new divisions of existing institutions, and a flexible array of delivery models, including face-to-face learning, interactive courses, internet-based offerings, and instruction on main campuses, branch campuses, and other educational centers.

(5) The legislature recognizes the global needs of the economic marketplace for technologically prepared graduates, and the relationship between technology industries and higher education. Institutions of higher education, including community colleges, are strongly urged to consider science, engineering, and technology program growth in areas of the state that exhibit a high concentration of aerospace, biotechnology, and technology industrial presence. Expanded science and technology programs can gain from the proximity of experienced and knowledgeable industry leaders, while industry can benefit from access to new sources of highly trained and educated graduates.

Passed by the House March 4, 2006.

Passed by the Senate March 3, 2006.

Approved by the Governor March 23, 2006.

Filed in Office of Secretary of State March 23, 2006.

CHAPTER 181

[Engrossed Second Substitute House Bill 2673]

LOCAL INFRASTRUCTURE FINANCING TOOL PROGRAM

AN ACT Relating to creating the local infrastructure financing tool demonstration program; adding a new section to chapter 82.14 RCW; adding a new chapter to Title 39 RCW; creating new sections; providing an effective date; and providing an expiration date.

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

PART I INTENT AND DEFINITIONS

NEW SECTION. Sec. 101. INTENT. The legislature recognizes that the state as a whole benefits from investment in public infrastructure because it promotes community and economic development. Public investment stimulates business activity and helps create jobs; stimulates the redevelopment of brownfields and blighted areas in the inner city; lowers the cost of housing; and promotes efficient land use. The legislature finds that these activities generate revenue for the state and that it is in the public interest to invest in these projects through a credit against the state sales and use tax and an allocation of property

tax revenue to those sponsoring local governments that can demonstrate the expected returns to the state.

NEW SECTION. Sec. 102. DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Annual state contribution limit" means five million dollars statewide per fiscal year.

(2) "Assessed value" means the valuation of taxable real property as placed on the last completed assessment roll.

(3) "Base year" means the first calendar year following the creation of a revenue development area. For a local government that meets the requirements of section 202(2) of this act, "base year" is the calendar year after it amends its ordinance as provided in section 202(2) of this act.

(4) "Board" means the community economic revitalization board under chapter 43.160 RCW.

(5) "Demonstration project" means one of the following projects:

- (a) Bellingham waterfront redevelopment project;
- (b) Spokane river district project at Liberty Lake; and
- (c) Vancouver riverwest project.

(6) "Department" means the department of revenue.

(7) "Fiscal year" means the twelve-month period beginning July 1st and ending the following June 30th.

(8) "Local excise taxes" means local revenues derived from the imposition of sales and use taxes authorized in RCW 82.14.030 at the tax rate that was in effect at the time the revenue development area was created, except that if a local government reduces the rate of such tax after the revenue development area was created, "local excise taxes" means the local revenues derived from the imposition of the sales and use taxes authorized in RCW 82.14.030 at the lower tax rate.

(9) "Local excise tax allocation revenue" means the amount of local excise taxes received by the local government during the measurement year from taxable activity within the revenue development area over and above the amount of local excise taxes received by the local government during the base year from taxable activity within the revenue development area, except that:

(a) If a sponsoring local government creates a revenue development area and reasonably determines that no activity subject to tax under chapters 82.08 and 82.12 RCW occurred in the twelve months immediately preceding the creation of the revenue development area within the boundaries of the area that became the revenue development area, "local excise tax allocation revenue" means the entire amount of local excise taxes received by the sponsoring local government during a calendar year period beginning with the calendar year immediately following the creation of the revenue development area and continuing with each measurement year thereafter; and

(b) For revenue development areas created in calendar year 2006 that do not meet the requirements in (a) of this subsection and if legislation is enacted in this state by July 1, 2006, that adopts the sourcing provisions of the streamlined sales and use tax agreement, "local excise tax allocation revenue" means the amount of local excise taxes received by the sponsoring local government during the measurement year from taxable activity within the revenue development area over and above an amount of local excise taxes received by the sponsoring local

government during the 2007 base year adjusted by the department for any estimated impacts from retail sales and use tax sourcing changes effective July 1, 2007. The amount of base year adjustment determined by the department is final.

(10) "Local government" means any city, town, county, port district, and any federally recognized Indian tribe.

(11) "Local infrastructure financing" means the use of revenues received from local excise tax allocation revenues, local property tax allocation revenues, dedicated revenues from local public sources, and revenues received from the local option sales and use tax authorized in section 401 of this act to pay the principal and interest on bonds authorized under section 501 of this act.

(12) "Local property tax allocation revenue" means those tax revenues derived from the receipt of regular property taxes levied on the property tax allocation revenue value and used for local infrastructure financing.

(13) "Revenues from local public sources" means federal and private monetary contributions, amounts of local excise tax allocation revenues, and amounts of local property tax allocation revenues dedicated by participating taxing districts and participating local governments for local infrastructure financing.

(14) "Low-income housing" means residential housing for low-income persons or families who lack the means which is necessary to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings, without overcrowding. For the purposes of this subsection, "low income" means income that does not exceed eighty percent of the median family income for the standard metropolitan statistical area in which the revenue development area is located.

(15) "Measurement year" means a calendar year, beginning with the calendar year following the base year and each calendar year thereafter, that is used annually to measure state and local excise tax allocation revenues.

(16) "Ordinance" means any appropriate method of taking legislative action by a local government.

(17) "Participating local government" means a local government having a revenue development area within its geographic boundaries that has entered into a written agreement with a sponsoring local government as provided in section 206 of this act to allow the use of all or some of its local excise tax allocation revenues or other revenues from local public sources dedicated for local infrastructure financing.

(18) "Participating taxing district" means a local government having a revenue development area within its geographic boundaries that has entered into a written agreement with a sponsoring local government as provided in section 206 of this act to allow the use of some or all of its local property tax allocation revenues or other revenues from local public sources dedicated for local infrastructure financing.

(19)(a) "Property tax allocation revenue value" means seventy-five percent of any increase in the assessed value of real property in a revenue development area resulting from the placement of new construction, improvements, or both to property on the assessment rolls after the revenue development area is created, where the new construction or improvements occur entirely after the revenue development area is created.

(b) If any new construction added to the assessment rolls consists of entire buildings, "property tax allocation revenue value" includes seventy-five percent of any increase in the assessed value of the buildings in the years following their initial placement on the assessment rolls.

(c) "Property tax allocation revenue value" does not include any increase in the assessed value of improvements to property or new construction that do not consist of an entire building, occurring after their initial placement on the assessment rolls.

(d) There is no property tax allocation revenue value if the assessed value of real property in a revenue development area has not increased due to new construction or improvements to property occurring after the revenue development area is created.

(20) "Taxing district" means a government entity that levies or has levied for it regular property taxes upon real property located within a proposed or approved revenue development area.

(21) "Public improvements" means:

(a) Infrastructure improvements within the revenue development area that include:

(i) Street, bridge, and road construction and maintenance, including highway interchange construction;

(ii) Water and sewer system construction and improvements, including wastewater reuse facilities;

(iii) Sidewalks, traffic controls, and streetlights;

(iv) Parking, terminal, and dock facilities;

(v) Park and ride facilities of a transit authority;

(vi) Park facilities and recreational areas, including trails; and

(vii) Storm water and drainage management systems;

(b) Expenditures for facilities and improvements that support affordable housing as defined in RCW 43.63A.510.

(22) "Public improvement costs" means the cost of: (a) Design, planning, acquisition including land acquisition, site preparation including land clearing, construction, reconstruction, rehabilitation, improvement, and installation of public improvements; (b) demolishing, relocating, maintaining, and operating property pending construction of public improvements; (c) the local government's portion of relocating utilities as a result of public improvements; (d) financing public improvements, including interest during construction, legal and other professional services, taxes, insurance, principal and interest costs on general indebtedness issued to finance public improvements, and any necessary reserves for general indebtedness; (e) assessments incurred in revaluing real property for the purpose of determining the property tax allocation revenue base value that are in excess of costs incurred by the assessor in accordance with the revaluation plan under chapter 84.41 RCW, and the costs of apportioning the taxes and complying with this chapter and other applicable law; and (f) administrative expenses and feasibility studies reasonably necessary and related to these costs, including related costs that may have been incurred before adoption of the ordinance authorizing the public improvements and the use of local infrastructure financing to fund the costs of the public improvements.

(23) "Regular property taxes" means regular property taxes as defined in RCW 84.04.140, except: (a) Regular property taxes levied by public utility

districts specifically for the purpose of making required payments of principal and interest on general indebtedness; (b) regular property taxes levied by the state for the support of the common schools under RCW 84.52.065; and (c) regular property taxes authorized by RCW 84.55.050 that are limited to a specific purpose. "Regular property taxes" do not include excess property tax levies that are exempt from the aggregate limits for junior and senior taxing districts as provided in RCW 84.52.043.

(24) "Property tax allocation revenue base value" means the assessed value of real property located within a revenue development area for taxes levied in the year in which the revenue development area is created for collection in the following year, plus one hundred percent of any increase in the assessed value of real property located within a revenue development area that is placed on the assessment rolls after the revenue development area is created, less the property tax allocation revenue value.

(25) "Relocating a business" means the closing of a business and the reopening of that business, or the opening of a new business that engages in the same activities as the previous business, in a different location within a one-year period, when an individual or entity has an ownership interest in the business at the time of closure and at the time of opening or reopening. "Relocating a business" does not include the closing and reopening of a business in a new location where the business has been acquired and is under entirely new ownership at the new location, or the closing and reopening of a business in a new location as a result of the exercise of the power of eminent domain.

(26) "Revenue development area" means the geographic area created by a sponsoring local government from which local excise and property tax allocation revenues are derived for local infrastructure financing.

(27) "Small business" has the same meaning as provided in RCW 19.85.020.

(28) "Sponsoring local government" means a city, town, or county, and for the purpose of this chapter a federally recognized Indian tribe or any combination thereof, that creates a revenue development area and applies to the board to use local infrastructure financing.

(29) "State contribution" means the lesser of:

(a) One million dollars;

(b) The state excise tax allocation revenue and state property tax allocation revenue received by the state during the preceding calendar year;

(c) The amount of local excise tax allocation revenues, local property tax allocation revenues, and revenues from local public sources, that are dedicated by a sponsoring local government in the preceding calendar year to the payment of principal and interest on bonds issued under section 501 of this act; or

(d) The amount of project award granted by the board in the notice of approval to use local infrastructure financing under section 202 of this act.

(30) "State excise taxes" means revenues derived from state retail sales and use taxes under chapters 82.08 and 82.12 RCW, less the amount of tax distributions from all local retail sales and use taxes imposed on the same taxable events that are credited against the state retail sales and use taxes under chapters 82.08 and 82.12 RCW.

(31) "State excise tax allocation revenue" means the amount of state excise taxes received by the state during the measurement year from taxable activity

within the revenue development area over and above the amount of state excise taxes received by the state during the base year from taxable activity within the revenue development area, except that:

(a) If a sponsoring local government creates a revenue development area and reasonably determines that no activity subject to tax under chapters 82.08 and 82.12 RCW occurred in the twelve months immediately preceding the creation of the revenue development area within the boundaries of the area that became the revenue development area, "state excise tax allocation revenue" means the entire amount of state excise taxes received by the state during a calendar year period beginning with the calendar year immediately following the creation of the revenue development area and continuing with each measurement year thereafter; and

(b) For revenue development areas created in calendar year 2006 that do not meet the requirements in (a) of this subsection and if legislation is enacted in this state by July 1, 2006, that adopts the sourcing provisions of the streamlined sales and use tax agreement, "state excise tax allocation revenue" means the amount of state excise taxes received by the state during the measurement year from taxable activity within the revenue development area over and above an amount of state excise taxes received by the state during the 2007 base year adjusted by the department for any estimated impacts from retail sales and use tax sourcing changes effective July 1, 2007. The amount of base year adjustment determined by the department is final.

(32) "State property tax allocation revenue" means those tax revenues derived from the imposition of property taxes levied by the state for the support of common schools under RCW 84.52.065 on the property tax allocation revenue value.

PART II

LOCAL INFRASTRUCTURE FINANCING TOOL

NEW SECTION. Sec. 201. CREATION OF THE LOCAL INFRASTRUCTURE FINANCING TOOL PROGRAM. The local infrastructure financing tool program is created to assist local governments in financing authorized public infrastructure projects designed to promote economic development in the jurisdiction. The local infrastructure financing tool program is not created to enable existing Washington-based businesses from outside a revenue development area to relocate into a revenue development area.

NEW SECTION. Sec. 202. LOCAL INFRASTRUCTURE FINANCING TOOL PROGRAM APPLICATION. (1) Prior to applying to the board to use local infrastructure financing, a sponsoring local government shall:

(a) Designate a revenue development area within the limitations in section 204 of this act;

(b) Certify that the conditions in section 205 of this act are met;

(c) Complete the process in section 206 of this act;

(d) Provide public notice as required in section 208 of this act; and

(e) Pass an ordinance adopting the revenue development area as required in section 207 of this act.

(2) Any local government that has created an increment area under chapter 39.89 RCW that has not issued bonds to finance any public improvement shall

be considered a revenue development area under this chapter without creating a new increment area under sections 207 and 208 of this act if it amends its ordinance to comply with section 207(1) of this act and otherwise meets the conditions and limitations under this chapter.

(3) As a condition to imposing a sales and use tax under section 401 of this act, a sponsoring local government, including any cosponsoring local government seeking authority to impose a sales and use tax under section 401 of this act, must apply to the board and be approved for a project award amount. The application shall be in a form and manner prescribed by the board and include but not be limited to information establishing that the applicant is an eligible candidate to impose the local sales and use tax under section 401 of this act, the anticipated effective date for imposing the tax, the estimated number of years that the tax will be imposed, and the estimated amount of tax revenue to be received in each fiscal year that the tax will be imposed. The board shall make available forms to be used for this purpose. As part of the application, each applicant must provide to the board a copy of the ordinance or ordinances creating the revenue development area as required in section 207 of this act. A notice of approval to use local infrastructure financing shall contain a project award that represents the maximum amount of state contribution that the applicant, including any cosponsoring local governments, can earn each year that local infrastructure financing is used. The total of all project awards shall not exceed the annual state contribution limit. The determination of a project award shall be made based on information contained in the application and the remaining amount of annual state contribution limit to be awarded. Determination of a project award by the board is final.

(4) Sponsoring local governments, and any cosponsoring local governments, must submit completed applications to the board no later than July 1, 2007. By September 15, 2007, in consultation with the department of revenue and the department of community, trade, and economic development, the board shall approve qualified projects, up to the annual state contribution limit. Except as provided in section 203 of this act, approvals shall be based on the following criteria:

(a) The project potential to enhance the sponsoring local government's regional and/or international competitiveness;

(b) The project's ability to encourage mixed use development and the redevelopment of a geographic area;

(c) Achieving an overall distribution of projects statewide that reflect geographic diversity;

(d) The estimated wages and benefits for the project is greater than the average labor market area;

(e) The estimated state and local net employment change over the life of the project;

(f) The estimated state and local net property tax change over the life of the project; and

(g) The estimated state and local sales and use tax increase over the life of the project.

(5) A revenue development area is considered created when the sponsoring local government, including any cosponsoring local government, has adopted an ordinance creating the revenue development area and the board has approved the

sponsoring local government to use local infrastructure financing. If a sponsoring local government receives approval from the board after the fifteenth day of October to use local infrastructure financing, the revenue development area is considered created in the calendar year following the approval. Once the board has approved the sponsoring local government, and any cosponsoring local governments, to use local infrastructure financing, notification shall be sent to the sponsoring local government, and any cosponsoring local governments, authorizing the sponsoring local government, and any cosponsoring local governments, to impose the local sales and use tax authorized under section 401 of this act, subject to the conditions in section 401 of this act.

NEW SECTION. Sec. 203. In addition to a competitive process, demonstration projects are provided to determine the feasibility of the local infrastructure financing tool. Notwithstanding section 202 of this act, the board shall approve each demonstration project before approving any other application. The Bellingham waterfront redevelopment project award shall not exceed one million dollars per year, the Spokane river district project award shall not exceed one million dollars per year, and the Vancouver riverwest project award shall not exceed five hundred thousand dollars per year.

NEW SECTION. Sec. 204. LIMITATIONS ON REVENUE DEVELOPMENT AREAS. The designation of a revenue development area is subject to the following limitations:

(1) The taxable real property within the revenue development area boundaries may not exceed one billion dollars in assessed value at the time the revenue development area is designated;

(2) The average assessed value per square foot of taxable land within the revenue development area boundaries may not exceed seventy dollars at the time the revenue development area is designated;

(3) No more than one revenue development area may be created in a county;

(4) A revenue development area is limited to contiguous tracts, lots, pieces, or parcels of land without the creation of islands of property not included in the revenue development area;

(5) The boundaries may not be drawn to purposely exclude parcels where economic growth is unlikely to occur;

(6) The public improvements financed through local infrastructure financing must be located in the revenue development area;

(7) A revenue development area cannot comprise an area containing more than twenty-five percent of the total assessed value of the taxable real property within the boundaries of the sponsoring local government, including any cosponsoring local government, at the time the revenue development area is designated;

(8) The boundaries of the revenue development area shall not be changed for the time period that local infrastructure financing is used; and

(9) A revenue development area cannot include any part of an increment area created under chapter 39.89 RCW, except those increment areas created prior to January 1, 2006.

NEW SECTION. Sec. 205. CONDITIONS. The use of local infrastructure financing under this chapter is subject to the following conditions:

(1) No funds may be used to finance, design, acquire, construct, equip, operate, maintain, remodel, repair, or reequip public facilities funded with taxes collected under RCW 82.14.048;

(2)(a) Except as provided in (b) of this subsection no funds may be used for public improvements other than projects identified within the capital facilities, utilities, housing, or transportation element of a comprehensive plan required under chapter 36.70A RCW;

(b) Funds may be used for public improvements that are historical preservation activities as defined in RCW 39.89.020;

(3) The public improvements proposed to be financed in whole or in part using local infrastructure financing are expected to encourage private development within the revenue development area and to increase the fair market value of real property within the revenue development area;

(4) A sponsoring local government, participating local government, or participating taxing district has entered or expects to enter into a contract with a private developer relating to the development of private improvements within the revenue development area or has received a letter of intent from a private developer relating to the developer's plans for the development of private improvements within the revenue development area;

(5) Private development that is anticipated to occur within the revenue development area, as a result of the public improvements, will be consistent with the countywide planning policy adopted by the county under RCW 36.70A.210 and the local government's comprehensive plan and development regulations adopted under chapter 36.70A RCW;

(6) The governing body of the sponsoring local government, and any cosponsoring local government, must make a finding that local infrastructure financing:

(a) Is not expected to be used for the purpose of relocating a business from outside the revenue development area, but within this state, into the revenue development area; and

(b) Will improve the viability of existing business entities within the revenue development area;

(7) The governing body of the sponsoring local government, and any cosponsoring local government, finds that the public improvements proposed to be financed in whole or in part using local infrastructure financing are reasonably likely to:

(a) Increase private residential and commercial investment within the revenue development area;

(b) Increase employment within the revenue development area;

(c) Improve the viability of any existing communities that are based on mixed-use development within the revenue development area; and

(d) Generate, over the period of time that the local option sales and use tax will be imposed under section 401 of this act, state excise tax allocation revenues and state property tax allocation revenues derived from the revenue development area that are equal to or greater than the respective state contributions made under this chapter;

(8) The sponsoring local government may only use local infrastructure financing in areas deemed in need of economic development or redevelopment within boundaries of the sponsoring local government.

NEW SECTION. Sec. 206. PROCESS. Before adopting an ordinance creating the revenue development area, a sponsoring local government must:

(1) Obtain written agreement from any participating local government and participating taxing district to use dedicated amounts of local excise tax allocation revenues, local property tax allocation revenues, and other revenues from local public sources in whole or in part, for local infrastructure financing authorized under this chapter. The agreement to opt into the local infrastructure financing public improvement project must be authorized by the governing body of such participating local government and participating taxing district;

(2) Estimate the impact of the revenue development area on small business and low-income housing and develop a mitigation plan for the impacted businesses and housing. In analyzing the impact of the revenue development area, the sponsoring local government must develop:

(a) An inventory of existing low-income housing units, and businesses and retail activity within the revenue development area;

(b) A reasonable estimate of the number of low-income housing units, small businesses, and other commercial activity that may be vulnerable to displacement within the revenue development area;

(c) A reasonable estimate of projected net job growth and net housing growth caused by creation of the revenue development area when compared to the existing jobs or housing balance for the area; and

(d) A reasonable estimate of the impact of net housing growth on the current housing price mix.

NEW SECTION. Sec. 207. ORDINANCE. (1) To create a revenue development area, a sponsoring local government, and any cosponsoring local government, must adopt an ordinance establishing the revenue development area that:

(a) Describes the public improvements proposed to be made in the revenue development area;

(b) Describes the boundaries of the revenue development area, subject to the limitations in section 204 of this act;

(c) Estimates the cost of the proposed public improvements and the portion of these costs to be financed by local infrastructure financing;

(d) Estimates the time during which local excise tax allocation revenues, local property tax allocation revenues, and other revenues from local public sources are to be used for local infrastructure financing;

(e) Provides the date when the use of local excise tax allocation revenues and local property tax allocation revenues will commence; and

(f) Finds that the conditions in section 205 of this act are met and the findings in section 206 of this act are complete.

(2) The sponsoring local government, and any cosponsoring local government, must hold a public hearing on the proposed financing of the public improvements in whole or in part with local infrastructure financing at least thirty days before passage of the ordinance establishing the revenue development area. The public hearing may be held by either the governing body of the sponsoring local government and the governing body of any cosponsoring local government, or by a committee of those governing bodies that includes at least a majority of the whole governing body or bodies. The public hearing is subject to the notice requirements in section 208 of this act.

(3) The sponsoring local government, and any cosponsoring local government, shall deliver a certified copy of the adopted ordinance to the county treasurer, the governing body of each participating local government and participating taxing district within which the revenue development area is located, the board, and the department.

NEW SECTION. Sec. 208. NOTICE REQUIREMENTS. Prior to adopting the ordinance creating the revenue development area and to meet the requirements of section 501(1)(b) of this act, a sponsoring local government and any cosponsoring local government must provide public notice.

(1) Notice of the public hearing must be published in a legal newspaper of general circulation within the proposed revenue development area at least ten days before the public hearing and posted in at least six conspicuous public places located in the proposed revenue development area.

(2) Notice must also be sent by United States mail to the property owners, all identifiable community-based organizations with involvement in the proposed revenue development area, and the business enterprises located within the proposed revenue development area at least thirty days prior to the hearing. In implementing provisions under this chapter, the local governing body may also consult with community-based groups, business organizations, including the local chamber of commerce, and the office of minority and women's business enterprises to assist with providing appropriate notice to business enterprises and property owners for whom English is a second language.

(3) Notices must describe the contemplated public improvements, estimate the public improvement costs, describe the portion of the public improvement costs to be borne by local infrastructure financing, describe any other sources of revenue to finance the public improvements, describe the boundaries of the proposed revenue development area, estimate the impact that the public improvements will have on small businesses and low-income housing, and estimate the period during which local infrastructure financing is contemplated to be used.

(4) Notices must inform the public where to obtain the information that shows how the limitations, conditions, and findings required in sections 204 through 206 of this act are met.

(5) The sponsoring local government and any cosponsoring local government shall deliver a certified copy of the proposed ordinance to the county treasurer, the governing body of each participating local government and participating taxing district within which the revenue development area is located, the board, and the department.

PART III TAX ALLOCATION REVENUES

NEW SECTION. Sec. 301. LOCAL EXCISE TAX ALLOCATION REVENUES. (1) A sponsoring local government or participating local government that has received approval by the board to use local infrastructure financing may use annually its local excise tax allocation revenues to finance public improvements in the revenue development area financed in whole or in part by local infrastructure financing. The use of local excise tax allocation revenues dedicated by participating local governments must cease when such

allocation revenues are no longer necessary or obligated to pay bonds issued to finance the public improvements in the revenue development area. Any participating local government is authorized to dedicate local excise tax allocation revenues to the sponsoring local government as authorized in section 206(1) of this act.

(2) A sponsoring local government shall provide the board accurate information describing the geographical boundaries of the revenue development area at the time of application. The information shall be provided in an electronic format or manner as prescribed by the department. The sponsoring local government shall ensure that the boundary information provided to the board and department is kept current.

(3) In the event a city annexes a county area located within a county-sponsored revenue development area, the city shall remit to the county the portion of the local excise tax allocation revenue that the county would have received had the area not been annexed to the county. The city shall remit such revenues until such time as the bonds issued under section 501 of this act are retired.

NEW SECTION. Sec. 302. LOCAL PROPERTY TAX ALLOCATION REVENUES. (1) Commencing in the second calendar year following the passage of the ordinance creating a revenue development area and authorizing the use of local infrastructure financing, the county treasurer shall distribute receipts from regular taxes imposed on real property located in the revenue development area as follows:

(a) Each participating taxing district and the sponsoring local government shall receive that portion of its regular property taxes produced by the rate of tax levied by or for the taxing district on the property tax allocation revenue base value for that local infrastructure financing project in the taxing district, or upon the total assessed value of real property in the taxing district, whichever is smaller; and

(b) The sponsoring local government shall receive an additional portion of the regular property taxes levied by it and by or for each participating taxing district upon the property tax allocation revenue value within the revenue development area. However, if there is no property tax allocation revenue value, the sponsoring local government shall not receive any additional regular property taxes under this subsection (1)(b). The sponsoring local government may agree to receive less than the full amount of the additional portion of regular property taxes under this subsection (1)(b) as long as bond debt service, reserve, and other bond covenant requirements are satisfied, in which case the balance of these tax receipts shall be allocated to the participating taxing districts that levied regular property taxes, or have regular property taxes levied for them, in the revenue development area for collection that year in proportion to their regular tax levy rates for collection that year. The sponsoring local government may request that the treasurer transfer this additional portion of the property taxes to its designated agent. The portion of the tax receipts distributed to the sponsoring local government or its agent under this subsection (1)(b) may only be expended to finance public improvement costs associated with the public improvements financed in whole or in part by local infrastructure financing.

(2) The county assessor shall allocate any increase in the assessed value of real property occurring in the revenue development area to the property tax

allocation revenue value and property tax allocation revenue base value as appropriate. This section does not authorize revaluations of real property by the assessor for property taxation that are not made in accordance with the assessor's revaluation plan under chapter 84.41 RCW or under other authorized revaluation procedures.

(3) The apportionment of increases in assessed valuation in a revenue development area, and the associated distribution to the sponsoring local government of receipts from regular property taxes that are imposed on the property tax allocation revenue value, must cease when property tax allocation revenues are no longer necessary or obligated to pay the costs of the public improvements. Any excess local property tax allocation revenues derived from regular property taxes and earnings on these tax allocation revenues, remaining at the time the allocation of tax receipts terminates, must be returned to the county treasurer and distributed to the participating taxing districts that imposed regular property taxes, or had regular property taxes imposed for it, in the revenue development area for collection that year, in proportion to the rates of their regular property tax levies for collection that year.

(4) The allocation to the revenue development area of portions of the local regular property taxes levied by or for each taxing district upon the property tax allocation revenue value within that revenue development area is declared to be a public purpose of and benefit to each such taxing district.

(5) The allocation of local property tax allocation revenues pursuant to this section shall not affect or be deemed to affect the rate of taxes levied by or within any taxing district or the consistency of any such levies with the uniformity requirement of Article VII, section 1 of the state Constitution.

(6) This section does not apply to those revenue development areas that include any part of an increment area created under chapter 39.89 RCW.

PART IV STATE CONTRIBUTIONS

NEW SECTION. Sec. 401. A new section is added to chapter 82.14 RCW to read as follows:

SALES AND USE TAX. (1) A sponsoring local government, and any cosponsoring local government, that has been approved by the board to use local infrastructure financing may impose a sales and use tax in accordance with the terms of this chapter and subject to the criteria set forth in this section. Except as provided in this section, the tax is in addition to other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the taxing jurisdiction of the sponsoring local government or cosponsoring local government. The rate of tax shall not exceed the rate provided in RCW 82.08.020(1), less the aggregate rates of any other local sales and use taxes imposed on the same taxable events that are credited against the state sales and use taxes imposed under chapters 82.08 and 82.12 RCW. The rate of tax may be changed only on the first day of a fiscal year as needed. Notice of rate changes must be provided to the department on the first day of March to be effective on July 1st of the next fiscal year.

(2) The tax authorized under subsection (1) of this section shall be credited against the state taxes imposed under chapter 82.08 or 82.12 RCW. The department shall perform the collection of such taxes on behalf of the sponsoring local government or cosponsoring local government at no cost to the sponsoring local government or cosponsoring local government and shall remit the taxes as provided in RCW 82.14.060.

(3)(a) No tax may be imposed under this section:

(i) Before July 1, 2008;

(ii) Before approval by the board under section 202 of this act; and

(iii) Except as provided in (b) of this subsection, unless the sponsoring local government has received and dedicated to the payment of bonds authorized in section 501 of this act, in whole or in part, both local excise tax allocation revenues and local property tax allocation revenues during the preceding calendar year.

(b) The requirement to receive local property tax allocation revenues under (a) of this subsection is waived if the revenue development area coincides with or is contained entirely within the boundaries of an increment area adopted by a local government under the authority of chapter 39.89 RCW for the purposes of utilizing community revitalization financing.

(c) The tax imposed under this section shall expire when the bonds issued under the authority of section 501 of this act are retired, but not more than twenty-five years after the tax is first imposed.

(4) An ordinance adopted by the legislative authority of a sponsoring local government or cosponsoring local government imposing a tax under this section shall provide that:

(a) The tax shall first be imposed on the first day of a fiscal year;

(b) The cumulative amount of tax received by the sponsoring local government, and any cosponsoring local government, in any fiscal year shall not exceed the amount of the state contribution;

(c) The tax shall cease to be distributed for the remainder of any fiscal year in which either:

(i) The amount of tax received by the sponsoring local government, and any cosponsoring local government, equals the amount of the state contribution;

(ii) The amount of revenue from taxes imposed under this section by all sponsoring and cosponsoring local governments equals the annual state contribution limit; or

(iii) The amount of tax received by the sponsoring local government equals the amount of project award granted in the approval notice described in section 202 of this act;

(d) Except when the requirement to receive local property tax allocation revenues is waived as provided in subsection (3)(b) of this section, neither the local excise tax allocation revenues nor the local property tax allocation revenues can be more than eighty percent of the total local funds as described in section 102(29)(c) of this act;

(e) The tax shall be distributed again, should it cease to be distributed for any of the reasons provided in (c) of this subsection, at the beginning of the next fiscal year, subject to the restrictions in this section; and

(f) Any revenue generated by the tax in excess of the amounts specified in (c) of this subsection shall belong to the state of Washington.

(5) If a county and city cosponsor a revenue development area, the combined rates of the city and county tax shall not exceed the rate provided in RCW 82.08.020(1), less the aggregate rates of any other local sales and use taxes imposed on the same taxable events that are credited against the state sales and use taxes imposed under chapters 82.08 and 82.12 RCW. The combined amount of distributions received by both the city and county may not exceed the state contribution.

(6) The department shall determine the amount of tax receipts distributed to each sponsoring local government, and any cosponsoring local government, imposing sales and use tax under this section and shall advise a sponsoring or cosponsoring local government when tax distributions for the fiscal year equal the amount of state contribution for that fiscal year as provided in subsection (8) of this section. Determinations by the department of the amount of tax distributions attributable to each sponsoring or cosponsoring local government are final and shall not be used to challenge the validity of any tax imposed under this section. The department shall remit any tax receipts in excess of the amounts specified in subsection (4)(c) of this section to the state treasurer who shall deposit the money in the general fund.

(7) If a sponsoring or cosponsoring local government fails to comply with section 403 of this act, no tax may be distributed in the subsequent fiscal year until such time as the sponsoring or cosponsoring local government complies and the department calculates the state contribution amount for such fiscal year.

(8) Each year, the amount of taxes approved by the department for distribution to a sponsoring or cosponsoring local government in the next fiscal year shall be equal to the state contribution and shall be no more than the total local funds as described in section 102(29)(c) of this act. The department shall consider information from reports described in section 403 of this act when determining the amount of state contributions for each fiscal year. A sponsoring or cosponsoring local government shall not receive, in any fiscal year, more revenues from taxes imposed under the authority of this section than the amount approved annually by the department. The department shall not approve the receipt of more distributions of sales and use tax under this section to a sponsoring or cosponsoring local government than is authorized under subsection (4) of this section.

(9) The amount of tax distributions received from taxes imposed under the authority of this section by all sponsoring and cosponsoring local governments is limited annually to not more than five million dollars. The tax distributions shall be available to the sponsoring local government, and any cosponsoring local government, imposing a tax under this section only as long as the sponsoring local government has outstanding indebtedness under section 501 of this act.

(10) The definitions in section 102 of this act apply to this section unless the context clearly requires otherwise.

(11) If a sponsoring local government is a federally recognized Indian tribe, the distribution of the sales and use tax authorized under this section shall be authorized through an interlocal agreement pursuant to chapter 39.34 RCW.

NEW SECTION. Sec. 402. USE OF FUNDS. Money collected from the taxes imposed under section 401 of this act shall be used only for the purpose of principal and interest payments on bonds issued under the authority of section 501 of this act.

NEW SECTION. Sec. 403. REPORTING REQUIREMENTS. (1) A sponsoring local government shall provide a report to the board and the department by March 1st of each year. The report shall contain the following information:

(a) The amount of local excise tax allocation revenues, and local property tax allocation revenues, taxes under section 401 of this act, and revenues from local public sources received by the sponsoring local government during the preceding calendar year that were dedicated to pay the public improvements financed in whole or in part with local infrastructure financing, and a summary of how these revenues were expended;

(b) The names of any businesses locating within the revenue development area as a result of the public improvements undertaken by the sponsoring local government and financed in whole or in part with local infrastructure financing;

(c) The total number of permanent jobs created in the revenue development area as a result of the public improvements undertaken by the sponsoring local government and financed in whole or in part with local infrastructure financing;

(d) The average wages and benefits received by all employees of businesses locating within the revenue development area as a result of the public improvements undertaken by the sponsoring local government and financed in whole or in part with local infrastructure financing; and

(e) That the sponsoring local government is in compliance with section 205 of this act.

(2) The board shall make a report available to the public and the legislature by June 1st of each year. The report shall include a list of public improvements undertaken by sponsoring local governments and financed in whole or in part with local infrastructure financing and it shall also include a summary of the information provided to the department by sponsoring local governments under subsection (1) of this section.

PART V BOND AUTHORIZATION

NEW SECTION. Sec. 501. BOND ISSUANCE. (1) A sponsoring local government that has designated a revenue development area and been authorized the use of local infrastructure financing may incur general indebtedness, and issue general obligation bonds, to finance the public improvements and retire the indebtedness in whole or in part from tax allocation revenues it receives, subject to the following requirements:

(a) The ordinance adopted by the sponsoring local government and authorizing the use of local infrastructure financing indicates an intent to incur this indebtedness and the maximum amount of this indebtedness that is contemplated; and

(b) The sponsoring local government includes this statement of the intent in all notices required by section 207 of this act.

(2)(a) Except as provided in (b) of this subsection, the general indebtedness incurred under subsection (1) of this section may be payable from other tax revenues, the full faith and credit of the local government, and nontax income, revenues, fees, and rents from the public improvements, as well as contributions, grants, and nontax money available to the local government for payment of costs

of the public improvements or associated debt service on the general indebtedness.

(b) A sponsoring local government that issues bonds under this section shall not pledge any money received from the state of Washington for the payment of such bonds, other than the local sales and use taxes imposed under the authority of section 401 of this act and collected by the department.

(3) In addition to the requirements in subsection (1) of this section, a sponsoring local government designating a revenue development area and authorizing the use of local infrastructure financing may require the nonpublic participant to provide adequate security to protect the public investment in the public improvement within the revenue development area.

(4) Bonds issued under this section shall be authorized by ordinance of the governing body of the sponsoring local government and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form either coupon or registered as provided in RCW 39.46.030, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption with or without premium, be secured in such manner, and have such other characteristics, as may be provided by such ordinance or trust indenture or mortgage issued pursuant thereto.

(5) The sponsoring local government may annually pay into a fund to be established for the benefit of bonds issued under this section a fixed proportion or a fixed amount of any local excise tax allocation revenues and local property tax allocation revenues derived from property or business activity within the revenue development area containing the public improvements funded by the bonds, such payment to continue until all bonds payable from the fund are paid in full. The local government may also annually pay into the fund established in this section a fixed proportion or a fixed amount of any revenues derived from taxes imposed under section 401 of this act, such payment to continue until all bonds payable from the fund are paid in full. Revenues derived from taxes imposed under section 401 of this act are subject to the use restriction in section 402 of this act.

(6) In case any of the public officials of the sponsoring local government whose signatures appear on any bonds or any coupons issued under this chapter shall cease to be such officials before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such officials had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued under this chapter are fully negotiable.

(7) Notwithstanding subsections (4) through (6) of this section, bonds issued under this section may be issued and sold in accordance with chapter 39.46 RCW.

NEW SECTION. Sec. 502. USE OF TAX REVENUE FOR BOND REPAYMENT. A sponsoring local government that issues bonds under section 501 of this act to finance public improvements may pledge for the payment of such bonds all or part of any local excise tax allocation revenues and all or part of any local property tax allocation revenues dedicated by the sponsoring local

government, any participating local government, or participating taxing district. The sponsoring local government may also pledge all or part of any revenues derived from taxes imposed under section 401 of this act and held in connection with the public improvements. All of such tax revenues are subject to the use restrictions in sections 202 through 205 of this act, and the process requirements in section 206(1) of this act.

NEW SECTION. Sec. 503. BONDS ISSUED NOT AN OBLIGATION OF THE STATE OF WASHINGTON. The bonds issued by a sponsoring local government under section 501 of this act to finance public improvements shall not constitute an obligation of the state of Washington, either general or special.

NEW SECTION. Sec. 504. GENERAL INDEBTEDNESS—SECURITY. (1) A sponsoring local government designating a revenue development area and authorizing the use of local infrastructure financing may incur general indebtedness, and issue general obligation bonds, to finance the public improvements and retire the indebtedness in whole or in part from local excise tax allocation revenues and local property tax allocation revenues it receives, subject to the following requirements:

(a) The ordinance adopted by the sponsoring local government creating the revenue development area and authorizing the use of local infrastructure financing indicates an intent to incur this indebtedness and the maximum amount of this indebtedness that is contemplated; and

(b) The sponsoring local government includes this statement of the intent in all notices required by sections 205 and 206 of this act.

(2) The general indebtedness incurred under subsection (1) of this section may be payable from other tax revenues, the full faith and credit of the sponsoring local government, and nontax income, revenues, fees, and rents from the public improvements, as well as contributions, grants, and nontax money available to the sponsoring local government for payment of costs of the public improvements or associated debt service on the general indebtedness.

(3) In addition to the requirements in subsection (1) of this section, a sponsoring local government designating a revenue development area and authorizing the use of local infrastructure financing may require the nonpublic participant to provide adequate security to protect the public investment in the public improvement within the revenue development area.

NEW SECTION. Sec. 505. REVENUE BONDS. (1) A sponsoring local government may issue revenue bonds to fund revenue-generating public improvements, or portions of public improvements, that are located within a revenue development area. Whenever revenue bonds are to be issued, the legislative authority of the sponsoring local government shall create or have created a special fund or funds from which, along with any reserves created pursuant to RCW 39.44.140, the principal and interest on these revenue bonds shall exclusively be payable. The legislative authority of the sponsoring local government may obligate the sponsoring local government to set aside and pay into the special fund or funds a fixed proportion or a fixed amount of the revenues from the public improvements that are funded by the revenue bonds. This amount or proportion is a lien and charge against these revenues, subject only to operating and maintenance expenses. The sponsoring local government shall have due regard for the cost of operation and maintenance of the public

improvements that are funded by the revenue bonds, and shall not set aside into the special fund or funds a greater amount or proportion of the revenues that in its judgment will be available over and above the cost of maintenance and operation and the amount or proportion, if any, of the revenue previously pledged. The sponsoring local government may also provide that revenue bonds payable out of the same source or sources of revenue may later be issued on a parity with any revenue bonds being issued and sold.

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

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

(4) Notwithstanding subsections (1) through (3) of this section, bonds issued under this section may be issued and sold in accordance with chapter 39.46 RCW.

PART VI JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE REPORTS

NEW SECTION. Sec. 601. JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE REPORTS. Beginning September 1, 2013, and continuing every five years thereafter, the joint legislative audit and review committee shall submit a report to the appropriate committees of the legislature.

(1) The report shall, at a minimum, evaluate the effectiveness of the local infrastructure financing tool program, including a project-by-project review. The report shall evaluate the project's interim results based on the selection criteria. The report shall also measure:

- (a) Employment changes in the revenue development area;
- (b) Property tax changes in the revenue development area;
- (c) Sales and use tax changes in the revenue development area;
- (d) Property value changes in the revenue development area; and
- (e) Changes in housing and existing commercial activities based on the impact analysis and mitigation plan required in section 206(2) of this act.

(2) The report that is due September 1, 2028, should also include any recommendations regarding whether or not the program should be expanded statewide and what impact the expansion would have on economic development in Washington.

PART VII MISCELLANEOUS

NEW SECTION. Sec. 701. PERIODIC EVALUATION. The department of revenue and the community economic revitalization board shall evaluate and periodically report on the implementation of the local infrastructure financing program to the governor and legislature as the department and the board deems appropriate and recommend such amendments, changes in, and modifications of this act as seem proper.

***NEW SECTION. Sec. 702. GOVERNANCE AND SELECTION CRITERIA STUDY.** *The office of financial management shall contract with the appropriate vendor to study and report on similar programs in other states. The report shall include an overview of the programs in other states, including project selection criteria and program governance. The report shall include recommendations regarding project selection and governance that address Washington's unique needs. The report shall also include recommendations for reporting information on future projects. The report is due to the governor and the legislature by December 1, 2006.*

*Sec. 702 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 703. CAPTIONS. Captions and part headings used in this act are not any part of the law.

NEW SECTION. Sec. 704. 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. 705. PORT DISTRICTS. Nothing in this act shall be construed to give port districts the authority to impose a sales or use tax under chapter 82.14 RCW.

NEW SECTION. Sec. 706. EFFECTIVE DATE. This act takes effect July 1, 2006.

NEW SECTION. Sec. 707. EXPIRATION DATE. This act expires June 30, 2039.

NEW SECTION. Sec. 708. NEW CHAPTER. Sections 101 through 302 and 402 through 601 of this act constitute a new chapter in Title 39 RCW.

Passed by the House March 8, 2006.

Passed by the Senate March 7, 2006.

Approved by the Governor March 23, 2006, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 23, 2006.

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

"I am returning, without my approval as to Section 702, Engrossed Second Substitute House Bill No. 2673 entitled:

"AN ACT Relating to creating the local infrastructure financing tool demonstration program."

The Office of Financial Management (OFM) is required in Section 702 to conduct a study of governance and selection criteria for the Local Infrastructure Financing Tool (LIFT) program. Section 702 reflects discussions that were underway before the Legislature passed the final version of the bill. In earlier discussions, before the Community Economic Revitalization Board (CERB) was identified as the lead agency, legislators considered having a study of governance issues underway while the projects in the LIFT program's project list were being developed. In the final version of the bill, however, governance and project selection criteria are identified, making the OFM study moot. In addition, the budget does not provide funding for the OFM study and OFM is not the lead agency on the LIFT program.

For these reasons, I have vetoed Section 702 of Engrossed Second Substitute House Bill No. 2673.

With the exception of Section 702, Engrossed Second Substitute House Bill No. 2673 is approved."

CHAPTER 182

[House Bill 2348]

TAX INCENTIVES—ALUMINUM SMELTERS

AN ACT Relating to tax relief for aluminum smelters; amending RCW 82.04.2909, 82.04.4481, 82.08.805, 82.12.805, 82.12.022, and 82.32.570; and providing an expiration date.

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

Sec. 1. RCW 82.04.2909 and 2004 c 24 s 3 are each amended to read as follows:

(1) Upon every person who is an aluminum smelter engaging within this state in the business of manufacturing aluminum; as to such persons the amount of tax with respect to such business shall, in the case of manufacturers, be equal to the value of the product manufactured, or in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of .2904 percent.

(2) Upon every person who is an aluminum smelter engaging within this state in the business of making sales at wholesale of aluminum manufactured by that person, as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the aluminum multiplied by the rate of .2904 percent.

(3) This section expires January 1, (~~2007~~) 2012.

Sec. 2. RCW 82.04.4481 and 2004 c 24 s 8 are each amended to read as follows:

(1) In computing the tax imposed under this chapter, a credit is allowed for all property taxes paid during the calendar year on property owned by a direct service industrial customer and reasonably necessary for the purposes of an aluminum smelter.

(2) A person taking the credit under this section is subject to all the requirements of chapter 82.32 RCW. A credit earned during one calendar year may be carried over to be credited against taxes incurred in the subsequent calendar year, but may not be carried over a second year. Credits carried over must be applied to tax liability before new credits. No refunds may be granted for credits under this section.

(3) Credits may not be claimed under this section for property taxes levied for collection in (~~2007~~) 2012 and thereafter.

Sec. 3. RCW 82.08.805 and 2004 c 24 s 10 are each amended to read as follows:

(1) A person who has paid tax under RCW 82.08.020 for tangible personal property used at an aluminum smelter, tangible personal property that will be incorporated as an ingredient or component of buildings or other structures at an aluminum smelter, or for labor and services rendered with respect to such buildings, structures, or tangible personal property, is eligible for an exemption from the state share of the tax in the form of a credit, as provided in this section. A person claiming an exemption must pay the tax and may then take a credit equal to the state share of retail sales tax paid under RCW 82.08.020. The person shall submit information, in a form and manner prescribed by the department, specifying the amount of qualifying purchases or acquisitions for which the exemption is claimed and the amount of exempted tax.

(2) For the purposes of this section, "aluminum smelter" has the same meaning as provided in RCW 82.04.217.

(3) Credits may not be claimed under this section for taxable events occurring on or after January 1, (~~2007~~) 2012.

Sec. 4. RCW 82.12.805 and 2004 c 24 s 11 are each amended to read as follows:

(1) A person who is subject to tax under RCW 82.12.020 for tangible personal property used at an aluminum smelter, or for tangible personal property that will be incorporated as an ingredient or component of buildings or other structures at an aluminum smelter, or for labor and services rendered with respect to such buildings, structures, or tangible personal property, is eligible for an exemption from the state share of the tax in the form of a credit, as provided in this section. The amount of the credit shall be equal to the state share of use tax computed to be due under RCW 82.12.020. The person shall submit information, in a form and manner prescribed by the department, specifying the amount of qualifying purchases or acquisitions for which the exemption is claimed and the amount of exempted tax.

(2) For the purposes of this section, "aluminum smelter" has the same meaning as provided in RCW 82.04.217.

(3) Credits may not be claimed under this section for taxable events occurring on or after January 1, (~~2007~~) 2012.

Sec. 5. RCW 82.12.022 and 2004 c 24 s 12 are each amended to read as follows:

(1) There is hereby levied and there shall be collected from every person in this state a use tax for the privilege of using natural gas or manufactured gas within this state as a consumer.

(2) The tax shall be levied and collected in an amount equal to the value of the article used by the taxpayer multiplied by the rate in effect for the public utility tax on gas distribution businesses under RCW 82.16.020. The "value of the article used" does not include any amounts that are paid for the hire or use of a gas distribution business as defined in RCW 82.16.010(7) in transporting the gas subject to tax under this subsection if those amounts are subject to tax under that chapter.

(3) The tax levied in this section shall not apply to the use of natural or manufactured gas delivered to the consumer by other means than through a pipeline.

(4) The tax levied in this section shall not apply to the use of natural or manufactured gas if the person who sold the gas to the consumer has paid a tax under RCW 82.16.020 with respect to the gas for which exemption is sought under this subsection.

(5) The tax levied in this section shall not apply to the use of natural or manufactured gas by an aluminum smelter as that term is defined in RCW 82.04.217 before January 1, (~~2007~~) 2012.

(6) There shall be a credit against the tax levied under this section in an amount equal to any tax paid by:

(a) The person who sold the gas to the consumer when that tax is a gross receipts tax similar to that imposed pursuant to RCW 82.16.020 by another state with respect to the gas for which a credit is sought under this subsection; or

(b) The person consuming the gas upon which a use tax similar to the tax imposed by this section was paid to another state with respect to the gas for which a credit is sought under this subsection.

(7) The use tax hereby imposed shall be paid by the consumer to the department.

(8) There is imposed a reporting requirement on the person who delivered the gas to the consumer to make a quarterly report to the department. Such report shall contain the volume of gas delivered, name of the consumer to whom delivered, and such other information as the department shall require by rule.

(9) The department may adopt rules under chapter 34.05 RCW for the administration and enforcement of sections 1 through 6, chapter 384, Laws of 1989.

Sec. 6. RCW 82.32.570 and 2004 c 24 s 14 are each amended to read as follows:

(1) For the purposes of this section, "smelter tax incentive" means the preferential tax rate under RCW 82.04.2909, or an exemption or credit under RCW 82.04.4481, 82.08.805, 82.12.805, or 82.12.022(5).

(2) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information to evaluate whether the stated goals of legislation were achieved.

(3) The goals of the smelter tax incentives are to retain family-wage jobs in rural areas by:

(a) Enabling the aluminum industry to maintain production of aluminum at a level that will preserve at least 75 percent of the jobs that were on the payroll effective January 1, 2004, as adjusted for employment reductions publicly announced before November 30, 2003; and

(b) Allowing the aluminum industry to continue producing aluminum in this state through (~~2006~~) 2012 so that the industry will be positioned to preserve and create new jobs when the anticipated reduction of energy costs occurs.

(4)(a) An aluminum smelter receiving the benefit of a smelter tax incentive shall make an annual report to the department detailing employment, wages, and employer-provided health and retirement benefits per job at the manufacturing site. The report is due by March 31st following any year in which a tax incentive is claimed or used. The report shall not include names of employees. The report shall detail employment by the total number of full-time, part-time, and temporary positions. The report shall indicate the quantity of aluminum smelted

at the plant during the time period covered by the report. The first report filed under this subsection shall include employment, wage, and benefit information for the twelve-month period immediately before first use of a tax incentive. Employment reports shall include data for actual levels of employment and identification of the number of jobs affected by any employment reductions that have been publicly announced at the time of the report. Information in a report under this section is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(b) If a person fails to submit an annual report under (a) of this subsection by the due date of the report, the department shall declare the amount of taxes exempted or credited, or reduced in the case of the preferential business and occupation tax rate, for that year to be immediately due and payable. Excise taxes payable under this subsection are subject to interest but not penalties, as provided under this chapter. This information is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(5) By ~~((December 1, 2005, and by))~~ December 1, ~~((2006))~~ 2007, December 1, 2010, and December 1, 2015, the fiscal committees of the house of representatives and the senate, in consultation with the department, shall report to the legislature on the effectiveness of the smelter tax incentives ~~((and, by December 1, 2010, on the effectiveness of the incentives))~~ under RCW 82.04.4482 and 82.16.0498. The reports shall measure the effect of the tax incentives on job retention for Washington residents and any other factors the committees may select.

Passed by the House March 4, 2006.

Passed by the Senate March 1, 2006.

Approved by the Governor March 23, 2006.

Filed in Office of Secretary of State March 23, 2006.

CHAPTER 183

[Engrossed Substitute Senate Bill 6428]

ELECTRONIC PRODUCT RECYCLING

AN ACT Relating to providing electronic product recycling through manufacturer financed opportunities; amending RCW 42.56.270; adding a new section to chapter 43.19 RCW; adding a new chapter to Title 70 RCW; creating a new section; prescribing penalties; and providing an effective date.

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

NEW SECTION. Sec. 1. The legislature finds that a convenient, safe, and environmentally sound system for the collection, transportation, and recycling of covered electronic products must be established. The legislature further finds that the system must encourage the design of electronic products that are less toxic and more recyclable. The legislature further finds that the responsibility for this system must be shared among all stakeholders, with manufacturers financing the collection, transportation, and recycling system.

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

(1) "Authority" means the Washington materials management and financing authority created under section 29 of this act.

(2) "Authorized party" means a manufacturer who submits an individual independent plan or the entity authorized to submit an independent plan for more than one manufacturer.

(3) "Board" means the board of directors of the Washington materials management and financing authority created under section 30 of this act.

(4) "Collector" means an entity licensed to do business in the state that gathers unwanted covered electronic products from households, small businesses, school districts, small governments, and charities for the purpose of recycling and meets minimum standards that may be developed by the department.

(5) "Contract for services" means an instrument executed by the authority and one or more persons or entities that delineates collection, transportation, and recycling services, in whole or in part, that will be provided to the citizens of the state within service areas as described in the approved standard plan.

(6) "Covered electronic product" includes a cathode ray tube or flat panel computer monitor having a viewable area greater than four inches when measured diagonally, a desktop computer, a laptop or a portable computer, or a cathode ray tube or flat panel television having a viewable area greater than four inches when measured diagonally that has been used in the state by any covered entity regardless of original point of purchase. "Covered electronic product" does not include: (a) A motor vehicle or replacement parts for use in motor vehicles or aircraft, or any computer, computer monitor, or television that is contained within, and is not separate from, the motor vehicle or aircraft; (b) monitoring and control instruments or systems; (c) medical devices; (d) products including materials intended for use as ingredients in those products as defined in the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.) or the virus-serum-toxin act of 1913 (21 U.S.C. Sec. 151 et seq.), and regulations issued under those acts; (e) equipment used in the delivery of patient care in a health care setting; (f) a computer, computer monitor, or television that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier; or (g) hand-held portable voice or data devices used for commercial mobile services as defined in 47 U.S.C. Sec. 332 (d)(1).

(7) "Covered entity" means any household, charity, school district, small business, or small government located in Washington state.

(8) "Curbside service" means a collection service providing regularly scheduled pickup of covered electronic products from households or other covered entities in quantities generated from households.

(9) "Department" means the department of ecology.

(10) "Electronic product" includes a cathode ray tube or flat panel computer monitor having a viewable area greater than four inches when measured diagonally; a desktop computer; a laptop or a portable computer; or a cathode ray tube or flat screen television having a viewable area greater than four inches when measured diagonally.

(11) "Equivalent share" means the weight in pounds of covered electronic products identified for an individual manufacturer under this chapter as determined by the department under section 20 of this act.

(12) "Household" means a single detached dwelling unit or a single unit of a multiple dwelling unit and appurtenant structures.

(13) "Independent plan" means a plan for the collection, transportation, and recycling of unwanted covered electronic products that is developed, implemented, and financed by an individual manufacturer or by an authorized party.

(14) "Manufacturer" means any person, in business or no longer in business but having a successor in interest, who, irrespective of the selling technique used, including by means of distance or remote sale:

(a) Manufactures or has manufactured a covered electronic product under its own brand names for sale in or into this state;

(b) Assembles or has assembled a covered electronic product that uses parts manufactured by others for sale in or into this state under the assembler's brand names;

(c) Resells or has resold in or into this state under its own brand names a covered electronic product produced by other suppliers, including retail establishments that sell covered electronic products under their own brand names;

(d) Manufactures or manufactured a cobranded product for sale in or into this state that carries the name of both the manufacturer and a retailer;

(e) Imports or has imported a covered electronic product into the United States that is sold in or into this state. However, if the imported covered electronic product is manufactured by any person with a presence in the United States meeting the criteria of manufacturer under (a) through (d) of this subsection, that person is the manufacturer. For purposes of this subsection, "presence" means any person that performs activities conducted under the standards established for interstate commerce under the commerce clause of the United States Constitution; or

(f) Sells at retail a covered electronic product acquired from an importer that is the manufacturer as described in (e) of this subsection, and elects to register in lieu of the importer as the manufacturer for those products.

(15) "New entrant" means: (a) A manufacturer of televisions that have been sold in the state for less than ten years; or (b) a manufacturer of desktop computers, laptop and portable computers, or computer monitors that have been sold in the state for less than five years. However, a manufacturer of both televisions and computers or a manufacturer of both televisions and computer monitors that is deemed a new entrant under either only (a) or (b) of this subsection is not considered a new entrant for purposes of this chapter.

(16) "Orphan product" means a covered electronic product that lacks a manufacturer's brand or for which the manufacturer is no longer in business and has no successor in interest.

(17) "Plan's equivalent share" means the weight in pounds of covered electronic products for which a plan is responsible. A plan's equivalent share is equal to the sum of the equivalent shares of each manufacturer participating in that plan.

(18) "Plan's return share" means the sum of the return shares of each manufacturer participating in that plan.

(19) "Premium service" means services such as at-location system upgrade services provided to covered entities and at-home pickup services offered to households. "Premium service" does not include curbside service.

(20) "Processor" means an entity engaged in disassembling, dismantling, or shredding electronic products to recover materials contained in the electronic products and prepare those materials for reclaiming or reuse in new products in accordance with processing standards established by this chapter and by the department. A processor may also salvage parts to be used in new products.

(21) "Product type" means one of the following categories: Computer monitors; desktop computers; laptop and portable computers; and televisions.

(22) "Program" means the collection, transportation, and recycling activities conducted to implement an independent plan or the standard plan.

(23) "Program year" means each full calendar year after the program has been initiated.

(24) "Recycling" means transforming or remanufacturing unwanted electronic products, components, and byproducts into usable or marketable materials for use other than landfill disposal or incineration. "Recycling" does not include energy recovery or energy generation by means of combusting unwanted electronic products, components, and byproducts with or without other waste. Smelting of electronic materials to recover metals for reuse in conformance with all applicable laws and regulations is not considered disposal or energy recovery.

(25) "Retailer" means a person who offers covered electronic products for sale at retail through any means including, but not limited to, remote offerings such as sales outlets, catalogs, or the internet, but does not include a sale that is a wholesale transaction with a distributor or a retailer.

(26) "Return share" means the percentage of covered electronic products by weight identified for an individual manufacturer, as determined by the department under section 19 of this act.

(27) "Reuse" means any operation by which an electronic product or a component of a covered electronic product changes ownership and is used for the same purpose for which it was originally purchased.

(28) "Small business" means a business employing less than fifty people.

(29) "Small government" means a city in the state with a population less than fifty thousand, a county in the state with a population less than one hundred twenty-five thousand, and special purpose districts in the state.

(30) "Standard plan" means the plan for the collection, transportation, and recycling of unwanted covered electronic products developed, implemented, and financed by the authority on behalf of manufacturers participating in the authority.

(31) "Transporter" means an entity that transports covered electronic products from collection sites or services to processors or other locations for the purpose of recycling, but does not include any entity or person that hauls their own unwanted electronic products.

(32) "Unwanted electronic product" means a covered electronic product that has been discarded or is intended to be discarded by its owner.

(33) "White box manufacturer" means a person who manufactured unbranded covered electronic products offered for sale in the state within ten years prior to a program year for televisions or within five years prior to a program year for desktop computers, laptop or portable computers, or computer monitors.

NEW SECTION. Sec. 3. (1) A manufacturer must participate in an independent plan or the standard plan to implement and finance the collection, transportation, and recycling of covered electronic products.

(2) An independent plan or the standard plan must be implemented and fully operational no later than January 1, 2009.

(3) The manufacturers participating in an approved plan are responsible for covering all administrative and operational costs associated with the collection, transportation, and recycling of their plan's equivalent share of covered electronic products. If costs are passed on to consumers, it must be done without any fees at the time the unwanted electronic product is delivered or collected for recycling. However, this does not prohibit collectors providing premium or curbside services from charging customers a fee for the additional collection cost of providing this service, when funding for collection provided by an independent plan or the standard plan does not fully cover the cost of that service.

(4) Nothing in this chapter changes or limits the authority of the Washington utilities and transportation commission to regulate collection of solid waste in the state of Washington, including curbside collection of residential recyclable materials, nor does this chapter change or limit the authority of a city or town to provide such service itself or by contract pursuant to RCW 81.77.020.

(5) Manufacturers are encouraged to collaborate with electronic product retailers, certificated waste haulers, processors, recyclers, charities, and local governments within the state in the development and implementation of their plans.

NEW SECTION. Sec. 4. (1) By January 1, 2007, and annually thereafter, each manufacturer must register with the department.

(2) A manufacturer must submit to the department with each registration or annual renewal a fee to cover the administrative costs of this chapter as determined by the department under section 23 of this act.

(3) The department shall review the registration or renewal application and notify the manufacturer if their registration does not meet the requirements of this section. Within thirty days of receipt of such a notification from the department, the manufacturer must file with the department a revised registration addressing the requirements noted by the department.

(4) The registration must include the following information:

(a) The name and contact information of the manufacturer submitting the registration;

(b) The manufacturer's brand names of covered electronic products, including all brand names sold in the state in the past, all brand names currently being sold in the state, and all brand names for which the manufacturer has legal responsibility under section 10 of this act;

(c) The method or methods of sale used in the state; and

(d) Whether the registrant will be participating in the standard plan or submitting an independent plan to the department for approval.

(5) The registrant shall submit any changes to the information provided in the registration to the department within fourteen days of such change.

(6) The department shall identify, using all reasonable means, manufacturers that are in business or that are no longer in business but that have a successor in interest by examining best available return share data and other pertinent data. The department shall notify manufacturers that have been identified and for whom an address has been found of the requirements of this chapter, including registration and plan requirements under this section and section 5 of this act.

NEW SECTION. Sec. 5. (1) A manufacturer must participate in the standard plan administered by the authority, unless the manufacturer obtains department approval for an independent plan for the collection, transportation, and recycling of unwanted electronic products.

(2) An independent plan may be submitted by an individual manufacturer or by a group of manufacturers, provided that:

(a) Each independent plan represents at least a five percent return share of covered electronic products; and

(b) No manufacturer may participate in an independent plan if it is a new entrant or a white box manufacturer.

(3) An individual manufacturer submitting an independent plan to the department is responsible for collecting, transporting, and recycling its equivalent share of covered electronic products.

(4)(a) Manufacturers collectively submitting an independent plan are responsible for collecting, transporting, and recycling the sum of the equivalent shares of each participating manufacturer.

(b) Each group of manufacturers submitting an independent plan must designate a party authorized to file the plan with the department on their behalf. A letter of certification from each of the manufacturers designating the authorized party must be submitted to the department together with the plan.

(5) Each manufacturer in the standard plan or in an independent plan retains responsibility and liability under this chapter in the event that the plan fails to meet the manufacturer's obligations under this chapter.

NEW SECTION. Sec. 6. (1) All initial independent plans and the initial standard plan required under section 5 of this act must be submitted to the department by February 1, 2008. The department shall review each independent plan and the standard plan.

(2) The authority submitting the standard plan and each authorized party submitting an independent plan to the department must pay a fee to the department to cover the costs of administering and implementing this chapter. The department shall set the fees as described under section 23 of this act.

(3) The fees in subsection (2) of this section apply to the initial plan submission and plan updates and revisions required in section 7 of this act.

(4) Within ninety days after receipt of a plan, the department shall determine whether the plan complies with this chapter. If the plan is approved, the department shall send a letter of approval. If a plan is rejected, the department shall provide the reasons for rejecting the plan to the authority or authorized

party. The authority or authorized party must submit a new plan within sixty days after receipt of the letter of disapproval.

(5) An independent plan and the standard plan must contain the following elements:

(a) Contact information for the authority or authorized party and a comprehensive list of all manufacturers participating in the plan and their contact information;

(b) A description of the collection, transportation, and recycling systems and service providers used, including a description of how the authority or authorized party will:

(i) Seek to use businesses within the state, including retailers, charities, processors, and collection and transportation services;

(ii) Fairly compensate collectors for providing collection services; and

(iii) Fairly compensate processors for providing processing services;

(c) The method or methods for the reasonably convenient collection of all product types of covered electronic products in rural and urban areas throughout the state, including how the plan will provide for collection services in each county of the state and for a minimum of one collection site or alternate collection service for each city or town with a population greater than ten thousand. A collection site for a county may be the same as a collection site for a city or town in the county;

(d) A description of how the plan will provide service to small businesses, small governments, charities, and school districts in Washington;

(e) The processes and methods used to recycle covered electronic products including a description of the processing that will be used and the facility location;

(f) Documentation of audits of each processor used in the plan and compliance with processing standards established under sections 25 and 26 of this act;

(g) A description of the accounting and reporting systems that will be employed to track progress toward the plan's equivalent share;

(h) A timeline describing startup, implementation, and progress towards milestones with anticipated results;

(i) A public information campaign to inform consumers about how to recycle their covered electronic products at the end of the product's life; and

(j) A description of how manufacturers participating in the plan will communicate and work with processors utilized by that plan to promote and encourage design of electronic products and their components for recycling.

(6) The standard plan shall address how it will incorporate and fairly compensate registered collectors providing curbside or premium services such that they are not compensated at a lower rate for collection costs than the compensation offered other collectors providing drop-off collection sites in that geographic area.

(7) All transporters, collectors, and processors used to fulfill the requirements of this section must be registered as described in section 24 of this act.

NEW SECTION. Sec. 7. (1) An independent plan and the standard plan must be updated at least every five years and as required in (a) and (b) of this subsection.

(a) If the program fails to provide service in each county in the state or meet other plan requirements, the authority or authorized party shall submit to the department within sixty days of failing to provide service an updated plan addressing how the program will be adjusted to meet the program geographic coverage and collection service requirements established in section 9 of this act.

(b) The authority or authorized party shall notify the department of any modification to the plan. If the department determines that the authority or authorized party has significantly modified the program described in the plan, the authority or authorized party shall submit a revised plan describing the changes to the department within sixty days of notification by the department.

(2) Within sixty days after receipt of a revised plan, the department shall determine whether the revised plan complies with this chapter. If the revised plan is approved, the department shall send a letter of approval. If the revised plan is rejected, the department shall provide the reasons for rejecting the plan to the authority or authorized party. The authority or authorized party must submit a new plan revision within sixty days after receipt of the letter of disapproval.

(3) The authority or authorized parties may buy and sell collected covered electronic products with other programs without submitting a plan revision for review.

NEW SECTION. Sec. 8. (1) A manufacturer participating in an independent plan may join the standard plan by notifying the authority and the department of its intention at least five months prior to the start of the next program year.

(2) Manufacturers may not change from one plan to another plan during a program year.

(3) A manufacturer participating in the standard plan wishing to implement or participate in an independent plan may do so by complying with rules adopted by the department under section 23 of this act.

NEW SECTION. Sec. 9. (1) A program must provide collection services for covered electronic products of all product types that are reasonably convenient and available to all citizens of the state residing within its geographic boundaries, including both rural and urban areas. Each program must provide collection service in every county of the state. A program may provide collection services jointly with another plan or plans.

(a) For any city or town with a population of greater than ten thousand, each program shall provide a minimum of one collection site or alternate collection service described in subsection (3) of this section or a combination of sites and alternate service that together provide at least one collection opportunity for all product types. A collection site for a county may be the same as a collection site for a city or town in the county.

(b) Collection sites may include electronics recyclers and repair shops, recyclers of other commodities, reuse organizations, charities, retailers, government recycling sites, or other suitable locations.

(c) Collection sites must be staffed, open to the public at a frequency adequate to meet the needs of the area being served, and on an on-going basis.

(2) A program may limit the number of covered electronic products or covered electronic products by product type accepted per customer per day or per delivery at a collection site or service. All covered entities may use a

collection site as long as the covered entities adhere to any restrictions established in the plans.

(3) A program may provide collection services in forms different than collection sites, such as curbside services, if those alternate services provide equal or better convenience to citizens and equal or increased recovery of unwanted covered electronic products.

(4) For rural areas without commercial centers or areas with widely dispersed population, a program may provide collection at the nearest commercial centers or solid waste sites, collection events, mail-back systems, or a combination of these options.

(5) For small businesses, small governments, charities, and school districts that may have large quantities of covered electronic products that cannot be handled at collection sites or curbside services, a program may provide alternate services. At a minimum, a program must provide for processing of these large quantities of covered electronic products at no charge to the small businesses, small governments, charities, and school districts.

NEW SECTION, Sec. 10. Any person acquiring a manufacturer, or who has acquired a manufacturer, shall have all responsibility for the acquired company's covered electronic products, including covered electronic products manufactured prior to the effective date of this section, unless that responsibility remains with another entity per the purchase agreement and the acquiring manufacturer provides the department with a letter from the other entity accepting responsibility for the covered electronic products. Cobranding manufacturers may negotiate with retailers for responsibility for those products and must notify the department of the results of their negotiations.

NEW SECTION, Sec. 11. (1) An independent plan and the standard plan must implement and finance an auditable, statistically significant sampling of covered electronic products entering its program every program year. The information collected must include a list of the brand names of covered electronic products by product type, the number of covered electronic products by product type, the weight of covered electronic products that are identified for each brand name or that lack a manufacturer's brand, the total weight of the sample by product type, and any additional information needed to assign return share.

(2) The sampling must be conducted in the presence of the department or a third-party organization approved by the department. The department may, at its discretion, audit the methodology and the results.

(3) After the fifth program year, the department may reassess the sampling required in this section. The department may adjust the frequency at which manufacturers must implement the sampling or may adjust the frequency at which manufacturers must provide certain information from the sampling. Prior to making any changes, the department shall notify the public, including all registered manufacturers, and provide a comment period. The department shall notify all registered manufacturers of any such changes.

NEW SECTION, Sec. 12. (1) An independent plan and the standard plan must inform covered entities about where and how to reuse and recycle their covered electronic products at the end of the product's life, including providing a web site or a toll-free telephone number that gives information about the

recycling program in sufficient detail to educate covered entities regarding how to return their covered electronic products for recycling.

(2) The department shall promote covered electronic product recycling by:

(a) Posting information describing where to recycle unwanted covered electronic products on its web site;

(b) Providing information about recycling covered electronic products through a toll-free telephone service; and

(c) Developing and providing artwork for use in flyers and signage to retailers upon request.

(3) Local governments shall promote covered electronic product recycling, including listings of local collection sites and services, through existing educational methods typically used by each local government.

(4) A retailer who sells new covered electronic products shall provide information to consumers describing where and how to recycle covered electronic products and opportunities and locations for the convenient collection or return of the products. This requirement can be fulfilled by providing the department's toll-free telephone number and web site. Remote sellers may include the information in a visible location on their web site as fulfillment of this requirement.

(5) Manufacturers, state government, local governments, retailers, and collection sites and services shall collaborate in the development and implementation of the public information campaign.

NEW SECTION. Sec. 13. (1) The electronic products recycling account is created in the custody of the state treasurer. All payments resulting from plans not reaching their equivalent share, as described in section 22 of this act, shall be deposited into the account. Any moneys collected for manufacturer registration fees, fees associated with reviewing and approving plans and plan revisions, and penalties levied under this chapter shall be deposited into the account.

(2) Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(3) Moneys in the account may be used solely by the department for the purposes of fulfilling department responsibilities specified in this chapter and for expenditures to the authority and authorized parties resulting from plans exceeding their equivalent share, as described in section 22 of this act. Funds in the account may not be diverted for any purpose or activity other than those specified in this section.

NEW SECTION. Sec. 14. (1) By March 1st of the second program year and each program year thereafter, the authority and each authorized party shall file with the department an annual report for the preceding program year.

(2) The annual report must include the following information:

(a) The total weight in pounds of covered electronic products collected and recycled, by county, during the preceding program year including documentation verifying collection and processing of that material. The total weight in pounds includes orphan products. The report must also indicate and document the weight in pounds received from each nonprofit charitable organization primarily engaged in the business of reuse and resale used by the plan. The report must

document the weight in pounds that were received in large quantities from small businesses, small governments, charities and school districts as described in section 9(5) of this act;

(b) The collection services provided in each county and for each city with a population over ten thousand including a list of all collection sites and services operating in the state in the prior program year and the parties who operated them;

(c) A list of processors used, the weight of covered electronic products processed by each direct processor, and a description of the processes and methods used to recycle the covered electronic products including a description of the processing and facility locations. The report must also include a list of subcontractors who further processed or recycled unwanted covered electronic products, electronic components, or electronic scrap described in section 26(1) of this act, including facility locations;

(d) Other documentation as established under section 26(3) of this act;

(e) Educational and promotional efforts that were undertaken;

(f) The results of sampling and sorting as required in section 11 of this act, including a list of the brand names of covered electronic products by product type, the number of covered electronic products by product type, the weight of covered electronic products that are identified for each brand name or that lack a manufacturer's brand, and the total weight of the sample by product type;

(g) The list of manufacturers that are participating in the standard plan; and

(h) Any other information deemed necessary by the department.

(3) The department shall review each report within ninety days of its submission and shall notify the authority or authorized party of any need for additional information or documentation, or any deficiency in its program.

(4) All reports submitted to the department must be available to the general public through the internet. Proprietary information submitted to the department under this chapter is exempt from public disclosure under RCW 42.56.270.

NEW SECTION. Sec. 15. Nonprofit charitable organizations that qualify for a taxation exemption under section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)) that are primarily engaged in the business of reuse and resale and that are used by a plan to collect covered electronic products shall file a report with the department by March 1st of the second program year and each program year thereafter. The report must indicate and document the weight of covered electronic products sent for recycling during the previous program year attributed to each plan that the charitable organization is participating in.

NEW SECTION. Sec. 16. (1) Beginning January 1, 2007, no person may sell or offer for sale an electronic product to any person in the state unless the electronic product is labeled with the manufacturer's brand. The label must be permanently affixed and readily visible.

(2) In-state retailers in possession of unlabeled products on January 1, 2007, may exhaust their stock through sales to the public.

NEW SECTION. Sec. 17. No person may sell or offer for sale a covered electronic product to any person in this state unless the manufacturer of the covered electronic product has filed a registration with the department under section 4 of this act and is participating in an approved plan under section 5 of

this act. A person that sells or offers for sale a covered electronic product in the state shall consult the department's web site for lists of manufacturers with registrations and approved plans prior to selling a covered electronic product in the state. A person is considered to have complied with this section if on the date the product was ordered from the manufacturer or its agent, the manufacturer was listed as having registered and having an approved plan on the department's web site.

NEW SECTION. Sec. 18. (1) The department shall maintain on its web site the following information:

- (a) The names of the manufacturers and the manufacturer's brands that are registered with the department under section 4 of this act;
 - (b) The names of the manufacturers and the manufacturer's brands that are participating in an approved plan under section 5 of this act;
 - (c) The names and addresses of the collectors and transporters that are listed in registrations filed with the department under section 24 of this act;
 - (d) The names and addresses of the processors used to fulfill the requirements of the plans;
 - (e) Return and equivalent shares for all manufacturers.
- (2) The department shall update this web site information promptly upon receipt of a registration or a report.

NEW SECTION. Sec. 19. (1) The department shall determine the return share for each manufacturer in the standard plan or an independent plan by dividing the weight of covered electronic products identified for each manufacturer by the total weight of covered electronic products identified for all manufacturers in the standard plan or an independent plan, then multiplying the quotient by one hundred.

(2) For the first program year, the department shall determine the return share for such manufacturers using all reasonable means and based on best available information regarding return share data from other states and other pertinent data.

(3) For the second and each subsequent program year, the department shall determine the return share for such manufacturers using all reasonable means and based on the most recent sampling of covered electronic products conducted in the state under section 11 of this act.

NEW SECTION. Sec. 20. (1) The department shall determine the total equivalent share for each manufacturer in the standard plan or an independent plan by dividing the return share percentage for each manufacturer by one hundred, then multiplying the quotient by the total weight in pounds of covered electronic products collected for that program year, allowing as needed for the additional credit authorized in subsection (3) of this section.

(2)(a) By June 1st of each program year, the department shall notify each manufacturer of the manufacturer's equivalent share of covered electronic products to be applied to the previous program year. The department shall also notify each manufacturer of how its equivalent share was determined.

(b) By June 1st of each program year, the department shall bill any authorized party or authority that has not attained its plan's equivalent share as determined under section 22 of this act. The authorized party or authority shall remit payment to the department within sixty days from the billing date.

(c) By September 1st of each program year, the department shall pay any authorized party or authority that exceeded its plan's equivalent share.

(3) Plans that utilize the collection services of nonprofit charitable organizations that qualify for a taxation exemption under section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)) that are primarily engaged in the business of reuse and resale must be given an additional five percent credit to be applied toward a plan's equivalent share for pounds that are received for recycling from those organizations. The department may adjust the percentage of credit annually.

NEW SECTION. Sec. 21. (1) By June 1, 2007, the department shall notify each manufacturer of its preliminary return share of covered electronic products for the first program year.

(2) Preliminary return share of covered electronic products must be announced annually by June 1st of each program year for the next program year.

(3) Manufacturers may challenge the preliminary return share by written petition to the department. The petition must be received by the department within thirty days of the date of publication of the preliminary return shares.

(4) The petition must contain a detailed explanation of the grounds for the challenge, an alternative calculation, and the basis for such a calculation, documentary evidence supporting the challenge, and complete contact information for requests for additional information or clarification.

(5) Sixty days after the publication of the preliminary return share, the department shall make a final decision on return share, having fully taken into consideration any and all challenges to its preliminary calculations.

(6) A written record of challenges received and a summary of the bases for the challenges, as well as the department's response, must be published at the same time as the publication of the final return share.

(7) By August 1, 2007, the department shall publish the final return shares for the first program year. By August 1st of each program year, the department shall publish the final return shares for use in the coming program year.

NEW SECTION. Sec. 22. (1) For an independent plan and the standard plan, if the total weight in pounds of covered electronic products collected during a program year is less than the plan's equivalent share of covered electronic products for that year, then the authority or authorized party shall submit to the department a payment equal to the weight in pounds of the deficit multiplied by the reasonable collection, transportation, and recycling cost for covered electronic products and an administrative fee. Moneys collected by the department must be deposited in the electronic products recycling account.

(2) For an independent plan and the standard plan, if the total weight in pounds of covered electronic products collected during a program year is more than the plan's equivalent share of covered electronic products for that year, then the department shall submit to the authority or authorized party, a payment equal to the weight in pounds of the surplus multiplied by the reasonable collection, transportation, and recycling cost for covered electronic products.

(3) For purposes of this section, the initial reasonable collection, transportation, and recycling cost for covered electronic products is forty-five cents per pound and the administrative fee is five cents per pound.

(4) The department may annually adjust the reasonable collection, transportation, and recycling cost for covered electronic products and the administrative fee described in this section. Prior to making any changes in the fees described in this section, the department shall notify the public, including all registered manufacturers, and provide a comment period. The department shall notify all registered manufacturers of any changes to the reasonable collection, transportation, and recycling cost or the administrative fee by January 1st of the program year in which the change is to take place.

NEW SECTION. Sec. 23. (1) The department shall adopt rules to determine the process for manufacturers to change plans under section 8 of this act.

(2) The department shall establish annual registration and plan review fees for administering this chapter. An initial fee schedule must be established by rule and be adjusted no more often than once every two years. All fees charged must be based on factors relating to administering this chapter and be based on a sliding scale that is representative of annual sales of covered electronic products in the state. Fees must be established in amounts to fully recover and not to exceed expenses incurred by the department to implement this chapter.

(3) The department shall establish an annual process for local governments and local communities to report their satisfaction with the services provided by plans under this chapter. This information must be used by the department in reviewing plan updates and revisions.

(4) The department may adopt rules as necessary for the purpose of implementing, administering, and enforcing this chapter.

NEW SECTION. Sec. 24. (1) Each collector and transporter of covered electronic products in the state must register annually with the department. The registration must include all identification requirements for licensure in the state and the geographic area of the state that they serve. The department shall develop a single form for registration of both collectors and transporters.

(2) Each processor of covered electronic products utilized by an independent or standard plan must register annually with the department. The registration must include identification information and documentation of any necessary operating permits issued by state or local authorities.

NEW SECTION. Sec. 25. (1) The authority and each authorized party shall ensure that each processor used directly by the authority or the authorized party to fulfill the requirements of their respective standard plan or independent plan has provided the authority or the authorized party a written statement that the processor will comply with the requirements of this section and section 26 of this act.

(2) The department shall establish by rule performance standards for environmentally sound management for processors directly used to fulfill the requirements of an independent plan or the standard plan. Performance standards may include financial assurance to ensure proper closure of facilities consistent with environmental standards.

(3) The department shall establish by rule guidelines regarding nonrecycled residual that may be properly disposed after covered electronic products have been processed.

(4) The department may audit processors that are utilized to fulfill the requirements of an independent plan or the standard plan.

(5) No plan or program required under this chapter may include the use of federal or state prison labor for processing.

***NEW SECTION. Sec. 26.** (1) *The international export of any unwanted covered electronic products or electronic components or electronic scrap derived from such products destined for disposal or recycling that are capable of leaching lead, cadmium, mercury, hexavalent chromium, or selenium or selenium compounds in concentrations above the limits listed in 40 C.F.R. Sec. 261.24 as of the effective date of this section are prohibited except for exports to:*

(a) *Countries that are members of the organization for economic cooperation and development;*

(b) *Countries that are members of the European Union; or*

(c) *Countries that have entered into an agreement with the United States that allows for such exports.*

(2) *Any unwanted electronic products or electronic components derived from such products that are capable of leaching lead, cadmium, mercury, hexavalent chromium, or selenium or selenium compounds in concentrations exceeding the levels established in 40 C.F.R. Sec. 261.24 as of the effective date of this section and exported to countries that are not members of the organization for economic cooperation and development or the European Union or with whom the United States has not entered into an agreement for such export for reuse, must be tested and labeled as fully functional or needing only repairs that do not result in the replacement of components capable of leaching these substances in concentrations exceeding the levels established in 40 C.F.R. Sec. 261.24 as of the effective date of this section.*

(3) *The department shall establish rules to implement this section, including any requirements necessary to ensure that full compliance is adequately documented.*

**Sec. 26 was vetoed. See message at end of chapter.*

NEW SECTION. Sec. 27. (1) No manufacturer may sell or offer for sale a covered electronic product in or into the state unless the manufacturer of the covered electronic product is participating in an approved plan. The department shall send a written warning to a manufacturer that does not have an approved plan or is not participating in an approved plan as required under section 5 of this act. The written warning must inform the manufacturer that it must participate in an approved plan within thirty days of the notice. Any violation after the initial written warning shall be assessed a penalty of up to ten thousand dollars for each violation.

(2) If the authority or any authorized party fails to implement their approved plan, the department must assess a penalty of up to five thousand dollars for the first violation along with notification that the authority or authorized party must implement its plan within thirty days of the violation. After thirty days, the authority or any authorized party failing to implement their approved plan must be assessed a penalty of up to ten thousand dollars for the second and each subsequent violation.

(3) Any person that does not comply with manufacturer registration requirements under section 4 of this act, education and outreach requirements

under section 12 of this act, reporting requirements under section 14 of this act, labeling requirements under section 16 of this act, retailer responsibility requirements under section 17 of this act, collector or transporter registration requirements under section 24 of this act, or requirements under sections 25 and 26 of this act, must first receive a written warning including a copy of the requirements under this chapter and thirty days to correct the violation. After thirty days, a person must be assessed a penalty of up to one thousand dollars for the first violation and up to two thousand dollars for the second and each subsequent violation.

(4) All penalties levied under this section must be deposited into the electronic products recycling account created under section 13 of this act.

(5) The department shall enforce this section.

NEW SECTION. Sec. 28. (1) By December 31, 2012, the department shall provide a report to the appropriate committees of the legislature that includes the following information:

(a) For each of the preceding program years, the weight of covered electronic products recycled in the state by plan, by county, and in total;

(b) The performance of each plan in meeting its equivalent share, and payments received from and disbursed to each plan from the electronic products recycling account;

(c) A description of the various collection programs used to collect covered electronic products in the state;

(d) An evaluation of how the pounds per capita recycled of covered electronic products in the state compares to programs in other states;

(e) Comments received from local governments and local communities regarding satisfaction with the program, including accessibility and convenience of services provided by the plans;

(f) Recommendations on how to improve the statewide collection, transportation, and recycling system for convenient, safe, and environmentally sound recycling of electronic products; and

(g) An analysis of whether and in what amounts unwanted electronic products and electronic components and electronic scrap exported from Washington have been exported to countries that are not members of the organization for economic cooperation and development or the European union, and recommendations for addressing such exports.

(2) By April 1, 2010, the department shall provide a report to the appropriate committees of the legislature regarding the amount of orphan products collected as a percent of the total amount of covered electronic products collected. If the orphan products collected exceed ten percent of the total amount of covered electronic products collected, the department shall report to the appropriate committees of the legislature within ninety days describing the orphan products collected and include recommendations for decreasing the amount of orphan products or alternative methods for financing the collection, transportation, and recycling of orphan products.

NEW SECTION. Sec. 29. (1) The Washington materials management and financing authority is established as a public body corporate and politic, constituting an instrumentality of the state of Washington exercising essential governmental functions.

(2) The authority shall plan and implement a collection, transportation, and recycling program for manufacturers that have registered with the department their intent to participate in the standard program as required under section 4 of this act.

(3) Membership in the authority is comprised of registered participating manufacturers. Any registered manufacturer who does not qualify or is not approved to submit an independent plan, or whose independent plan has not been approved by the department, is a member of the authority. All new entrants and white box manufacturers are also members of the authority.

(4) The authority shall act as a business management organization on behalf of the citizens of the state to manage financial resources and contract for services for collection, transportation, and recycling of covered electronic products.

(5) The authority's standard plan is responsible for collecting, transporting, and recycling the sum of the equivalent shares of each participating manufacturer.

(6) The authority shall accept into the standard program covered electronic products from any registered collector who meets the requirements of this chapter. The authority shall compensate registered collectors for the reasonable costs associated with collection, but is not required to compensate nor restricted from compensating the additional collection costs resulting from the additional convenience offered to customers through premium and curbside services.

(7) The authority shall accept and utilize in the standard program any registered processor meeting the requirements of this chapter and any requirements described in the authority's operating plan or through contractual arrangements. Processors utilized by the standard plan shall provide documentation to the authority at least annually regarding how they are meeting the requirements in sections 25 and 26 of this act, including enough detail to allow the standard plan to meet its reporting requirements in section 14(2) (c) and (d), and must submit to audits conducted by or for the authority. The authority shall compensate such processors for the reasonable costs, as determined by the authority, associated with processing unwanted electronic products. Such processors must demonstrate that the unwanted electronic products have been received from registered collectors or transporters, and provide other documentation as may be required by the authority.

(8) Except as specifically allowed in this chapter, the authority shall operate without using state funds or lending the credit of the state or local governments.

(9) The authority shall develop innovative approaches to improve materials management efficiency in order to ensure and increase the use of secondary material resources within the economy.

NEW SECTION. Sec. 30. (1)(a) The authority is governed by a board of directors. The board of directors is comprised of eleven participating manufacturers, appointed by the director of the department. Five board positions are reserved for representatives of the top ten brand owners by return share of covered electronic products, and six board positions are reserved for representatives of other brands, including at least one board position reserved for a manufacturer who is also a retailer selling their own private label. The return share of covered electronic products used to determine the top ten brand owners for purposes of electing the board must be determined by the department by January 1, 2007.

(b) The board must have representation from both television and computer manufacturers.

(2) The board shall select from its membership the chair of the board and such other officers as it deems appropriate.

(3) A majority of the board constitutes a quorum.

(4) The directors of the department of community, trade, and economic development and the department of ecology, and the state treasurer serve as ex officio members. The state agency directors and the state treasurer serving in ex officio capacity may each designate an employee of their respective departments to act on their behalf in all respects with regard to any matter to come before the authority. Ex officio designations must be made in writing and communicated to the authority director.

(5) The board shall create its own bylaws in accordance with the laws of the state of Washington.

(6) Any member of the board may be removed for misfeasance, malfeasance, or willful neglect of duty after notice and a public hearing, unless the notice and hearing are expressly waived in writing by the affected member.

(7) The members of the board serve without compensation but are entitled to reimbursement, solely from the funds of the authority, for expenses incurred in the discharge of their duties under this chapter.

NEW SECTION. Sec. 31. (1) Manufacturers participating in the standard plan shall pay the authority to cover all administrative and operational costs associated with the collection, transportation, and recycling of covered electronic products within the state of Washington incurred by the standard program operated by the authority to meet the standard plan's equivalent share obligation as described in section 29(5) of this act.

(2) The authority shall assess charges on each manufacturer participating in the standard plan and collect funds from each participating manufacturer for the manufacturer's portion of the costs in subsection (1) of this section. Such apportionment shall be based on return share, market share, any combination of return share and market share, or any other equitable method. The authority's apportionment of costs to manufacturers participating in the standard plan may not include nor be based on electronic products imported through the state and subsequently exported outside the state. Charges assessed under this section must not be formulated in such a way as to create incentives to divert imported electronic products to ports or distribution centers in other states. The authority shall adjust the charges to manufacturers participating in the standard plan as necessary in order to ensure that all costs associated with the identified activities are covered.

(3) The authority may require financial assurances or performance bonds for manufacturers participating in the standard plan, including but not limited to new entrants and white box manufacturers, when determining equitable methods for apportioning costs to ensure that the long-term costs for collecting, transporting, and recycling of a covered electronic product are borne by the appropriate manufacturer in the event that the manufacturer ceases to participate in the program.

(4) Nothing in this section authorizes the authority to assess fees or levy taxes directly on the sale or possession of electronic products.

(5) If a manufacturer has not met its financial obligations as determined by the authority under this section, the authority shall notify the department that the manufacturer is no longer participating in the standard plan.

(6) The authority shall submit its plan for assessing charges and apportioning cost on manufacturers participating in the standard plan to the department for review and approval along with the standard plan as provided in section 6 of this act.

(7)(a) Any manufacturer participating in the standard plan may appeal an assessment of charges or apportionment of costs levied by the authority under this section by written petition to the director of the department. The director of the department or the director's designee shall review all appeals within timelines established by the department and shall reverse any assessments of charges or apportionment of costs if the director finds that the authority's assessments or apportionment of costs was an arbitrary administrative decision, an abuse of administrative discretion, or is not an equitable assessment or apportionment of costs. The director shall make a fair and impartial decision based on sound data. If the director of the department reverses an assessment of charges, the authority must redetermine the assessment or apportionment of costs.

(b) Disputes regarding a final decision made by the director or director's designee may be challenged through arbitration. The director shall appoint one member to serve on the arbitration panel and the challenging party shall appoint one other. These two persons shall choose a third person to serve. If the two persons cannot agree on a third person, the presiding judge of the Thurston county superior court shall choose a third person. The decision of the arbitration panel shall be final and binding, subject to review by the superior court solely upon the question of whether the decision of the panel was arbitrary or capricious.

NEW SECTION. Sec. 32. (1) The authority shall use any funds legally available to it for any purpose specifically authorized by this chapter to:

(a) Contract and pay for collecting, transporting, and recycling of covered electronic products and education and other services as identified in the standard plan;

(b) Pay for the expenses of the authority including, but not limited to, salaries, benefits, operating costs and consumable supplies, equipment, office space, and other expenses related to the costs associated with operating the authority;

(c) Pay into the electronic products recycling account amounts billed by the department to the authority for any deficit in reaching the standard plan's equivalent share as required under section 22 of this act; and

(d) Pay the department for the fees for submitting the standard plan and any plan revisions.

(2) If practicable, the authority shall avoid creating new infrastructure already available through private industry in the state.

(3) The authority may not receive an appropriation of state funds, other than:

(a) Funds that may be provided as a one-time loan to cover administrative costs associated with start up of the authority, such as electing the board of directors and conducting the public hearing for the operating plan, provided that

no appropriated funds may be used to pay for collection, transportation, or recycling services; and

(b) Funds received from the department from the electronic products recycling account for exceeding the standard plan's equivalent share.

(4) The authority may receive additional sources of funding that do not obligate the state to secure debt.

(5) All funds collected by the authority under this chapter, including interest, dividends, and other profits, are and must remain under the complete control of the authority and its board of directors, be fully available to achieve the intent of this chapter, and be used for the sole purpose of achieving the intent of this chapter.

NEW SECTION. Sec. 33. (1) The board shall adopt a general operating plan of procedures for the authority. The board shall also adopt operating procedures for collecting funds from participating covered electronic manufacturers and for providing funding for contracted services. These operating procedures must be adopted by resolution prior to the authority operating the applicable programs.

(2) The general operating plan must include, but is not limited to: (a) Appropriate minimum reserve requirements to secure the authority's financial stability; (b) appropriate standards for contracting for services; and (c) standards for service.

(3) The board shall conduct at least one public hearing on the general operating plan prior to its adoption. The authority shall provide and make public a written response to all comments received by the public.

(4) The general operating plan must be adopted by resolution of the board. The board may periodically update the general operating plan as necessary, but must update the plan no less than once every four years. The general operating plan or updated plan must include a report on authority activities conducted since the commencement of authority operation or since the last reported general operating plan, whichever is more recent, including a statement of results achieved under the purposes of this chapter and the general operating plan. Upon adoption, the authority shall conduct its programs in observance of the objectives established in the general operating plan.

NEW SECTION. Sec. 34. (1) The authority shall employ a chief executive officer, appointed by the board, and a chief financial officer, as well as professional, technical, and support staff, appointed by the chief executive officer, necessary to carry out its duties.

(2) Employees of the authority are not classified employees of the state. Employees of the authority are exempt from state service rules and may receive compensation only from the authority at rates competitive with state service.

(3) The authority may retain its own legal counsel.

(4) The departments of ecology and community, trade, and economic development shall provide staff to assist in the creation of the authority. If requested by the authority, the departments of ecology and community, trade, and economic development shall also provide start-up support staff to the authority for its first twelve months of operation, or part thereof, to assist in the quick establishment of the authority. Staff expenses must be paid through funds

collected by the authority and must be reimbursed to the departments from the authority's financial resources within the first twenty-four months of operation.

(5) In addition to accomplishing the activities specifically authorized in this chapter, the authority may:

- (a) Maintain an office or offices;
- (b) Make and execute all manner of contracts, agreements, and instruments and financing documents with public and private parties as the authority deems necessary, useful, or convenient to accomplish its purposes;
- (c) Make expenditures as appropriate for paying the administrative costs and expenses of the authority in carrying out the provisions of this chapter;
- (d) Give assistance to private and public bodies contracted to provide collection, transportation, and recycling services by providing information, guidelines, forms, and procedures for implementing their programs;
- (e) Delegate, through contract, any of its powers and duties if consistent with the purposes of this chapter; and
- (f) Exercise any other power the authority deems necessary, useful, or convenient to accomplish its purposes and exercise the powers expressly granted in this chapter.

NEW SECTION. Sec. 35. This chapter is void if a federal law, or a combination of federal laws, takes effect that establishes a national program for the collection and recycling of covered electronic products that substantially meets the intent of this chapter, including the creation of a financing mechanism for collection, transportation, and recycling of all covered electronic products from households, small businesses, school districts, small governments, and charities in the United States.

NEW SECTION. Sec. 36. A new section is added to chapter 43.19 RCW to read as follows:

(1) The department of general administration shall establish purchasing and procurement policies that establish a preference for electronic products that meet environmental performance standards relating to the reduction or elimination of hazardous materials.

(2) The department of general administration shall ensure that their surplus electronic products, other than those sold individually to private citizens, are managed only by registered transporters and by processors meeting the requirements of sections 25 and 26 of this act.

(3) The department of general administration shall ensure that their surplus electronic products are directed to legal secondary materials markets by requiring a chain of custody record that documents to whom the products were initially delivered through to the end use manufacturer.

Sec. 37. RCW 42.56.270 and 2005 c 274 s 407 are each amended to read as follows:

The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

(2) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a

ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070;

(3) Financial and commercial information and records supplied by private persons pertaining to export services provided under chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects under RCW 43.23.035;

(4) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency;

(5) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW;

(6) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information;

(7) Financial and valuable trade information under RCW 51.36.120;

(8) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW;

(9) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010;

(10) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a liquor license, gambling license, or lottery retail license;

(11) Proprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011; ~~((and))~~

(12)(a) When supplied to and in the records of the department of community, trade, and economic development:

(i) Financial and proprietary information collected from any person and provided to the department of community, trade, and economic development pursuant to RCW 43.330.050(8) and 43.330.080(4); and

(ii) Financial or proprietary information collected from any person and provided to the department of community, trade, and economic development or the office of the governor in connection with the siting, recruitment, expansion, retention, or relocation of that person's business and until a siting decision is made, identifying information of any person supplying information under this subsection and the locations being considered for siting, relocation, or expansion of a business;

(b) When developed by the department of community, trade, and economic development based on information as described in (a)(i) of this subsection, any work product is not exempt from disclosure;

(c) For the purposes of this subsection, "siting decision" means the decision to acquire or not to acquire a site;

(d) If there is no written contact for a period of sixty days to the department of community, trade, and economic development from a person connected with siting, recruitment, expansion, retention, or relocation of that person's business, information described in (a)(ii) of this subsection will be available to the public under this chapter; and

(13) Financial and proprietary information submitted to or obtained by the department of ecology or the authority created under chapter 70.— RCW (sections 1 through 35 of this act) to implement chapter 70.— RCW (sections 1 through 35 of this act).

NEW SECTION. Sec. 38. This act must be liberally construed to carry out its purposes and objectives.

NEW SECTION. Sec. 39. 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. 40. This act takes effect July 1, 2006.

NEW SECTION. Sec. 41. Sections 1 through 35 of this act constitute a new chapter in Title 70 RCW.

Passed by the Senate March 6, 2006.

Passed by the House March 2, 2006.

Approved by the Governor March 24, 2006, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 24, 2006.

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

"I am returning herewith, without my approval as to sections Section 26, Engrossed Substitute Senate Bill No. 6428 entitled:

"AN ACT Relating to providing electronic product recycling through manufacturer financed opportunities."

This bill creates a recycling program for "electronic wastes," which includes used and unwanted computers and televisions. Section 26 of the bill would prohibit the export of these wastes to certain other countries.

I regret that, based on legal advice, the State of Washington does not have the necessary authority to prohibit the export of electronic waste. Accordingly, I will not put the entire bill at risk because of this section alone.

However, I believe that the section represents good environmental policy. I will therefore call on the President and Congress to take up this issue and enact legislation that prohibits the export of our hazardous wastes to third world countries that are not prepared to manage them.

Once enacted by the federal government, I recognize this might affect our options for proper recycling and disposal of e-wastes. To make sure we are ready, I hereby direct the Department of Ecology to evaluate alternatives to the export of these wastes and recommend actions as needed to ensure capacity for their proper management.

For the remainder of the bill, this is a new program for the state and it will take some time and experience to make sure it runs right. I am asking Ecology to work closely with all affected stakeholders to ensure that this bill is implemented in a fair and equitable manner.

Along that line, I am directing Ecology to take the following steps:

1. To adopt, within their new program rules, rigorous financial assurance requirements for new manufacturers, sufficient to ensure that they will be responsible for recycling their products and not leave them for others to clean up;
2. To evaluate alternatives for managing legacy e-waste products in a manner that does not create competitive differences between existing and new companies, including a way to distribute costs of recycling past products more fairly among all affected parties; and,
3. To evaluate the use of product toxicity in lieu of, or in addition to, product weight, when determining equitable cost shares.

In addition, I am asking Ecology to provide annual reports on the progress, problems, and stakeholder concerns with implementation of this bill. The reports should include any needed changes to the statute to ensure fairness and clarity in the program.

For these reasons, I have vetoed Section 26 of Engrossed Substitute Senate Bill No. 6428.

With the exception of Section 26, Engrossed Substitute Senate Bill No. 6428 is approved."

CHAPTER 184

[Substitute Senate Bill 6141]

PROPERTY TAX LIMITATIONS—WIND TURBINE FACILITIES

AN ACT Relating to including the value of electric generation wind turbine facilities in the property tax levy limit calculation; and amending RCW 84.55.010, 84.55.015, 84.55.020, 84.55.030, 84.55.080, and 84.55.120.

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

Sec. 1. RCW 84.55.010 and 1997 c 3 s 202 are each amended to read as follows:

Except as provided in this chapter, the levy for a taxing district in any year shall be set so that the regular property taxes payable in the following year shall not exceed the limit factor multiplied by the amount of regular property taxes lawfully levied for such district in the highest of the three most recent years in which such taxes were levied for such district plus an additional dollar amount calculated by multiplying the increase in assessed value in that district resulting from new construction, increases in assessed value due to construction of electric generation wind turbine facilities classified as personal property, improvements to property, and any increase in the assessed value of state-assessed property by the regular property tax levy rate of that district for the preceding year.

Sec. 2. RCW 84.55.015 and 1999 c 96 s 1 are each amended to read as follows:

If a taxing district has not levied since 1985 and elects to restore a regular property tax levy subject to applicable statutory limitations then such first restored levy shall be set so that the regular property tax payable shall not exceed the amount which was last levied, plus an additional dollar amount calculated by multiplying the increase in assessed value in the district since the last levy resulting from new construction (~~and~~), increases in assessed value due to construction of electric generation wind turbine facilities classified as personal property, improvements to property, and any increase in the assessed value of

state-assessed property by the property tax rate which is proposed to be restored, or the maximum amount which could be lawfully levied in the year such a restored levy is proposed.

Sec. 3. RCW 84.55.020 and 1997 c 3 s 203 are each amended to read as follows:

Notwithstanding the limitation set forth in RCW 84.55.010, the first levy for a taxing district created from consolidation of similar taxing districts shall be set so that the regular property taxes payable in the following year shall not exceed the limit factor multiplied by the sum of the amount of regular property taxes lawfully levied for each component taxing district in the highest of the three most recent years in which such taxes were levied for such district plus the additional dollar amount calculated by multiplying the increase in assessed value in each component district resulting from new construction (~~and~~), increases in assessed value due to construction of electric generation wind turbine facilities classified as personal property, improvements to property, and any increase in the assessed value of state-assessed property by the regular property tax rate of each component district for the preceding year.

Sec. 4. RCW 84.55.030 and 1973 1st ex.s. c 195 s 107 are each amended to read as follows:

For the first levy for a taxing district following annexation of additional property, the limitation set forth in RCW 84.55.010 shall be increased by an amount equal to (1) the aggregate assessed valuation of the newly annexed property as shown by the current completed and balanced tax rolls of the county or counties within which such property lies, multiplied by (2) the dollar rate that would have been used by the annexing unit in the absence of such annexation, plus (3) the additional dollar amount calculated by multiplying the increase in assessed value in the annexing district resulting from new constructions (~~and~~), increases in assessed value due to construction of electric generation wind turbine facilities classified as personal property, improvements to property, and any increase in the assessed value of state-assessed property by the regular property tax levy rate of that annexing taxing district for the preceding year.

Sec. 5. RCW 84.55.080 and 1982 1st ex.s. c 42 s 12 are each amended to read as follows:

Pursuant to chapter 39.88 RCW, any increase in the assessed value of real property within an apportionment district resulting from new construction, increases in assessed value due to construction of electric generation wind turbine facilities classified as personal property, improvements to property, or any increase in the assessed value of state-assessed property shall not be included in the increase in assessed value resulting from new construction, increases in assessed value due to construction of electric generation wind turbine facilities classified as personal property, improvements, or any increase in the assessed value of state-assessed property for purposes of calculating any limitations upon regular property taxes under this chapter until the termination of apportionment as set forth in RCW 39.88.070(4), as now or hereafter amended, except to the extent a taxing district actually will receive the taxes levied upon this value. Tax allocation revenues, as defined in RCW 39.88.020, as now or hereafter amended, shall not be deemed to be "regular property taxes" for purposes of this chapter.

Sec. 6. RCW 84.55.120 and 1997 c 3 s 209 are each amended to read as follows:

A taxing district, other than the state, that collects regular levies shall hold a public hearing on revenue sources for the district's following year's current expense budget. The hearing must include consideration of possible increases in property tax revenues and shall be held prior to the time the taxing district levies the taxes or makes the request to have the taxes levied. The county legislative authority, or the taxing district's governing body if the district is a city, town, or other type of district, shall hold the hearing. For purposes of this section, "current expense budget" means that budget which is primarily funded by taxes and charges and reflects the provision of ongoing services. It does not mean the capital, enterprise, or special assessment budgets of cities, towns, counties, or special purpose districts.

If the taxing district is otherwise required to hold a public hearing on its proposed regular tax levy, a single public hearing may be held on this matter.

No increase in property tax revenue, other than that resulting from the addition of new construction, increases in assessed value due to construction of electric generation wind turbine facilities classified as personal property, and improvements to property and any increase in the value of state-assessed property, may be authorized by a taxing district, other than the state, except by adoption of a separate ordinance or resolution, pursuant to notice, specifically authorizing the increase in terms of both dollars and percentage. The ordinance or resolution may cover a period of up to two years, but the ordinance shall specifically state for each year the dollar increase and percentage change in the levy from the previous year.

Passed by the Senate February 14, 2006.

Passed by the House March 4, 2006.

Approved by the Governor March 24, 2006.

Filed in Office of Secretary of State March 24, 2006.

CHAPTER 185

[Substitute Senate Bill 6225]

SPECIALTY PLUMBERS—DOMESTIC WATER PUMPING SYSTEMS

AN ACT Relating to regulating the business of installing, repairing, and maintaining domestic water pumping systems; amending RCW 18.106.010, 18.106.040, 18.106.050, 18.106.110, 19.28.041, 19.28.161, 19.28.051, 19.28.061, 18.106.070, 18.106.020, 19.28.211, 19.28.131, and 18.27.060; reenacting and amending RCW 19.28.191; and prescribing penalties.

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

Sec. 1. RCW 18.106.010 and 2003 c 399 s 102 are each amended to read as follows:

~~((Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meaning:))~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Advisory board" means the state advisory board of plumbers((:)).

(2) "Contractor" means any person, corporate or otherwise, who engages in, or offers or advertises to engage in, any work covered by the provisions of this chapter by way of trade or business, or any person, corporate or otherwise, who

employs anyone, or offers or advertises to employ anyone, to engage in any work covered by the provisions of this chapter.

(3) "Department" means the department of labor and industries.

(4) "Director" means the director of department of labor and industries.

(5) "Journeyman plumber" means any person who has been issued a certificate of competency by the department of labor and industries as provided in this chapter.

(6) "Like-in-kind" means having similar characteristics such as plumbing size, type, and function, and being in the same location.

(7) "Medical gas piping" means oxygen, nitrous oxide, high pressure nitrogen, medical compressed air, and medical vacuum systems.

(8) "Medical gas piping installer" means a journeyman plumber who has been issued a medical gas piping installer endorsement.

(9) "Plumbing" means that craft involved in installing, altering, repairing and renovating potable water systems, liquid waste systems, and medical gas piping systems within a building. Installation in a water system of water softening or water treatment equipment is not within the meaning of plumbing as used in this chapter.

(10) "Specialty plumber" means anyone who has been issued a specialty certificate of competency limited to:

(a) Installation, maintenance, and repair of the plumbing of single-family dwellings, duplexes, and apartment buildings that do not exceed three stories;

(b) Maintenance and repair of backflow prevention assemblies; or

(c) A domestic water pumping system consisting of the installation, maintenance, and repair of the pressurization, treatment, and filtration components of a domestic water system consisting of: One or more pumps; pressure, storage, and other tanks; filtration and treatment equipment; if appropriate, a pitless adapter; along with valves, transducers, and other plumbing components that:

(i) Are used to acquire, treat, store, or move water suitable for either drinking or other domestic purposes, including irrigation, to: (A) A single-family dwelling, duplex, or other similar place of residence; (B) a public water system, as defined in RCW 70.119.020 and as limited under RCW 70.119.040; or (C) a farm owned and operated by a person whose primary residence is located within thirty miles of any part of the farm;

(ii) Are located within the interior space, including but not limited to an attic, basement, crawl space, or garage, of a residential structure, which space is separated from the living area of the residence by a lockable entrance and fixed walls, ceiling, or floor;

(iii) If located within the interior space of a residential structure, are connected to a plumbing distribution system supplied and installed into the interior space by either: (A) A person who, pursuant to RCW 18.106.070 or 18.106.090, possesses a valid temporary permit or certificate of competency as a journeyman plumber, specialty plumber, or trainee, as defined in this chapter; or (B) a person exempt from the requirement to obtain a certified plumber to do such plumbing work under RCW 18.106.150.

Sec. 2. RCW 18.106.040 and 2001 c 281 s 2 are each amended to read as follows:

(1) Upon receipt of the application and evidence set forth in RCW 18.106.030, the director shall review the same and make a determination as to whether the applicant is eligible to take an examination for the certificate of competency. To be eligible to take the examination:

(a) Each applicant for a journeyman plumber's certificate of competency shall furnish written evidence that he or she has completed a course of study in the plumbing trade in the armed services of the United States or at a school licensed by the work force training and education coordinating board, or has had four or more years of experience under the direct supervision of a licensed journeyman plumber.

(b) Each applicant for a specialty plumber's certificate of competency under RCW 18.106.010(~~(8)~~) (10)(a) shall furnish written evidence that he or she has completed a course of study in the plumbing trade in the armed services of the United States or at a school licensed by the work force training and education coordinating board under chapter 28C.10 RCW, or that he or she has had at least three years practical experience in the specialty.

(c) Each applicant for a specialty plumber's certificate of competency under RCW 18.106.010(~~(8)~~) (10) (b) or (c) shall furnish written evidence that he or she is eligible to take the examination. These eligibility requirements for the specialty plumbers defined by RCW 18.106.010(10)(c) shall be one year of practical experience working on pumping systems not exceeding one hundred gallons per minute, and two years of practical experience working on pumping systems exceeding one hundred gallons per minute, or equivalent as determined by rule by the department in consultation with the advisory board, and that experience may be obtained at the same time the individual is meeting the experience required by RCW 19.28.191. The eligibility requirements for other specialty plumbers shall be ((adopted)) established by rule by the director pursuant to subsection (2)(b) of this section.

(2)(a) The director shall establish reasonable rules for the examinations to be given applicants for certificates of competency. In establishing the rules, the director shall consult with the state advisory board of plumbers as established in RCW 18.106.110.

(b) The director shall establish reasonable criteria by rule for determining an applicant's eligibility to take an examination for the certificate of competency for specialty plumbers under subsection (1)(c) of this section. In establishing the criteria, the director shall consult with the state advisory board of plumbers as established in RCW 18.106.110. These rules must take effect by ((July 1, 2002)) December 31, 2006.

(3) Upon determination that the applicant is eligible to take the examination, the director shall so notify the applicant, indicating the time and place for taking the same.

(4) No other requirement for eligibility may be imposed.

Sec. 3. RCW 18.106.050 and 1997 c 326 s 5 are each amended to read as follows:

(1) The department, with the advice of the advisory board, shall prepare a written examination to be administered to applicants for certificates of competency for journeyman plumber and specialty plumber. The examination shall be constructed to determine:

(a) Whether the applicant possesses varied general knowledge of the technical information and practical procedures that are identified with the trade of journeyman plumber or specialty plumber; and

(b) Whether the applicant is familiar with the applicable plumbing codes and the administrative rules of the department pertaining to plumbing and plumbers.

~~((The department shall administer the examination to eligible persons. All applicants shall, before taking the examination, pay to the department a fee.))~~

(2) ~~((For purposes of the medical gas piping installer endorsement,))~~ The department, with the consent of the advisory board, may enter into a contract with a nationally recognized testing agency to develop, administer, and score ~~((medical gas piping installer))~~ any examinations required by this chapter. All applicants shall, before taking an examination ~~((for a medical gas piping installer endorsement))~~, pay the required examination fee. The department shall set the examination fee by contract with a nationally recognized testing agency. The fee shall cover but not exceed the costs of preparing and administering the examination and the materials necessary to conduct the practical elements of the examination. The department shall approve training courses and set the fees for training courses for ~~((the medical gas piping installer endorsement))~~ examinations provided by this chapter.

(3) An examination to determine the competency of an applicant for a domestic water pumping system specialty plumbing certificate as defined by RCW 18.106.010(10)(c) must be established by the department in consultation with the advisory board by December 31, 2006. The department may include an examination for appropriate electrical safety and technical requirements as required by RCW 19.28.191 with the examination required by this section. The department, in consultation with the advisory board, may accept the certification by a professional or trade association or other acceptable entity as meeting the examination requirement of this section. Individuals who can provide evidence to the department prior to January 1, 2007, that they have been employed in the pump and irrigation business as defined by RCW 18.106.010(10)(c) for not less than four thousand hours in the most recent four calendar years shall be issued the appropriate certificate by the department upon receiving such documentation and applicable fees. The department shall establish a single document for those who have received both the plumbing specialty certification defined by this subsection and have also met the certification requirements for a pump and irrigation or domestic pump specialty electrician, showing that the individual has received both certifications.

(4) The department shall certify the results of the examinations provided by this chapter, and shall notify the applicant in writing whether he or she has passed or failed. Any applicant who has failed the examination may retake the examination, upon the terms and after a period of time that the director shall set by rule. The director may not limit the number of times that a person may take the examination.

Sec. 4. RCW 18.106.110 and 1997 c 307 s 1 are each amended to read as follows:

(1) There is created a state advisory board of plumbers, to be composed of ~~((five))~~ seven members appointed by the governor. Two members shall be journeyman plumbers, ~~((two))~~ one member shall be a specialty plumber, three

members shall be persons conducting a plumbing business, at least one of which shall be primarily engaged in a specialty plumbing business, and one member from the general public who is familiar with the business and trade of plumbing.

(2) The term of one journeyman plumber expires July 1, 1995; the term of the second journeyman plumber expires July 1, 2000; the term of the specialty plumber expires July 1, 2008; the term of one person conducting a plumbing business expires July 1, 1996; the term of the second person conducting a plumbing business expires July 1, 2000; the term of the third person conducting a plumbing business expires July 1, 2007; and the term of the public member expires July 1, 1997. Thereafter, upon the expiration of said terms, the governor shall appoint a new member to serve for a period of three years. However, to ensure that the board can continue to act, a member whose term expires shall continue to serve until his or her replacement is appointed. In the case of any vacancy on the board for any reason, the governor shall appoint a new member to serve out the term of the person whose position has become vacant.

(3) The advisory board shall carry out all the functions and duties enumerated in this chapter, as well as generally advise the department on all matters relative to this chapter.

(4) Each member of the advisory board shall receive travel expenses in accordance with the provisions of RCW 43.03.050 and 43.03.060 as now existing or hereafter amended for each day in which such member is actually engaged in attendance upon the meetings of the advisory board.

Sec. 5. RCW 19.28.041 and 2002 c 249 s 2 are each amended to read as follows:

(1) It is unlawful for any person, firm, partnership, corporation, or other entity to advertise, engage in, conduct, or carry on the business of installing or maintaining wires or equipment to convey electric current, or installing or maintaining equipment to be operated by electric current as it pertains to the electrical industry, without having an unrevoked, unsuspended, and unexpired electrical contractor license, issued by the department in accordance with this chapter. All electrical contractor licenses expire twenty-four calendar months following the day of their issue. The department may issue an electrical contractors license for a period of less than twenty-four months only for the purpose of equalizing the number of electrical contractor licenses that expire each month. Application for an electrical contractor license shall be made in writing to the department, accompanied by the required fee. The application shall state:

(a) The name and address of the applicant; in case of firms or partnerships, the names of the individuals composing the firm or partnership; in case of corporations, the names of the managing officials thereof;

(b) The location of the place of business of the applicant and the name under which the business is conducted;

(c) Employer social security number;

(d) Evidence of workers' compensation coverage for the applicant's employees working in Washington, as follows:

(i) The applicant's industrial insurance account number issued by the department;

(ii) The applicant's self-insurer number issued by the department; or

(iii) For applicants domiciled in a state or province of Canada subject to an agreement entered into under RCW 51.12.120(7), as permitted by the agreement, filing a certificate of coverage issued by the agency that administers the workers' compensation law in the applicant's state or province of domicile certifying that the applicant has secured the payment of compensation under the other state's or province's workers' compensation law;

(e) Employment security department number;

(f) State excise tax registration number;

(g) Unified business identifier (UBI) account number may be substituted for the information required by (d) of this subsection if the applicant will not employ employees in Washington, and by (e) and (f) of this subsection; and

(h) Whether a general or specialty electrical contractor license is sought and, if the latter, the type of specialty. Electrical contractor specialties include, but are not limited to: Residential, pump and irrigation, limited energy system, signs, nonresidential maintenance, restricted nonresidential maintenance, appliance repair, and a combination specialty. A general electrical contractor license shall grant to the holder the right to engage in, conduct, or carry on the business of installing or maintaining wires or equipment to carry electric current, and installing or maintaining equipment, or installing or maintaining material to fasten or insulate such wires or equipment to be operated by electric current, in the state of Washington. A specialty electrical contractor license shall grant to the holder a limited right to engage in, conduct, or carry on the business of installing or maintaining wires or equipment to carry electrical current, and installing or maintaining equipment; or installing or maintaining material to fasten or insulate such wires or equipment to be operated by electric current in the state of Washington as expressly allowed by the license.

(2) The department may verify the workers' compensation coverage information provided by the applicant under subsection (1)(d) of this section, including but not limited to information regarding the coverage of an individual employee of the applicant. If coverage is provided under the laws of another state, the department may notify the other state that the applicant is employing employees in Washington.

(3) The application for an electrical contractor license shall be accompanied by a bond in the sum of four thousand dollars with the state of Washington named as obligee in the bond, with good and sufficient surety, to be approved by the department. The bond shall at all times be kept in full force and effect, and any cancellation or revocation thereof, or withdrawal of the surety therefrom, suspends the license issued to the principal until a new bond has been filed and approved as provided in this section. Upon approval of a bond, the department shall on the next business day deposit the fee accompanying the application in the electrical license fund and shall file the bond in the office. The department shall upon request furnish to any person, firm, partnership, corporation, or other entity a certified copy of the bond upon the payment of a fee that the department shall set by rule. The fee shall cover but not exceed the cost of furnishing the certified copy. The bond shall be conditioned that in any installation or maintenance of wires or equipment to convey electrical current, and equipment to be operated by electrical current, the principal will comply with the provisions of this chapter and with any electrical ordinance, building code, or regulation of a city or town adopted pursuant to RCW 19.28.010(3) that is in effect at the time

of entering into a contract. The bond shall be conditioned further that the principal will pay for all labor, including employee benefits, and material furnished or used upon the work, taxes and contributions to the state of Washington, and all damages that may be sustained by any person, firm, partnership, corporation, or other entity due to a failure of the principal to make the installation or maintenance in accordance with this chapter or any applicable ordinance, building code, or regulation of a city or town adopted pursuant to RCW 19.28.010(3). In lieu of the surety bond required by this section the license applicant may file with the department a cash deposit or other negotiable security acceptable to the department. If the license applicant has filed a cash deposit, the department shall deposit the funds in a special trust savings account in a commercial bank, mutual savings bank, or savings and loan association and shall pay annually to the depositor the interest derived from the account.

(4) The department shall issue general or specialty electrical contractor licenses to applicants meeting all of the requirements of this chapter. The provisions of this chapter relating to the licensing of any person, firm, partnership, corporation, or other entity including the requirement of a bond with the state of Washington named as obligee therein and the collection of a fee therefor, are exclusive, and no political subdivision of the state of Washington may require or issue any licenses or bonds or charge any fee for the same or a similar purpose. No person, firm, partnership, corporation, or other entity holding more than one specialty contractor license under this chapter may be required to pay an annual fee for more than one such license or to post more than one four thousand dollar bond, equivalent cash deposit, or other negotiable security.

(5) To obtain a general or specialty electrical contractor license the applicant must designate an individual who currently possesses a valid master journeyman electrician's certificate of competency, master specialty electrician's certificate of competency in the specialty for which application has been made, or administrator's certificate as a general electrical contractor administrator or as a specialty electrical contractor administrator in the specialty for which application has been made.

(6) Administrator certificate specialties include but are not limited to: Residential, pump and irrigation or domestic pump, limited energy system, signs, nonresidential maintenance, restricted nonresidential maintenance, appliance repair, and combination specialty. To obtain an administrator's certificate an individual must pass an examination as set forth in RCW 19.28.051 unless the applicant was a licensed electrical contractor at any time during 1974. Applicants who were electrical contractors licensed by the state of Washington at any time during 1974 are entitled to receive a general electrical contractor administrator's certificate without examination if the applicants apply prior to January 1, 1984. The board of electrical examiners shall certify to the department the names of all persons who are entitled to either a general or specialty electrical contractor administrator's certificate.

(7) For a contractor doing domestic water pumping system work as defined by RCW 18.106.010(10)(c), the department shall consider the requirements of subsections (1)(a) through (h), (2), and (3) of this section to have been met to be a pump and irrigation or domestic pump licensed electrical contractor if the contractor has met the contractor registration requirements of chapter 18.27

RCW. The department shall establish a single registration/licensing document for those who qualify for both general contractor registration as defined in chapter 18.27 RCW and a pump and irrigation or domestic pump electrical contractor license as defined by this chapter.

Sec. 6. RCW 19.28.161 and 2002 c 249 s 4 are each amended to read as follows:

(1) No person may engage in the electrical construction trade without having a valid master journeyman electrician certificate of competency, journeyman electrician certificate of competency, master specialty electrician certificate of competency, or specialty electrician certificate of competency issued by the department in accordance with this chapter. Electrician certificate of competency specialties include, but are not limited to: Residential, pump and irrigation, limited energy system, signs, nonresidential maintenance, restricted nonresidential maintenance, and appliance repair. Until July 1, 2007, the department of labor and industries shall issue a written warning to any specialty pump and irrigation or domestic pump electrician not having a valid electrician certification. The warning will state that the individual must apply for an electrical training certificate or be qualified for and apply for electrician certification under the requirements in RCW 19.28.191(1)(g) within thirty calendar days of the warning. Only one warning will be issued to any individual. If the individual fails to comply with this section, the department shall issue a penalty as defined in RCW 19.28.271 to the individual.

(2) A person who is indentured in an apprenticeship program approved under chapter 49.04 RCW for the electrical construction trade or who is learning the electrical construction trade may work in the electrical construction trade if supervised by a certified master journeyman electrician, journeyman electrician, master specialty electrician in that electrician's specialty, or specialty electrician in that electrician's specialty. All apprentices and individuals learning the electrical construction trade shall obtain an electrical training certificate from the department. The certificate shall authorize the holder to learn the electrical construction trade while under the direct supervision of a master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. The holder of the electrical training certificate shall renew the certificate biennially. At the time of renewal, the holder shall provide the department with an accurate list of the holder's employers in the electrical construction industry for the previous biennial period and the number of hours worked for each employer. A biennial fee shall be charged for the issuance or renewal of the certificate. The department shall set the fee by rule. The fee shall cover but not exceed the cost of administering and enforcing the trainee certification and supervision requirements of this chapter. Apprentices and individuals learning the electrical construction trade shall have their electrical training certificates in their possession at all times that they are performing electrical work. They shall show their certificates to an authorized representative of the department at the representative's request.

(3) Any person who has been issued an electrical training certificate under this chapter may work if that person is under supervision. Supervision shall consist of a person being on the same job site and under the control of either a certified master journeyman electrician, journeyman electrician, master specialty

electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. Either a certified master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty shall be on the same job site as the noncertified individual for a minimum of seventy-five percent of each working day unless otherwise provided in this chapter.

(4) The ratio of noncertified individuals to certified master journeymen electricians, journeymen electricians, master specialty electricians, or specialty electricians on any one job site is as follows:

(a) When working as a specialty electrician, not more than two noncertified individuals for every certified master specialty electrician working in that electrician's specialty, specialty electrician working in that electrician's specialty, master journeyman electrician, or journeyman electrician, except that the ratio requirements are one certified master specialty electrician working in that electrician's specialty, specialty electrician working in that electrician's specialty, master journeyman electrician, or journeyman electrician working as a specialty electrician to no more than four students enrolled in and working as part of an electrical construction program at public community or technical colleges, or not-for-profit nationally accredited trade or technical schools licensed by the work force training and education coordinating board under chapter 28C.10 RCW. In meeting the ratio requirements for students enrolled in an electrical construction program at a trade school, a trade school may receive input and advice from the electrical board; and

(b) When working as a journeyman electrician, not more than one noncertified individual for every certified master journeyman electrician or journeyman electrician, except that the ratio requirements shall be one certified master journeyman electrician or journeyman electrician to no more than four students enrolled in and working as part of an electrical construction program at public community or technical colleges, or not-for-profit nationally accredited trade or technical schools licensed by the work force training and education coordinating board under chapter 28C.10 RCW. In meeting the ratio requirements for students enrolled in an electrical construction program at a trade school, a trade school may receive input and advice from the electrical board.

An individual who has a current training certificate and who has successfully completed or is currently enrolled in an approved apprenticeship program or in an electrical construction program at public community or technical colleges, or not-for-profit nationally accredited technical or trade schools licensed by the work force training and education coordinating board under chapter 28C.10 RCW, may work without direct on-site supervision during the last six months of meeting the practical experience requirements of this chapter.

(5) For the residential (as specified in WAC ((~~296-46A-930~~) 296-46B-920(2)(a)), pump and irrigation (as specified in WAC ((~~296-46A-930(2)(b)(i)~~) 296-46B-920(2)(b)), sign (as specified in WAC ((~~296-46A-930(2)(e)~~) 296-46B-920(2)(d)), limited energy (as specified in WAC ((~~296-46A-930(2)(e)(i)~~) 296-46B-920(2)(e)), nonresidential maintenance (as specified in WAC ((~~296-46A-930(2)(f)(i)~~) 296-46B-920(2)(g)), restricted nonresidential maintenance as determined by the department in rule, or other new nonresidential specialties, not

including appliance repair, as determined by the department in rule, either a master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty must be on the same job site as the noncertified individual for a minimum of seventy-five percent of each working day. Other specialties must meet the requirements specified in RCW 19.28.191(~~((1)(f)(ii))~~) (1)(g)(ii). When the ratio of certified electricians to noncertified individuals on a job site is one certified electrician to three or four noncertified individuals, the certified electrician must:

(a) Directly supervise and instruct the noncertified individuals and the certified electrician may not directly make or engage in an electrical installation; and

(b) Be on the same job site as the noncertified individual for a minimum of one hundred percent of each working day.

(6) The electrical contractor shall accurately verify and attest to the electrical trainee hours worked by electrical trainees on behalf of the electrical contractor.

Sec. 7. RCW 19.28.191 and 2003 c 399 s 601 and 2003 c 211 s 1 are each reenacted and amended to read as follows:

(1) Upon receipt of the application, the department shall review the application and determine whether the applicant is eligible to take an examination for the master journeyman electrician, journeyman electrician, master specialty electrician, or specialty electrician certificate of competency.

(a) Before July 1, 2005, an applicant who possesses a valid journeyman electrician certificate of competency in effect for the previous four years and a valid general administrator's certificate may apply for a master journeyman electrician certificate of competency without examination.

(b) Before July 1, 2005, an applicant who possesses a valid specialty electrician certificate of competency, in the specialty applied for, for the previous two years and a valid specialty administrator's certificate, in the specialty applied for, may apply for a master specialty electrician certificate of competency without examination.

(c) Before December 1, 2003, the following persons may obtain an equipment repair specialty electrician certificate of competency without examination:

(i) A person who has successfully completed an apprenticeship program approved under chapter 49.04 RCW for the machinist trade; and

(ii) A person who provides evidence in a form prescribed by the department affirming that: (A) He or she was employed as of April 1, 2003, by a factory-authorized equipment dealer or service company; and (B) he or she has worked in equipment repair for a minimum of four thousand hours.

(d) To be eligible to take the examination for a master journeyman electrician certificate of competency the applicant must have possessed a valid journeyman electrician certificate of competency for four years.

(e) To be eligible to take the examination for a master specialty electrician certificate of competency the applicant must have possessed a valid specialty electrician certificate of competency, in the specialty applied for, for two years.

(f) To be eligible to take the examination for a journeyman certificate of competency the applicant must have:

(i) Worked in the electrical construction trade for a minimum of eight thousand hours, of which four thousand hours shall be in industrial or commercial electrical installation under the supervision of a master journeyman electrician or journeyman electrician and not more than a total of four thousand hours in all specialties under the supervision of a master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. Speciality electricians with less than a four thousand hour work experience requirement cannot credit the time required to obtain that specialty towards qualifying to become a journeyman electrician; or

(ii) Successfully completed an apprenticeship program approved under chapter 49.04 RCW for the electrical construction trade.

(g) To be eligible to take the examination for a specialty electrician certificate of competency the applicant must have:

(i) Worked in the residential (as specified in WAC ~~((296-46A-930))~~ 296-46B-920(2)(a)), pump and irrigation (as specified in WAC ~~((296-46A-930(2)(b)(i)))~~ 296-46B-920(2)(b)), sign (as specified in WAC ~~((296-46A-930(2)(c)))~~ 296-46B-920(2)(d)), limited energy (as specified in WAC ~~((296-46A-930(2)(e)(i)))~~ 296-46B-920(2)(e)), nonresidential maintenance (as specified in WAC ~~((296-46A-930(2)(f)(i)))~~ 296-46B-920(2)(g)), or other new nonresidential specialties as determined by the department in rule under the supervision of a master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty for a minimum of four thousand hours; ~~((e))~~

(ii) Worked in the appliance repair specialty as determined by the department in rule, restricted nonresidential maintenance as determined by the department in rule, the equipment repair specialty as determined by the department in rule, the pump and irrigation specialty other than as defined by (g)(i) of this subsection or domestic pump specialty as determined by the department in rule, or a specialty other than the designated specialties in (g)(i) of this subsection for a minimum of the initial ninety days, or longer if set by rule by the department. The restricted nonresidential maintenance specialty is limited to a maximum of 277 volts and 20 amperes for lighting branch circuits and/or a maximum of 250 volts and 60 amperes for other circuits, but excludes the replacement or repair of circuit breakers. The initial period must be spent under one hundred percent supervision of a master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. After this initial period, a person may take the specialty examination. If the person passes the examination, the person may work unsupervised for the balance of the minimum hours required for certification. A person may not be certified as a specialty electrician in the appliance repair specialty or in a specialty other than the designated specialties in (g)(i) of this subsection, however, until the person has worked a minimum of two thousand hours in that specialty, or longer if set by rule by the department; ~~((e))~~

(iii) Successfully completed an approved apprenticeship program under chapter 49.04 RCW for the applicant's specialty in the electrical construction trade; or

(iv) In meeting the training requirements for the pump and irrigation or domestic pump specialties, the individual shall be allowed to obtain the experience required by this section at the same time the individual is meeting the experience required by RCW 18.106.040(1)(c). After meeting the training requirements provided in this section, the individual may take the examination and upon passing the examination, meeting additional training requirements as may still be required for those seeking a pump and irrigation, or a domestic pump specialty certificate as defined by rule, and paying the applicable fees, the individual must be issued the appropriate certificate. The department may include an examination for specialty plumbing certificate defined in RCW 18.106.010(10)(c) with the examination required by this section. The department, by rule and in consultation with the electrical board, may establish additional equivalent ways to gain the experience requirements required by this subsection. Individuals who are able to provide evidence to the department, prior to January 1, 2007, that they have been employed as a pump installer in the pump and irrigation or domestic pump business by an appropriately licensed electrical contractor, registered general contractor defined by chapter 18.27 RCW, or appropriate general specialty contractor defined by chapter 18.27 RCW for not less than eight thousand hours in the most recent six calendar years shall be issued the appropriate certificate by the department upon receiving such documentation and applicable fees. The department shall establish a single document for those who have received both an electrical specialty certification as defined by this subsection and have also met the certification requirements for the specialty plumber as defined by RCW 18.106.010(10)(c), showing that the individual has received both certifications. No other experience or training requirements may be imposed.

(h) Any applicant for a journeyman electrician certificate of competency who has successfully completed a two-year program in the electrical construction trade at public community or technical colleges, or not-for-profit nationally accredited technical or trade schools licensed by the work force training and education coordinating board under chapter 28C.10 RCW may substitute up to two years of the technical or trade school program for two years of work experience under a master journeyman electrician or journeyman electrician. The applicant shall obtain the additional two years of work experience required in industrial or commercial electrical installation prior to the beginning, or after the completion, of the technical school program. Any applicant who has received training in the electrical construction trade in the armed service of the United States may be eligible to apply armed service work experience towards qualification to take the examination for the journeyman electrician certificate of competency.

(i) An applicant for a specialty electrician certificate of competency who, after January 1, 2000, has successfully completed a two-year program in the electrical construction trade at a public community or technical college, or a not-for-profit nationally accredited technical or trade school licensed by the work force training and education coordinating board under chapter 28C.10 RCW, may substitute up to one year of the technical or trade school program for one year of work experience under a master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. Any applicant who

has received training in the electrical construction trade in the armed services of the United States may be eligible to apply armed service work experience towards qualification to take the examination for an appropriate specialty electrician certificate of competency.

(j) The department must determine whether hours of training and experience in the armed services or school program are in the electrical construction trade and appropriate as a substitute for hours of work experience. The department must use the following criteria for evaluating the equivalence of classroom electrical training programs and work in the electrical construction trade:

(i) A two-year electrical training program must consist of three thousand or more hours.

(ii) In a two-year electrical training program, a minimum of two thousand four hundred hours of student/instructor contact time must be technical electrical instruction directly related to the scope of work of the electrical specialty. Student/instructor contact time includes lecture and in-school lab.

(iii) The department may not allow credit for a program that accepts more than one thousand hours transferred from another school's program.

(iv) Electrical specialty training school programs of less than two years will have all of the above student/instructor contact time hours proportionately reduced. Such programs may not apply to more than fifty percent of the work experience required to attain certification.

(v) Electrical training programs of less than two years may not be credited towards qualification for journeyman electrician unless the training program is used to gain qualification for a four thousand hour electrical specialty.

(k) No other requirement for eligibility may be imposed.

(2) The department shall establish reasonable rules for the examinations to be given applicants for certificates of competency. In establishing the rules, the department shall consult with the board. Upon determination that the applicant is eligible to take the examination, the department shall so notify the applicant, indicating the time and place for taking the examination.

(3) No noncertified individual may work unsupervised more than one year beyond the date when the trainee would be eligible to test for a certificate of competency if working on a full-time basis after original application for the trainee certificate. For the purposes of this section, full-time basis means two thousand hours.

Sec. 8. RCW 19.28.051 and 2001 c 211 s 4 are each amended to read as follows:

It shall be the purpose and function of the board to establish, in addition to a general electrical contractors' license, such classifications of specialty electrical contractors' licenses as it deems appropriate with regard to individual sections pertaining to state adopted codes in this chapter. In addition, it shall be the purpose and function of the board to establish and administer written examinations for general electrical administrators' certificates and the various specialty electrical administrators' certificates. Examinations shall be designed to reasonably ~~((insure))~~ ensure that general and specialty electrical administrators' certificate holders are competent to engage in and supervise the work covered by this statute and their respective licenses. The examinations shall include questions from the following categories to ~~((assure))~~ ensure proper safety and protection for the general public: (1) Safety, (2) state electrical code,

and (3) electrical theory. The department with the consent of the board shall be permitted to enter into a contract with a professional testing agency to develop, administer, and score these examinations, or accept certifications or other appropriate demonstrations established by independent entities that otherwise fulfill the examination requirements of this section. Individuals who can provide evidence to the department, prior to January 1, 2007, that they have been employed as a pump installer in the pump and irrigation or domestic pump business by an appropriately licensed electrical contractor, registered general contractor defined by chapter 18.27 RCW, or appropriate general specialty contractor defined by chapter 18.27 RCW for not less than eight thousand hours in the most recent six calendar years shall be issued the appropriate administrator's certificate by the department upon receiving such documentation and applicable fees. The fee for the examination may be set by the department in its contract with the professional testing agency. The department may direct that the applicant pay the fee to the professional testing agency. The fee shall cover but not exceed the costs of preparing and administering the examination. It shall be the further purpose and function of this board to advise the director as to the need of additional electrical inspectors and compliance officers to be utilized by the director on either a full-time or part-time employment basis and to carry out the duties enumerated in RCW 19.28.161 through 19.28.271 as well as generally advise the department on all matters relative to RCW 19.28.161 through 19.28.271.

Sec. 9. RCW 19.28.061 and 2002 c 249 s 3 are each amended to read as follows:

(1) Each applicant for an electrical contractor's license, other than an individual, shall designate a supervisory employee or member of the firm to take the required master electrician's or administrator's examination. Effective July 1, 1987, a supervisory employee designated as the electrical contractor's master electrician or administrator shall be a full-time supervisory employee. This person shall be designated as master electrician or administrator under the license. No person may concurrently qualify as master electrician or administrator for more than one contractor. If the relationship of the master electrician or administrator with the electrical contractor is terminated, the contractor's license is void within ninety days unless another master electrician or administrator is qualified by the board. However, if the master electrician or administrator dies or is otherwise incapacitated, the contractor's license is void within one hundred eighty days unless another master electrician or administrator is qualified by the board. The contractor must notify the department in writing within ten days if the master electrician's or administrator's relationship with the contractor terminates due to the master electrician's or administrator's death or incapacitation.

(2) The department must issue an administrator's certificate to all applicants who have passed the examination as provided in RCW 19.28.051 and this section, and who have complied with the rules adopted under this chapter. The administrator's certificate must bear the date of issuance, expires on the holder's birthday, and is nontransferable. The certificate must be renewed every three years, upon application, on or before the holder's birthday.

(a) If the certificate holder demonstrates to the department that he or she has satisfactorily completed an annual eight-hour continuing education course, the

certificate may be renewed by appropriate application without examination unless the certificate has been revoked, suspended, or not renewed within ninety days after the expiration date. For holders of pump and irrigation or domestic pump specialty administrator certificates, the continuing education may comprise both electrical and plumbing education.

(b) The contents and requirements for satisfactory completion of the continuing education course must be determined by the director and approved by the board.

(c) The department must accept proof of a certificate holder's satisfactory completion of a continuing education course offered in another state as meeting the requirements for maintaining a current Washington state certificate if the department is satisfied the course is comparable in nature to that required in Washington state for maintaining a current certificate.

(3) A fee must be assessed for each administrator's certificate and for each renewal. An individual holding more than one administrator's certificate under this chapter is not required to pay fees for more than one certificate. The department must set the fees by rule for issuance and renewal of a certificate. The fees must cover, but not exceed, the costs of issuing the certificates and of administering and enforcing the administrator certification requirements of this chapter.

(4) The department may deny an application for an administrator's certificate for up to two years if the applicant's previous administrator's certificate has been revoked for a serious violation and all appeals concerning the revocation have been exhausted. For the purposes of this section only, a serious violation is a violation that presents imminent danger to the public. The certificate may be renewed for a three-year period without examination by appropriate application unless the certificate has been revoked, suspended, or not renewed within ninety days after the expiration date. If the certificate is not renewed before the expiration date, the individual shall pay twice the usual fee. A person may take the administrator's examination as many times as necessary to pass without limit.

(5) The designated master electrician or administrator shall:

(a) Be a member of the firm or a supervisory employee and shall be available during working hours to carry out the duties of an administrator under this section;

(b) Ensure that all electrical work complies with the electrical installation laws and rules of the state;

(c) Ensure that the proper electrical safety procedures are used;

(d) Ensure that all electrical labels, permits, and licenses required to perform electrical work are used;

(e) See that corrective notices issued by an inspecting authority are complied with; and

(f) Notify the department in writing within ten days if the master electrician or administrator terminates the relationship with the electrical contractor.

(6) The department shall not by rule change the administrator's duties under subsection (5) of this section.

Sec. 10. RCW 18.106.070 and 2003 c 399 s 801 are each amended to read as follows:

(1) The department shall issue a certificate of competency to all applicants who have passed the examination and have paid the fee for the certificate. The certificate shall bear the date of issuance, and shall expire on the birthdate of the holder immediately following the date of issuance. The certificate shall be renewable every other year, upon application, on or before the birthdate of the holder, except for specialty plumbers defined by RCW 18.106.010(10)(c) who also have an electrical certification issued jointly as provided by RCW 18.106.050(3) in which case their certificate shall be renewable every three years on or before the birthdate of the holder. The department shall renew a certificate of competency if the applicant: (a) Pays the renewal fee assessed by the department; and (b) during the past two years has completed sixteen hours of continuing education approved by the department with the advice of the advisory board, including four hours related to electrical safety. For holders of the specialty plumber certificate under RCW 18.106.010(10)(c), the continuing education may comprise both electrical and plumbing education with a minimum of twelve of the required twenty-four hours of continuing education in plumbing. If a person fails to renew the certificate by the renewal date, he or she must pay a doubled fee. If the person does not renew the certificate within ninety days of the renewal date, he or she must retake the examination and pay the examination fee.

The journeyman plumber and specialty plumber certificates of competency, the medical gas piping installer endorsement, and the temporary permit provided for in this chapter grant the holder the right to engage in the work of plumbing as a journeyman plumber, specialty plumber, or medical gas piping installer, in accordance with their provisions throughout the state and within any of its political subdivisions on any job or any employment without additional proof of competency or any other license or permit or fee to engage in the work. This section does not preclude employees from adhering to a union security clause in any employment where such a requirement exists.

(2) A person who is indentured in an apprenticeship program approved under chapter 49.04 RCW for the plumbing construction trade or who is learning the plumbing construction trade may work in the plumbing construction trade if supervised by a certified journeyman plumber or a certified specialty plumber in that plumber's specialty. All apprentices and individuals learning the plumbing construction trade shall obtain a plumbing training certificate from the department. The certificate shall authorize the holder to learn the plumbing construction trade while under the direct supervision of a journeyman plumber or a specialty plumber working in his or her specialty. The holder of the plumbing training certificate shall renew the certificate annually. At the time of renewal, the holder shall provide the department with an accurate list of the holder's employers in the plumbing construction industry for the previous year and the number of hours worked for each employer. An annual fee shall be charged for the issuance or renewal of the certificate. The department shall set the fee by rule. The fee shall cover but not exceed the cost of administering and enforcing the trainee certification and supervision requirements of this chapter. Apprentices and individuals learning the plumbing construction trade shall have their plumbing training certificates in their possession at all times that they are performing plumbing work. They shall show their certificates to an authorized representative of the department at the representative's request.

(3) Any person who has been issued a plumbing training certificate under this chapter may work if that person is under supervision. Supervision shall consist of a person being on the same job site and under the control of either a journeyman plumber or an appropriate specialty plumber who has an applicable certificate of competency issued under this chapter. Either a journeyman plumber or an appropriate specialty plumber shall be on the same job site as the noncertified individual for a minimum of seventy-five percent of each working day unless otherwise provided in this chapter. The ratio of noncertified individuals to certified journeymen or specialty plumbers working on a job site shall be: (a) Not more than two noncertified plumbers working on any one job site for every certified specialty plumber or journeyman plumber working as a specialty plumber; and (b) not more than one noncertified plumber working on any one job site for every certified journeyman plumber working as a journeyman plumber.

An individual who has a current training certificate and who has successfully completed or is currently enrolled in an approved apprenticeship program or in a technical school program in the plumbing construction trade in a school approved by the work force training and education coordinating board, may work without direct on-site supervision during the last six months of meeting the practical experience requirements of this chapter.

(4) An individual who has a current training certificate and who has successfully completed or is currently enrolled in a medical gas piping installer training course approved by the department may work on medical gas piping systems if the individual is under the direct supervision of a certified medical gas piping installer who holds a medical gas piping installer endorsement one hundred percent of a working day on a one-to-one ratio.

(5) The training to become a certified plumber must include not less than sixteen hours of classroom training established by the director with the advice of the advisory board. The classroom training must include, but not be limited to, electrical wiring safety, grounding, bonding, and other related items plumbers need to know to work under RCW 19.28.091.

(6) All persons who are certified plumbers before January 1, 2003, are deemed to have received the classroom training required in subsection (5) of this section.

Sec. 11. RCW 18.106.020 and 2002 c 82 s 2 are each amended to read as follows:

(1) No person may engage in or offer to engage in the trade of plumbing without having a journeyman certificate, specialty certificate, temporary permit, or trainee certificate. A trainee must be supervised by a person who has a journeyman certificate, specialty certificate, or temporary permit, as specified in RCW 18.106.070. No contractor may employ a person to engage in or offer to engage in the trade of plumbing unless the person employed has a journeyman certificate, specialty certificate, temporary permit, or trainee certificate. This section does not apply to a contractor who is contracting for work on his or her own residence. Until July 1, 2007, the department shall issue a written warning to any specialty plumber defined by RCW 18.106.010(10)(c) not having a valid plumber certification. The warning will state that the individual must apply for a plumber training certificate or be qualified for and apply for plumber certification under the requirements in RCW 18.106.040 within thirty calendar

days of the warning. Only one warning will be issued to any individual. If the individual fails to comply with this section, the department shall issue a penalty or penalties as authorized by this chapter.

(2) No person may engage in or offer to engage in medical gas piping installation without having a certificate of competency as a journeyman plumber and a medical gas piping installer endorsement. A trainee may engage in medical gas piping installation if he or she has a training certificate and is supervised by a person with a medical gas piping installer endorsement. No contractor may employ a person to engage in or offer to engage in medical gas piping installation unless the person employed has a certificate of competency as a journeyman plumber and a medical gas piping installer endorsement.

(3) No contractor may advertise, offer to do work, submit a bid, or perform any work under this chapter without being registered as a contractor under chapter 18.27 RCW.

(4) Violation of this section is an infraction. Each day in which a person engages in the trade of plumbing in violation of this section or employs a person in violation of this section is a separate infraction. Each worksite at which a person engages in the trade of plumbing in violation of this section or at which a person is employed in violation of this section is a separate infraction.

(5) Notices of infractions for violations of this section may be issued to:

(a) The person engaging in or offering to engage in the trade of plumbing in violation of this section;

(b) The contractor in violation of this section; and

(c) The contractor's employee who authorized the work assignment of the person employed in violation of this section.

Sec. 12. RCW 19.28.211 and 2002 c 249 s 7 are each amended to read as follows:

(1) The department shall issue a certificate of competency to all applicants who have passed the examination provided in RCW 19.28.201, and who have complied with RCW 19.28.161 through 19.28.271 and the rules adopted under this chapter. The certificate shall bear the date of issuance, and shall expire on the holder's birthday. The certificate shall be renewed every three years, upon application, on or before the holder's birthdate. A fee shall be assessed for each certificate and for each annual renewal.

(2) If the certificate holder demonstrates to the department that he or she has satisfactorily completed an annual eight-hour continuing education course, the certificate may be renewed without examination by appropriate application unless the certificate has been revoked, suspended, or not renewed within ninety days after the expiration date. For pump and irrigation or domestic pump specialty electricians, the continuing education course may combine both electrical and plumbing education provided that there is a minimum of four hours of electrical training in the course.

(a) The contents and requirements for satisfactory completion of the continuing education course shall be determined by the director and approved by the board.

(b) The department shall accept proof of a certificate holder's satisfactory completion of a continuing education course offered in another state as meeting the requirements for maintaining a current Washington state certificate of competency if the department is satisfied the course is comparable in nature to

that required in Washington state for maintaining a current certificate of competency.

(3) If the certificate is not renewed before the expiration date, the individual shall pay twice the usual fee. The department shall set the fees by rule for issuance and renewal of a certificate of competency. The fees shall cover but not exceed the costs of issuing the certificates and of administering and enforcing the electrician certification requirements of this chapter.

(4) The certificates of competency and temporary permits provided for in this chapter grant the holder the right to work in the electrical construction trade as a master electrician, journeyman electrician, or specialty electrician in accordance with their provisions throughout the state and within any of its political subdivisions without additional proof of competency or any other license, permit, or fee to engage in such work.

Sec. 13. RCW 19.28.131 and 2001 c 211 s 8 are each amended to read as follows:

Until July 1, 2007, the department shall issue a written warning to any specialty contractor, performing the scope of work defined by rule for the pump and irrigation or domestic pump specialties, not having a valid electrical contractor license. The warning will state that the contractor must be qualified for and apply for a specialty electrical contractor license under the requirements in RCW 19.28.041 within thirty calendar days of the warning. Only one warning will be issued to any contractor. If the contractor fails to comply with this section, the department shall issue a penalty or penalties as authorized in this section to the contractor. Any person, firm, partnership, corporation, or other entity violating any of the provisions of RCW 19.28.010 through 19.28.141 and 19.28.311 through 19.28.361 shall be assessed a penalty of not less than fifty dollars or more than ten thousand dollars. The department shall set by rule a schedule of penalties for violating RCW 19.28.010 through 19.28.141 and 19.28.311 through 19.28.361. The department shall notify the person, firm, partnership, corporation, or other entity violating any of the provisions of RCW 19.28.010 through 19.28.141 and 19.28.311 through 19.28.361 of the amount of the penalty and of the specific violation by certified mail, return receipt requested, sent to the last known address of the assessed party. Any penalty is subject to review by an appeal to the board. The filing of an appeal stays the effect of the penalty until the board makes its decision. The appeal shall be filed within twenty days after notice of the penalty is given to the assessed party by certified mail, return receipt requested, sent to the last known address of the assessed party and shall be made by filing a written notice of appeal with the department. The notice shall be accompanied by a certified check for two hundred dollars, which shall be returned to the assessed party if the decision of the department is not sustained by the board. If the board sustains the decision of the department, the two hundred dollars shall be applied by the department to the payment of the per diem and expenses of the members of the board incurred in the matter, and any balance remaining after payment of per diem and expenses shall be paid into the electrical license fund. The hearing and review procedures shall be conducted in accordance with chapter 34.05 RCW. The board shall assign its hearings to an administrative law judge to conduct the hearing and issue a proposed decision and order. The board shall be allowed a minimum of

twenty days to review a proposed decision and shall issue its decision no later than the next regularly scheduled board meeting.

Sec. 14. RCW 18.27.060 and 2001 c 159 s 5 are each amended to read as follows:

(1) A certificate of registration shall be valid for two years and shall be renewed on or before the expiration date. The department shall issue to the applicant a certificate of registration upon compliance with the registration requirements of this chapter.

(2) If the department approves an application, it shall issue a certificate of registration to the applicant.

(3) If a contractor's surety bond or other security has an unsatisfied judgment against it or is canceled, or if the contractor's insurance policy is canceled, the contractor's registration shall be automatically suspended on the effective date of the impairment or cancellation. The department shall mail notice of the suspension to the contractor's address on the certificate of registration by certified and by first class mail within two days after suspension.

(4) Renewal of registration is valid on the date the department receives the required fee and proof of bond and liability insurance, if sent by certified mail or other means requiring proof of delivery. The receipt or proof of delivery shall serve as the contractor's proof of renewed registration until he or she receives verification from the department.

(5) The department shall immediately suspend the certificate of registration of a contractor who has been certified by the department of social and health services as a person who is not in compliance with a support order or a ~~((residential or))~~ visitation order as provided in RCW 74.20A.320. The certificate of registration shall not be reissued or renewed unless the person provides to the department a release from the department of social and health services stating that he or she is in compliance with the order and the person has continued to meet all other requirements for certification during the suspension.

(6) For a contractor who employs plumbers, as described in RCW 18.106.010(10)(c), and is also required to be licensed as an electrical contractor as required in RCW 19.28.041, while doing pump and irrigation or domestic pump work described in rule as authorized by RCW 19.28.251, the department shall establish a single registration/licensing document for those who qualify for both general contractor registration as defined by this chapter and an electrical contractor license as defined by chapter 19.28 RCW.

Passed by the Senate March 6, 2006.

Passed by the House March 1, 2006.

Approved by the Governor March 24, 2006.

Filed in Office of Secretary of State March 24, 2006.

CHAPTER 186

[Substitute Senate Bill 6401]

CHARTER LICENSES

AN ACT Relating to charter licenses; and amending RCW 77.65.150.

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

Sec. 1. RCW 77.65.150 and 2000 c 107 s 36 are each amended to read as follows:

(1) The director shall issue the charter licenses and angler permits listed in this section according to the requirements of this title. The licenses and permits and their annual fees and surcharges are:

	License or Permit	Annual Fee (RCW 77.95.090 Surcharge)		Governing Section
		Resident	Nonresident	
(a)	Nonsalmon charter	\$225	\$375	
(b)	Salmon charter	\$380 (plus \$100)	\$685 (plus \$100)	RCW 77.70.050
(c)	Salmon angler	\$ 0	\$ 0	RCW 77.70.060
(d)	Salmon roe	\$ 95	\$ 95	RCW 77.65.350

(2) A salmon charter license designating a vessel is required to operate a charter boat ~~((to take))~~ from which persons may, for a fee, fish for salmon, other food fish, and shellfish. The director may issue a salmon charter license only to a person who meets the qualifications of RCW 77.70.050.

(3) A nonsalmon charter license designating a vessel is required to operate a charter boat ~~((to take))~~ from which persons may, for a fee, fish for food fish other than salmon and shellfish. ~~((As used in this subsection, "food fish" does not include salmon.))~~

(4)(a) "Charter boat" means a vessel from which persons may, for a fee, fish for food fish or shellfish for personal use~~((, and that brings food fish or shellfish into state ports or brings food fish or shellfish taken from state waters into United States ports))~~ in those state waters set forth in (b) of this subsection. "Charter boat" also means a vessel from which persons may, for a fee, fish for food fish or shellfish for personal use in offshore waters or in the waters of other states. The director may specify by rule when a vessel is a "charter boat" within this definition. ~~((("Charter boat" does not mean a vessel used by a guide for clients fishing for food fish for personal use in freshwater rivers, streams, and lakes, other than Lake Washington or that part of the Columbia River below the bridge at Longview.))~~

(b) A person may not operate a vessel from which persons may, for a fee, fish for food fish or shellfish in Puget Sound, Grays Harbor, Willapa Bay, Pacific Ocean waters, Lake Washington, or the Columbia river below the bridge at Longview unless the vessel is designated on a charter boat license.

(5) A charter boat licensed in Oregon may fish without a Washington charter license under the same rules as Washington charter boat operators in ocean waters within the jurisdiction of Washington state from the southern border of the state of Washington to Leadbetter Point, as long as the Oregon vessel does not ~~((land at any Washington port with the purpose of taking on or discharging passengers))~~ take on or discharge passengers for any purpose from any Washington port, the Washington shore, or a dock, landing, or other point in Washington. The provisions of this subsection shall be in effect as long as the state of Oregon has reciprocal laws and regulations.

(6) A salmon charter license under subsection (1)(b) of this section may be renewed if the license holder notifies the department by May 1st of that year that he or she will not participate in the fishery during that calendar year. The license

holder must pay the one hundred-dollar enhancement surcharge, plus a fifteen-dollar handling charge, in order to be considered a valid renewal and eligible to renew the license the following year.

Passed by the Senate February 14, 2006.

Passed by the House February 28, 2006.

Approved by the Governor March 24, 2006.

Filed in Office of Secretary of State March 24, 2006.

CHAPTER 187

[Substitute House Bill 2415]

UNDERINSURED MOTORISTS

AN ACT Relating to compensating the victims of uninsured and underinsured motorists; and amending RCW 48.22.030.

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

Sec. 1. RCW 48.22.030 and 2004 c 90 s 1 are each amended to read as follows:

(1) "Underinsured motor vehicle" means a motor vehicle with respect to the ownership, maintenance, or use of which either no bodily injury or property damage liability bond or insurance policy applies at the time of an accident, or with respect to which the sum of the limits of liability under all bodily injury or property damage liability bonds and insurance policies applicable to a covered person after an accident is less than the applicable damages which the covered person is legally entitled to recover.

(2) No new policy or renewal of an existing policy insuring against loss resulting from liability imposed by law for bodily injury, death, or property damage, suffered by any person arising out of the ownership, maintenance, or use of a motor vehicle shall be issued with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of underinsured motor vehicles, hit-and-run motor vehicles, and phantom vehicles because of bodily injury, death, or property damage, resulting therefrom, except while operating or occupying a motorcycle or motor-driven cycle, and except while operating or occupying a motor vehicle owned or available for the regular use by the named insured or any family member, and which is not insured under the liability coverage of the policy. The coverage required to be offered under this chapter is not applicable to general liability policies, commonly known as umbrella policies, or other policies which apply only as excess to the insurance directly applicable to the vehicle insured.

(3) Except as to property damage, coverage required under subsection (2) of this section shall be in the same amount as the insured's third party liability coverage unless the insured rejects all or part of the coverage as provided in subsection (4) of this section. Coverage for property damage need only be issued in conjunction with coverage for bodily injury or death. Property damage coverage required under subsection (2) of this section shall mean physical damage to the insured motor vehicle unless the policy specifically provides coverage for the contents thereof or other forms of property damage.

(4) A named insured or spouse may reject, in writing, underinsured coverage for bodily injury or death, or property damage, and the requirements of subsections (2) and (3) of this section shall not apply. If a named insured or spouse has rejected underinsured coverage, such coverage shall not be included in any supplemental or renewal policy unless a named insured or spouse subsequently requests such coverage in writing. The requirement of a written rejection under this subsection shall apply only to the original issuance of policies issued after July 24, 1983, and not to any renewal or replacement policy.

(5) The limit of liability under the policy coverage may be defined as the maximum limits of liability for all damages resulting from any one accident regardless of the number of covered persons, claims made, or vehicles or premiums shown on the policy, or premiums paid, or vehicles involved in an accident.

(6) The policy may provide that if an injured person has other similar insurance available to him under other policies, the total limits of liability of all coverages shall not exceed the higher of the applicable limits of the respective coverages.

(7)(a) The policy may provide for a deductible of not more than three hundred dollars for payment for property damage when the damage is caused by a hit-and-run driver or a phantom vehicle.

(b) In all other cases of underinsured property damage coverage, the policy may provide for a deductible of not more than one hundred dollars.

(8) For the purposes of this chapter, a "phantom vehicle" shall mean a motor vehicle which causes bodily injury, death, or property damage to an insured and has no physical contact with the insured or the vehicle which the insured is occupying at the time of the accident if:

(a) The facts of the accident can be corroborated by competent evidence other than the testimony of the insured or any person having an underinsured motorist claim resulting from the accident; and

(b) The accident has been reported to the appropriate law enforcement agency within seventy-two hours of the accident.

(9) An insurer who elects to write motorcycle or motor-driven cycle insurance in this state must provide information to prospective insureds about the coverage.

(10) If the covered person seeking underinsured motorist coverage under this section was the intended victim of the tortfeasor, the incident must be reported to the appropriate law enforcement agency and the covered person must cooperate with any related law enforcement investigation.

(11) The purpose of this section is to protect innocent victims of motorists of underinsured motor vehicles. Covered persons are entitled to coverage without regard to whether an incident was intentionally caused. A person is not entitled to coverage if the insurer can demonstrate that the covered person intended to cause the damage for which underinsured motorists' coverage is sought. As used in this section, and in the section of policies providing the underinsured motorist coverage described in this section, "accident" means an occurrence that is unexpected and unintended from the standpoint of the covered person.

(12) "Underinsured coverage," for the purposes of this section, means coverage for "underinsured motor vehicles," as defined in subsection (1) of this section.

Passed by the House March 4, 2006.
Passed by the Senate February 28, 2006.
Approved by the Governor March 24, 2006.
Filed in Office of Secretary of State March 24, 2006.

CHAPTER 188

[House Bill 2567]

METHAMPHETAMINE PRECURSOR POSSESSION

AN ACT Relating to the possession of methamphetamine precursors; adding a new section to chapter 9.91 RCW; and prescribing penalties.

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

NEW SECTION. Sec. 1. A new section is added to chapter 9.91 RCW to read as follows:

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Iodine matrix" means iodine at a concentration greater than two percent by weight in a matrix or solution.

(b) "Matrix" means something, as a substance, in which something else originates, develops, or is contained.

(c) "Methylsulfonylmethane" means methylsulfonylmethane in its powder form only, and does not include products containing methylsulfonylmethane in other forms such as liquids, tablets, capsules not containing methylsulfonylmethane in pure powder form, ointments, creams, cosmetics, foods, and beverages.

(2) Any person who knowingly purchases in a thirty-day period or possesses any quantity of iodine in its elemental form, an iodine matrix, or more than two pounds of methylsulfonylmethane is guilty of a gross misdemeanor, except as provided in subsection (3) of this section.

(3) Subsection (2) of this section does not apply to:

(a) A person who possesses iodine in its elemental form or an iodine matrix as a prescription drug, under a prescription issued by a licensed veterinarian, physician, or advanced registered nurse practitioner;

(b) A person who possesses iodine in its elemental form, an iodine matrix, or any quantity of methylsulfonylmethane in its powder form and is actively engaged in the practice of animal husbandry of livestock;

(c) A person who possesses iodine in its elemental form or an iodine matrix in conjunction with experiments conducted in a chemistry or chemistry-related laboratory maintained by a:

(i) Public or private secondary school;

(ii) Public or private institution of higher education that is accredited by a regional or national accrediting agency recognized by the United States department of education;

(iii) Manufacturing facility, government agency, or research facility in the course of lawful business activities;

(d) A veterinarian, physician, advanced registered nurse practitioner, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman, or common carrier, or an agent of any of these persons who possesses iodine in its

elemental form, an iodine matrix, or methylsulfonylmethane in its powder form in the regular course of lawful business activities; or

(e) A person working in a general hospital who possesses iodine in its elemental form or an iodine matrix in the regular course of employment at the hospital.

(4) Any person who purchases any quantity of iodine in its elemental form, an iodine matrix, or any quantity of methylsulfonylmethane must present an identification card or driver's license issued by any state in the United States or jurisdiction of another country before purchasing the item.

(5) The Washington state patrol shall develop a form to be used in recording transactions involving iodine in its elemental form, an iodine matrix, or methylsulfonylmethane. A person who sells or otherwise transfers any quantity of iodine in its elemental form, an iodine matrix, or any quantity of methylsulfonylmethane to a person for any purpose authorized in subsection (3) of this section must record each sale or transfer. The record must be made on the form developed by the Washington state patrol and must be retained by the person for at least three years. The Washington state patrol or any local law enforcement agency may request access to the records:

(a) Failure to make or retain a record required under this subsection is a misdemeanor.

(b) Failure to comply with a request for access to records required under this subsection to the Washington state patrol or a local law enforcement agency is a misdemeanor.

Passed by the House March 4, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 24, 2006.

Filed in Office of Secretary of State March 24, 2006.

CHAPTER 189

[Substitute House Bill 2691]

PUBLIC EMPLOYEES RETIREMENT SYSTEM—JUDICIAL RETIREMENT ACCOUNT

AN ACT Relating to public retirement benefits for justices and judges; adding a new section to chapter 2.14 RCW; adding new sections to chapter 41.40 RCW; adding new sections to chapter 41.32 RCW; adding new sections to chapter 41.45 RCW; and providing an effective date.

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

NEW SECTION. Sec. 1. A new section is added to chapter 2.14 RCW to read as follows:

Beginning January 1, 2007, through December 31, 2007, any member of the public employees' retirement system eligible to participate in the judicial retirement account plan under this chapter may make a one-time irrevocable election, filed in writing with the member's employer, the department of retirement systems, and the administrative office of the courts, to discontinue future contributions to the judicial retirement account plan in lieu of prospective contribution and benefit provisions under this act.

NEW SECTION. Sec. 2. A new section is added to chapter 41.40 RCW to read as follows:

(1) Beginning January 1, 2007, any newly elected or appointed supreme court justice, court of appeals judge, or superior court judge shall not participate in the judicial retirement account plan under chapter 2.14 RCW and shall be subject to the benefit and contribution provisions under this act.

(2) Beginning January 1, 2007, any newly elected or appointed supreme court justice, court of appeals judge, or superior court judge, who has not previously established membership in this system, shall become a member of plan 2 and shall be subject to the benefit and contribution provisions under this act.

NEW SECTION. Sec. 3. A new section is added to chapter 41.32 RCW to read as follows:

Beginning January 1, 2007, any newly elected or appointed supreme court justice, court of appeals judge, or superior court judge, who is a member of plan 1, shall not participate in the judicial retirement account plan under chapter 2.14 RCW in lieu of prospective contribution and benefit provisions under this act.

NEW SECTION. Sec. 4. A new section is added to chapter 41.40 RCW to read as follows:

(1) Beginning January 1, 2007, any newly elected or appointed district court judge or municipal court judge, who is not eligible for membership under chapter 41.28 RCW, shall be subject to the benefit and contribution provisions under this act.

(2) Beginning January 1, 2007, any newly elected or appointed district court judge, or municipal court judge, who has not previously established membership in this system, and who is not eligible for membership under chapter 41.28 RCW, shall become a member of plan 2 and shall be subject to the benefit and contribution provisions under this act.

NEW SECTION. Sec. 5. A new section is added to chapter 41.40 RCW to read as follows:

(1) Between January 1, 2007, and December 31, 2007, a member of plan 1 or plan 2 employed as a supreme court justice, court of appeals judge, or superior court judge may make a one-time irrevocable election, filed in writing with the member's employer, the department, and the administrative office of the courts, to accrue an additional benefit equal to one and one-half percent of average final compensation for each year of future service credit from the date of the election in lieu of future employee and employer contributions to the judicial retirement account plan under chapter 2.14 RCW.

(2)(a) A member who chooses to make the election under subsection (1) of this section may apply to the department to increase the member's benefit multiplier by an additional one and one-half percent per year of service for the period in which the member served as a justice or judge prior to the election. The member shall pay, for the applicable period of service, the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier as determined by the director. This payment must be made prior to retirement.

(b) Subject to rules adopted by the department, a member applying to increase the member's benefit multiplier under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt

rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

NEW SECTION. Sec. 6. A new section is added to chapter 41.40 RCW to read as follows:

(1) Between January 1, 2007, and December 31, 2007, a member of plan 1 or plan 2 employed as a district court judge or municipal court judge may make a one-time irrevocable election, filed in writing with the member's employer and the department, to accrue an additional benefit equal to one and one-half percent of average final compensation for each year of future service credit from the date of the election.

(2)(a) A member who chooses to make the election under subsection (1) of this section may apply to the department to increase the member's benefit multiplier by one and one-half percent per year of service for the period in which the member served as a judge prior to the election. The member shall pay, for the applicable period of service, the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier as determined by the director. This payment must be made prior to retirement.

(b) Subject to rules adopted by the department, a member applying to increase the member's benefit multiplier under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

NEW SECTION. Sec. 7. A new section is added to chapter 41.32 RCW to read as follows:

(1) Between January 1, 2007, and December 31, 2007, a member of plan 1 employed as a supreme court justice, court of appeals judge, or superior court judge may make a one-time irrevocable election, filed in writing with the member's employer, the department, and the administrative office of the courts, to accrue an additional benefit equal to one and one-half percent of average final compensation for each year of future service credit from the date of the election.

(2)(a) A member who chooses to make the election under subsection (1) of this section may apply to the department to increase the member's benefit multiplier by one and one-half percent per year of service for the period in which the member served as a justice or judge prior to the election. The member shall pay, for the applicable period of service, the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit

multiplier as determined by the director. This payment must be made prior to retirement.

(b) Subject to rules adopted by the department, a member applying to increase the member's benefit multiplier under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

NEW SECTION. Sec. 8. A new section is added to chapter 41.40 RCW to read as follows:

(1) Between January 1, 2007, and December 31, 2007, a member of plan 3 employed as a supreme court justice, court of appeals judge, or superior court judge may make a one-time irrevocable election, filed in writing with the member's employer, the department, and the administrative office of the courts, to accrue an additional plan 3 defined benefit equal to six-tenths percent of average final compensation for each year of future service credit from the date of the election in lieu of future employer contributions to the judicial retirement account plan under chapter 2.14 RCW.

(2)(a) A member who chooses to make the election under subsection (1) of this section may apply to the department to increase the member's benefit multiplier by six-tenths percent per year of service for the period in which the member served as a justice or judge prior to the election. The member shall pay, for the applicable period of service, the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier as determined by the director. This payment must be made prior to retirement.

(b) Subject to rules adopted by the department, a member applying to increase the member's benefit multiplier under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(3) A member who chooses to make the election under subsection (1) of this section shall contribute a minimum of seven and one-half percent of pay to the member's defined contribution account.

NEW SECTION. Sec. 9. A new section is added to chapter 41.40 RCW to read as follows:

(1) Between January 1, 2007, and December 31, 2007, a member of plan 3 employed as a district court judge or municipal court judge may make a one-time irrevocable election, filed in writing with the member's employer and the department, to accrue an additional plan 3 defined benefit equal to six-tenths percent of average final compensation for each year of future service credit from the date of the election.

(2)(a) A member who chooses to make the election under subsection (1) of this section may apply to the department to increase the member's benefit multiplier by six-tenths percent per year of service for the period in which the member served as a judge prior to the election. The member shall pay, for the applicable period of service, the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier as determined by the director. This payment must be made prior to retirement.

(b) Subject to rules adopted by the department, a member applying to increase the member's benefit multiplier under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(3) A member who chooses to make the election under subsection (1) of this section shall contribute a minimum of seven and one-half percent of pay to the member's defined contribution account.

NEW SECTION. Sec. 10. A new section is added to chapter 41.40 RCW under the subchapter heading "plan 1" to read as follows:

(1) In lieu of the retirement allowance provided under RCW 41.40.185, the retirement allowance payable for service as a supreme court justice, court of appeals judge, or superior court judge, for a member who elects to participate under section 5(1) of this act, shall be equal to three and one-half percent of average final compensation for each year of service earned after the date of the election. The total retirement benefit accrued or purchased under this act in combination with benefits accrued during periods served prior to the election shall not exceed seventy-five percent of average final compensation.

(2) In lieu of the retirement allowance provided under RCW 41.40.185, the retirement allowance payable for service as a supreme court justice, court of appeals judge, or superior court judge, for those justices or judges newly elected or appointed after the effective date of this act, shall be equal to three and one-half percent of average final compensation for each year of service after the effective date of this act. The total retirement benefits accrued under this act in combination with benefits accrued during periods served prior to the effective date of this act shall not exceed seventy-five percent of average final compensation.

NEW SECTION. Sec. 11. A new section is added to chapter 41.32 RCW under the subchapter heading "plan 1" to read as follows:

(1) In lieu of the retirement allowance provided under RCW 41.32.498, the retirement allowance payable for service as a supreme court justice, court of appeals judge, or superior court judge, for those justices or judges who elected to participate under section 7(1) of this act, shall be equal to three and one-half percent of average final compensation for each year of service earned after the date of the election. The total retirement benefit accrued or purchased under this act in combination with benefits accrued during periods served prior to the election shall not exceed seventy-five percent of average final compensation.

(2) In lieu of the retirement allowance provided under RCW 41.32.498, the retirement allowance payable for service as a supreme court justice, court of appeals judge, or superior court judge, for those justices or judges newly elected or appointed after the effective date of this act, shall be equal to three and one-half percent of average final compensation for each year of service after the effective date of this act. The total retirement benefits accrued under this act in combination with benefits accrued during periods served prior to the effective date of this act shall not exceed seventy-five percent of average final compensation.

NEW SECTION. Sec. 12. A new section is added to chapter 41.40 RCW under the subchapter heading "plan 1" to read as follows:

(1) In lieu of the retirement allowance provided under RCW 41.40.185, the retirement allowance payable for service as a district court judge or municipal court judge, for those judges who elected to participate under section 6(1) of this act, shall be equal to three and one-half percent of average final compensation for each year of service earned after the election. The total retirement benefit accrued or purchased under this act in combination with benefits accrued during periods served prior to the election shall not exceed seventy-five percent of average final compensation.

(2) In lieu of the retirement allowance provided under RCW 41.40.185, the retirement allowance payable for service as a district court judge, or municipal court judge, for those judges newly elected or appointed after the effective date of this act, and who are not eligible for membership under chapter 41.28 RCW, shall be equal to three and one-half percent of average final compensation for each year of service after the effective date of this act. The total retirement benefits accrued under this act in combination with benefits accrued during periods served prior to the effective date of this act shall not exceed seventy-five percent of average final compensation.

NEW SECTION. Sec. 13. A new section is added to chapter 41.40 RCW under the subchapter heading "plan 2" to read as follows:

(1) In lieu of the retirement allowance provided under RCW 41.40.620, the retirement allowance payable for service as a supreme court justice, court of appeals judge, or superior court judge, for those justices or judges who elected to participate under section 5(1) of this act, shall be equal to three and one-half percent of average final compensation for each year of service earned after the election. The total retirement benefit accrued or purchased under this act in combination with benefits accrued during periods served prior to the election shall not exceed seventy-five percent of average final compensation.

(2) In lieu of the retirement allowance provided under RCW 41.40.620, the retirement allowance payable for service as a supreme court justice, court of

appeals judge, or superior court judge, for those justices or judges newly elected or appointed after the effective date of this act, shall be equal to three and one-half percent of average final compensation for each year of service after the effective date of this act. The total retirement benefits accrued under this act in combination with benefits accrued during periods served prior to the effective date of this act shall not exceed seventy-five percent of average final compensation.

NEW SECTION. Sec. 14. A new section is added to chapter 41.40 RCW under the subchapter heading "plan 2" to read as follows:

(1) In lieu of the retirement allowance provided under RCW 41.40.620, the retirement allowance payable for service as a district court judge or municipal court judge for those judges who elected to participate under section 6(1) of this act shall be equal to three and one-half percent of the average final compensation for each year of such service earned after the election. The total retirement benefit accrued or purchased under this act in combination with benefits accrued during periods served prior to the election shall not exceed seventy-five percent of average final compensation.

(2) In lieu of the retirement allowance provided under RCW 41.40.620, the retirement allowance payable for service as a district court judge, or municipal court judge, for those judges newly elected or appointed after the effective date of this act, and who are not eligible for membership under chapter 41.28 RCW, shall be equal to three and one-half percent of average final compensation for each year of service after the effective date of this act. The total retirement benefits accrued under this act in combination with benefits accrued during periods served prior to the effective date of this act shall not exceed seventy-five percent of average final compensation.

NEW SECTION. Sec. 15. A new section is added to chapter 41.40 RCW under the subchapter heading "plan 3" to read as follows:

In lieu of the retirement allowance provided under RCW 41.40.790, the retirement allowance payable for service as a supreme court justice, court of appeals judge, or superior court judge, for those justices or judges who elected to participate under section 8(1) of this act, shall be equal to one and six-tenths percent of average final compensation for each year of service earned after the election. The total retirement benefit accrued or purchased under this act in combination with benefits accrued during periods served prior to the election shall not exceed thirty-seven and one-half percent of average final compensation.

NEW SECTION. Sec. 16. A new section is added to chapter 41.40 RCW under the subchapter heading "plan 3" to read as follows:

In lieu of the retirement allowance provided under RCW 41.40.790, the retirement allowance payable for service as a district court judge or municipal court judge, for those judges who elected to participate under section 9(1) of this act, shall be equal to one and six-tenths percent of average final compensation for each year of service earned after the election. The total retirement benefit accrued or purchased under this act in combination with benefits accrued during periods served prior to the election shall not exceed thirty-seven and one-half percent of average final compensation.

NEW SECTION. Sec. 17. A new section is added to chapter 41.45 RCW to read as follows:

(1) The required employer contribution rate in support of public employees' retirement system members employed as supreme court justices, court of appeals judges, and superior court judges who elect to participate under section 5(1) or 8(1) of this act, or who are newly elected or appointed after the effective date of this act, shall consist of the public employees' retirement system employer contribution rate established under this chapter plus two and one-half percent of pay.

(2) The required contribution rate for members of the public employees' retirement system plan 2 employed as supreme court justices, court of appeals judges, and superior court judges who elect to participate under section 5(1) or 8(1) of this act, or who are newly elected or appointed after the effective date of this act, shall be two hundred fifty percent of the member contribution rate for the public employees' retirement system plan 2 established under this chapter less two and one-half percent of pay.

(3) The required contribution rate for members of the public employees' retirement system plan 1 employed as supreme court justices, court of appeals judges, and superior court judges who elect to participate under section 5(1) of this act, or who are newly elected or appointed after the effective date of this act, shall be the contribution rate established under RCW 41.40.330 plus three and seventy-six one-hundredths percent of pay.

NEW SECTION. Sec. 18. A new section is added to chapter 41.45 RCW to read as follows:

(1) The required employer contribution rate in support of teachers' retirement system members employed as supreme court justices, court of appeals judges, and superior court judges who elect to participate under section 7(1) of this act, or who are newly elected or appointed after the effective date of this act, shall equal the teachers' retirement system employer contribution rate established under this chapter.

(2) The required contribution rate for members of the teachers' retirement system plan 1 employed as supreme court justices, court of appeals judges, and superior court judges who elect to participate under section 7(1) of this act, or who are newly elected or appointed after the effective date of this act, shall be the deductions established under RCW 41.50.235 plus six and twenty-six one-hundredths percent of pay.

NEW SECTION. Sec. 19. A new section is added to chapter 41.45 RCW to read as follows:

(1) The required employer contribution rate in support of public employees' retirement system members employed as district court judges and municipal court judges who elect to participate under section 6(1) or 9(1) of this act, or who are newly elected or appointed after the effective date of this act, shall equal the public employees' retirement system employer contribution rate established under this chapter.

(2) The required contribution rate for members of the public employees' retirement system plan 2 employed as district court judges or municipal court judges who elect to participate under section 6(1) or 9(1) of this act, or who are newly elected or appointed after the effective date of this act, shall be two

hundred fifty percent of the member contribution rate for the public employees' retirement system plan 2 established under this chapter.

(3) The required contribution rate for members of the public employees' retirement system plan 1 employed as district court judges or municipal court judges who elect to participate under section 5(1) of this act, or who are newly elected or appointed after the effective date of this act, shall be the contribution rate established under RCW 41.40.330 plus six and twenty-six one-hundredths percent of pay.

NEW SECTION. Sec. 20. This act takes effect January 1, 2007.

Passed by the House February 11, 2006.

Passed by the Senate March 1, 2006.

Approved by the Governor March 24, 2006.

Filed in Office of Secretary of State March 24, 2006.

CHAPTER 190

[Senate Bill 6415]

DRIVER LICENSING EXAMINATIONS—INTERPRETERS

AN ACT Relating to the appointment of interpreters for driver's license examinations; amending RCW 46.20.130; and creating a new section.

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

Sec. 1. RCW 46.20.130 and 1999 c 6 s 20 are each amended to read as follows:

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

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

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

(c) An actual demonstration of the applicant's ability to operate a motor vehicle without jeopardizing the safety of persons or property. If the applicant is deaf or hearing impaired, the applicant may be accompanied by an interpreter to assist the applicant during the demonstration. The interpreter will be of the applicant's choosing from a list provided by the department of licensing; and

(d) Such further examination as the director deems necessary:

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

(ii) To determine the applicant's fitness to operate a motor vehicle safely on the highways.

(2) If the applicant desires to drive a motorcycle or a motor-driven cycle he or she must qualify for a motorcycle endorsement under RCW 46.20.500 through 46.20.515.

NEW SECTION. Sec. 2. This act does not affect the right of state employees to collectively bargain wages, hours, and other terms and conditions of employment under chapter 41.80 RCW.

Passed by the Senate March 7, 2006.
Passed by the House March 6, 2006.
Approved by the Governor March 24, 2006.
Filed in Office of Secretary of State March 24, 2006.

CHAPTER 191

[Substitute Senate Bill 6417]

ANIMAL CRUELTY—SEXUAL CONDUCT

AN ACT Relating to animal cruelty; amending RCW 16.52.205; reenacting and amending RCW 9.94A.515; and prescribing penalties.

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

Sec. 1. RCW 16.52.205 and 2005 c 481 s 1 are each amended to read as follows:

(1) A person is guilty of animal cruelty in the first degree when, except as authorized in law, he or she intentionally (a) inflicts substantial pain on, (b) causes physical injury to, or (c) kills an animal by a means causing undue suffering, or forces a minor to inflict unnecessary pain, injury, or death on an animal.

(2) A person is guilty of animal cruelty in the first degree when, except as authorized by law, he or she, with criminal negligence, starves, dehydrates, or suffocates an animal and as a result causes: (a) Substantial and unjustifiable physical pain that extends for a period sufficient to cause considerable suffering; or (b) death.

(3) A person is guilty of animal cruelty in the first degree when he or she:

(a) Knowingly engages in any sexual conduct or sexual contact with an animal;

(b) Knowingly causes, aids, or abets another person to engage in any sexual conduct or sexual contact with an animal;

(c) Knowingly permits any sexual conduct or sexual contact with an animal to be conducted on any premises under his or her charge or control;

(d) Knowingly engages in, organizes, promotes, conducts, advertises, aids, abets, participates in as an observer, or performs any service in the furtherance of an act involving any sexual conduct or sexual contact with an animal for a commercial or recreational purpose; or

(e) Knowingly photographs or films, for purposes of sexual gratification, a person engaged in a sexual act or sexual contact with an animal.

(4) Animal cruelty in the first degree is a class C felony.

(5) In addition to the penalty imposed in subsection (4) of this section, the court may order that the convicted person do any of the following:

(a) Not harbor or own animals or reside in any household where animals are present;

(b) Participate in appropriate counseling at the defendant's expense;

(c) Reimburse the animal shelter or humane society for any reasonable costs incurred for the care and maintenance of any animals taken to the animal shelter or humane society as a result of conduct proscribed in subsection (3) of this section.

(6) Nothing in this section may be considered to prohibit accepted animal husbandry practices or accepted veterinary medical practices by a licensed veterinarian or certified veterinary technician.

(7) If the court has reasonable grounds to believe that a violation of this section has occurred, the court may order the seizure of all animals involved in the alleged violation as a condition of bond of a person charged with a violation.

(8) For purposes of this section:

(a) "Animal" means every creature, either alive or dead, other than a human being.

(b) "Sexual conduct" means any touching or fondling by a person, either directly or through clothing, of the sex organs or anus of an animal or any transfer or transmission of semen by the person upon any part of the animal, for the purpose of sexual gratification or arousal of the person.

(c) "Sexual contact" means any contact, however slight, between the mouth, sex organ, or anus of a person and the sex organ or anus of an animal, or any intrusion, however slight, of any part of the body of the person into the sex organ or anus of an animal, or any intrusion of the sex organ or anus of the person into the mouth of the animal, for the purpose of sexual gratification or arousal of the person.

(d) "Photographs" or "films" means the making of a photograph, motion picture film, videotape, digital image, or any other recording, sale, or transmission of the image.

Sec. 2. RCW 9.94A.515 and 2005 c 458 s 2 and 2005 c 183 s 9 are each reenacted and amended to read as follows:

TABLE 2	
CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL	
XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055) Malicious explosion 1 (RCW 70.74.280(1)) Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050) Trafficking 1 (RCW 9A.40.100(1))
XIII	Malicious explosion 2 (RCW 70.74.280(2)) Malicious placement of an explosive 1 (RCW 70.74.270(1))
XII	Assault 1 (RCW 9A.36.011) Assault of a Child 1 (RCW 9A.36.120) Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))

- Rape 1 (RCW 9A.44.040)
- Rape of a Child 1 (RCW 9A.44.073)
- Trafficking 2 (RCW 9A.40.100(2))
- XI Manslaughter 1 (RCW 9A.32.060)
- Rape 2 (RCW 9A.44.050)
- Rape of a Child 2 (RCW 9A.44.076)
- X Child Molestation 1 (RCW 9A.44.083)
- Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
- Kidnapping 1 (RCW 9A.40.020)
- Leading Organized Crime (RCW 9A.82.060(1)(a))
- Malicious explosion 3 (RCW 70.74.280(3))
- Sexually Violent Predator Escape (RCW 9A.76.115)
- IX Assault of a Child 2 (RCW 9A.36.130)
- Explosive devices prohibited (RCW 70.74.180)
- Hit and Run—Death (RCW 46.52.020(4)(a))
- Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)
- Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
- Malicious placement of an explosive 2 (RCW 70.74.270(2))
- Robbery 1 (RCW 9A.56.200)
- Sexual Exploitation (RCW 9.68A.040)
- Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
- VIII Arson 1 (RCW 9A.48.020)
- Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)

- Manslaughter 2 (RCW 9A.32.070)
- Promoting Prostitution 1 (RCW 9A.88.070)
- Theft of Ammonia (RCW 69.55.010)
- Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- VII Burglary 1 (RCW 9A.52.020)
- Child Molestation 2 (RCW 9A.44.086)
- Civil Disorder Training (RCW 9A.48.120)
- Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)
- Drive-by Shooting (RCW 9A.36.045)
- Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050)
- Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))
- Introducing Contraband 1 (RCW 9A.76.140)
- Malicious placement of an explosive 3 (RCW 70.74.270(3))
- Negligently Causing Death By Use of a Signal Preemption Device (RCW 46.37.675)
- Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)
- Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1))
- Use of a Machine Gun in Commission of a Felony (RCW 9.41.225)
- Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- VI Bail Jumping with Murder 1 (RCW 9A.76.170(3)(a))

- Bribery (RCW 9A.68.010)
- Incest 1 (RCW 9A.64.020(1))
- Intimidating a Judge (RCW 9A.72.160)
- Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
- Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
- Rape of a Child 3 (RCW 9A.44.079)
- Theft of a Firearm (RCW 9A.56.300)
- Unlawful Storage of Ammonia (RCW 69.55.020)
- V Abandonment of dependent person 1 (RCW 9A.42.060)
 - Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
 - Bail Jumping with class A Felony (RCW 9A.76.170(3)(b))
 - Child Molestation 3 (RCW 9A.44.089)
 - Criminal Mistreatment 1 (RCW 9A.42.020)
 - Custodial Sexual Misconduct 1 (RCW 9A.44.160)
 - Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
 - Extortion 1 (RCW 9A.56.120)
 - Extortionate Extension of Credit (RCW 9A.82.020)
 - Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
 - Incest 2 (RCW 9A.64.020(2))
 - Kidnapping 2 (RCW 9A.40.030)
 - Perjury 1 (RCW 9A.72.020)
 - Persistent prison misbehavior (RCW 9.94.070)

- Possession of a Stolen Firearm (RCW 9A.56.310)
- Rape 3 (RCW 9A.44.060)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)
- Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
- Sexually Violating Human Remains (RCW 9A.44.105)
- Stalking (RCW 9A.46.110)
- Taking Motor Vehicle Without Permission 1 (RCW 9A.56.070)
- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.021)
- Assault 3 (of a Peace Officer with a Projectile Stun Gun) (RCW 9A.36.031(1)(h))
- Assault by Watercraft (RCW 79A.60.060)
- Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
- Cheating 1 (RCW 9A.46.1961)
- Commercial Bribery (RCW 9A.68.060)
- Counterfeiting (RCW 9A.16.035(4))
- Endangerment with a Controlled Substance (RCW 9A.42.100)
- Escape 1 (RCW 9A.76.110)
- Hit and Run—Injury (RCW 46.52.020(4)(b))
- Hit and Run with Vessel—Injury Accident (RCW 79A.60.200(3))
- Identity Theft 1 (RCW 9A.35.020(2))
- Indecent Exposure to Person Under Age Fourteen (subsequent sex offense) (RCW 9A.88.010)
- Influencing Outcome of Sporting Event (RCW 9A.82.070)

- Malicious Harassment (RCW 9A.36.080)
- Residential Burglary (RCW 9A.52.025)
- Robbery 2 (RCW 9A.56.210)
- Theft of Livestock 1 (RCW 9A.56.080)
- Threats to Bomb (RCW 9.61.160)
- Trafficking in Stolen Property 1 (RCW 9A.82.050)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(b))
- Unlawful transaction of health coverage as a health care service contractor (RCW 48.44.016(3))
- Unlawful transaction of health coverage as a health maintenance organization (RCW 48.46.033(3))
- Unlawful transaction of insurance business (RCW 48.15.023(3))
- Unlicensed practice as an insurance professional (RCW 48.17.063(3))
- Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
- Vehicular Assault, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (RCW 46.61.522)
- Willful Failure to Return from Furlough (RCW 72.66.060)
- III Abandonment of dependent person 2 (RCW 9A.42.070)
- Animal Cruelty 1 (Sexual Conduct or Contact) (RCW 16.52.205(3))
- Assault 3 (Except Assault 3 of a Peace Officer With a Projectile Stun Gun) (RCW 9A.36.031 except subsection (1)(h))
- Assault of a Child 3 (RCW 9A.36.140)

Bail Jumping with class B or C Felony
(RCW 9A.76.170(3)(c))
Burglary 2 (RCW 9A.52.030)
Communication with a Minor for
Immoral Purposes (RCW
9.68A.090)
Criminal Gang Intimidation (RCW
9A.46.120)
Criminal Mistreatment 2 (RCW
9A.42.030)
Custodial Assault (RCW 9A.36.100)
Cyberstalking (subsequent conviction
or threat of death) (RCW
9.61.260(3))
Escape 2 (RCW 9A.76.120)
Extortion 2 (RCW 9A.56.130)
Harassment (RCW 9A.46.020)
Intimidating a Public Servant (RCW
9A.76.180)
Introducing Contraband 2 (RCW
9A.76.150)
Malicious Injury to Railroad Property
(RCW 81.60.070)
Negligently Causing Substantial Bodily
Harm By Use of a Signal
Preemption Device (RCW
46.37.674)
Patronizing a Juvenile Prostitute (RCW
9.68A.100)
Perjury 2 (RCW 9A.72.030)
Possession of Incendiary Device (RCW
9.40.120)
Possession of Machine Gun or Short-
Barreled Shotgun or Rifle (RCW
9.41.190)
Promoting Prostitution 2 (RCW
9A.88.080)
Securities Act violation (RCW
21.20.400)

- Tampering with a Witness (RCW 9A.72.120)
- Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230(2))
- Theft of Livestock 2 (RCW 9A.56.083)
- Trafficking in Stolen Property 2 (RCW 9A.82.055)
- Unlawful Imprisonment (RCW 9A.40.040)
- Unlawful possession of firearm in the second degree (RCW 9.41.040(2))
- Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)
- Willful Failure to Return from Work Release (RCW 72.65.070)
- II Computer Trespass 1 (RCW 9A.52.110)
 - Counterfeiting (RCW 9.16.035(3))
 - Escape from Community Custody (RCW 72.09.310)
 - Health Care False Claims (RCW 48.80.030)
 - Identity Theft 2 (RCW 9.35.020(3))
 - Improperly Obtaining Financial Information (RCW 9.35.010)
 - Malicious Mischief 1 (RCW 9A.48.070)
 - Possession of Stolen Property 1 (RCW 9A.56.150)
 - Theft 1 (RCW 9A.56.030)
 - Theft of Rental, Leased, or Lease-purchased Property (valued at one thousand five hundred dollars or more) (RCW 9A.56.096(5)(a))
 - Trafficking in Insurance Claims (RCW 48.30A.015)

- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(a))
- Unlawful Practice of Law (RCW 2.48.180)
- Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))
- I Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
- False Verification for Welfare (RCW 74.08.055)
- Forgery (RCW 9A.60.020)
- Fraudulent Creation or Revocation of a Mental Health Advance Directive (RCW 9A.60.060)
- Malicious Mischief 2 (RCW 9A.48.080)
- Mineral Trespass (RCW 78.44.330)
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Reckless Burning 1 (RCW 9A.48.040)
- Taking Motor Vehicle Without Permission 2 (RCW 9A.56.075)
- Theft 2 (RCW 9A.56.040)
- Theft of Rental, Leased, or Lease-purchased Property (valued at two hundred fifty dollars or more but less than one thousand five hundred dollars) (RCW 9A.56.096(5)(b))
- Transaction of insurance business beyond the scope of licensure (RCW 48.17.063(4))
- Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
- Unlawful Possession of Fictitious Identification (RCW 9A.56.320)
- Unlawful Possession of Instruments of Financial Fraud (RCW 9A.56.320)
- Unlawful Possession of Payment Instruments (RCW 9A.56.320)

Unlawful Possession of a Personal
Identification Device (RCW
9A.56.320)

Unlawful Production of Payment
Instruments (RCW 9A.56.320)

Unlawful Trafficking in Food Stamps
(RCW 9.91.142)

Unlawful Use of Food Stamps (RCW
9.91.144)

Vehicle Prowl 1 (RCW 9A.52.095)

Passed by the Senate February 11, 2006.

Passed by the House March 1, 2006.

Approved by the Governor March 24, 2006.

Filed in Office of Secretary of State March 24, 2006.

CHAPTER 192

[Substitute Senate Bill 6670]

COURT FILING FEES

AN ACT Relating to court filing fees; amending RCW 36.18.012, 60.04.081, and 60.70.060; and reenacting and amending RCW 36.18.016.

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

Sec. 1. RCW 36.18.012 and 2005 c 457 s 17 are each amended to read as follows:

(1) Revenue collected under this section is subject to division with the state for deposit in the public safety and education account under RCW 36.18.025.

(2) The party filing a transcript or abstract of judgment or verdict from a United States court held in this state, or from the superior court of another county or from a district court in the county of issuance, shall pay at the time of filing a fee of twenty dollars.

(3) The clerk shall collect a fee of twenty dollars for: Filing a paper not related to or a part of a proceeding, civil or criminal, or a probate matter, required or permitted to be filed in the clerk's office for which no other charge is provided by law.

(4) If the defendant serves or files an answer to an unlawful detainer complaint under chapter 59.18 or 59.20 RCW, the plaintiff shall pay before proceeding with the unlawful detainer action one hundred twelve dollars.

(5) Any party filing a counterclaim, cross-claim, or third-party claim in an unlawful detainer action under chapter 59.18 or 59.20 RCW shall pay the equivalent to the total filing fee of an unlawful detainer action pursuant to RCW 36.18.020, including the fee for an unlawful detainer answer pursuant to subsection (4) of this section.

(6) For a restrictive covenant for filing a petition to strike discriminatory provisions in real estate under RCW 49.60.227 a fee of twenty dollars must be charged.

~~((6))~~ (7) A fee of twenty dollars must be charged for filing a will only, when no probate of the will is contemplated.

~~((7))~~ (8) A fee of twenty dollars must be charged for filing a petition, written agreement, or written memorandum in a nonjudicial probate dispute under RCW 11.96A.220, if it is filed within an existing case in the same court.

~~((8))~~ (9) A fee of thirty-five dollars must be charged for filing a petition regarding a common law lien under RCW 60.70.060.

~~((9) For certification of delinquent taxes by a county treasurer under RCW 84.64.190, a fee of five dollars must be charged.)~~

(10) For the filing of a tax warrant for unpaid taxes or overpayment of benefits by any agency of the state of Washington, a fee of five dollars on or after July 22, 2001, and for the filing of such a tax warrant or overpayment of benefits on or after July 1, 2003, a fee of twenty dollars, of which forty-six percent of the first five dollars is directed to the public safety and education account established under RCW 43.08.250.

Sec. 2. RCW 36.18.016 and 2005 c 457 s 18, 2005 c 374 s 2, and 2005 c 202 s 1 are each reenacted and amended to read as follows:

(1) Revenue collected under this section is not subject to division under RCW 36.18.025 or 27.24.070.

(2)(a) For the filing of a petition for modification of a decree of dissolution or paternity, within the same case as the original action, and any party filing a counterclaim, cross-claim, or third-party claim in any such action, a fee of thirty-six dollars must be paid.

(b) The party filing the first or initial petition for dissolution, legal separation, or declaration concerning the validity of marriage shall pay, at the time and in addition to the filing fee required under RCW 36.18.020, a fee of thirty dollars. The clerk of the superior court shall transmit monthly twenty-four dollars of the thirty-dollar fee collected under this subsection to the state treasury for deposit in the domestic violence prevention account. The remaining six dollars shall be retained by the county for the purpose of supporting community-based services within the county for victims of domestic violence, except for five percent of the six dollars, which may be retained by the court for administrative purposes.

(3)(a) The party making a demand for a jury of six in a civil action shall pay, at the time, a fee of one hundred twenty-five dollars; if the demand is for a jury of twelve, a fee of two hundred fifty dollars. If, after the party demands a jury of six and pays the required fee, any other party to the action requests a jury of twelve, an additional one hundred twenty-five dollar fee will be required of the party demanding the increased number of jurors.

(b) Upon conviction in criminal cases a jury demand charge of one hundred twenty-five dollars for a jury of six, or two hundred fifty dollars for a jury of twelve may be imposed as costs under RCW 10.46.190.

(4) For preparing a certified copy of an instrument on file or of record in the clerk's office, for the first page or portion of the first page, a fee of five dollars, and for each additional page or portion of a page, a fee of one dollar must be charged. For authenticating or exemplifying an instrument, a fee of two dollars for each additional seal affixed must be charged. For preparing a copy of an instrument on file or of record in the clerk's office without a seal, a fee of fifty cents per page must be charged. When copying a document without a seal or file

that is in an electronic format, a fee of twenty-five cents per page must be charged. For copies made on a compact disc, an additional fee of twenty dollars for each compact disc must be charged.

(5) For executing a certificate, with or without a seal, a fee of two dollars must be charged.

(6) For a garnishee defendant named in an affidavit for garnishment and for a writ of attachment, a fee of twenty dollars must be charged.

(7) For filing a supplemental proceeding, a fee of twenty dollars must be charged.

(8) For approving a bond, including justification on the bond, in other than civil actions and probate proceedings, a fee of two dollars must be charged.

(9) For the issuance of a certificate of qualification and a certified copy of letters of administration, letters testamentary, or letters of guardianship, there must be a fee of two dollars.

(10) For the preparation of a passport application, the clerk may collect an execution fee as authorized by the federal government.

(11) For clerk's services such as processing ex parte orders, performing historical searches, compiling statistical reports, and conducting exceptional record searches, the clerk may collect a fee not to exceed twenty dollars per hour or portion of an hour.

(12) For duplicated recordings of court's proceedings there must be a fee of ten dollars for each audio tape and twenty-five dollars for each video tape or other electronic storage medium.

(13) For registration of land titles, Torrens Act, under RCW 65.12.780, a fee of twenty dollars must be charged.

(14) For the issuance of extension of judgment under RCW 6.17.020 and chapter 9.94A RCW, a fee of two hundred dollars must be charged. When the extension of judgment is at the request of the clerk, the two hundred dollar charge may be imposed as court costs under RCW 10.46.190.

(15) A facilitator surcharge of up to twenty dollars must be charged as authorized under RCW 26.12.240.

(16) For filing a water rights statement under RCW 90.03.180, a fee of twenty-five dollars must be charged.

(17) For filing a claim of frivolous lien under RCW 60.04.081, a fee of thirty-five dollars must be charged.

(18) For preparation of a change of venue, a fee of twenty dollars must be charged by the originating court in addition to the per page charges in subsection (4) of this section.

(19) A service fee of three dollars for the first page and one dollar for each additional page must be charged for receiving faxed documents, pursuant to Washington state rules of court, general rule 17.

(20) For preparation of clerk's papers under RAP 9.7, a fee of fifty cents per page must be charged.

(21) For copies and reports produced at the local level as permitted by RCW 2.68.020 and supreme court policy, a variable fee must be charged.

(22) Investment service charge and earnings under RCW 36.48.090 must be charged.

(23) Costs for nonstatutory services rendered by clerk by authority of local ordinance or policy must be charged.

(24) For filing a request for mandatory arbitration, a filing fee may be assessed against the party filing a statement of arbitrability not to exceed two hundred twenty dollars as established by authority of local ordinance. This charge shall be used solely to offset the cost of the mandatory arbitration program.

(25) For filing a request for trial de novo of an arbitration award, a fee not to exceed two hundred fifty dollars as established by authority of local ordinance must be charged.

(26) A public agency may not charge a fee to a law enforcement agency, for preparation, copying, or mailing of certified copies of the judgment and sentence, information, affidavit of probable cause, and/or the notice of requirement to register, of a sex offender convicted in a Washington court, when such records are necessary for risk assessment, preparation of a case for failure to register, or maintenance of a sex offender's registration file.

(27) For the filing of a will or codicil under the provisions of chapter 11.12 RCW, a fee of twenty dollars must be charged.

The revenue to counties from the fees established in this section shall be deemed to be complete reimbursement from the state for the state's share of benefits paid to the superior court judges of the state prior to July 24, 2005, and no claim shall lie against the state for such benefits.

Sec. 3. RCW 60.04.081 and 1992 c 126 s 6 are each amended to read as follows:

(1) Any owner of real property subject to a recorded claim of lien under this chapter, or contractor, subcontractor, lender, or lien claimant who believes the claim of lien to be frivolous and made without reasonable cause, or clearly excessive may apply by motion to the superior court for the county where the property, or some part thereof is located, for an order directing the lien claimant to appear before the court at a time no earlier than six nor later than fifteen days following the date of service of the application and order on the lien claimant, and show cause, if any he or she has, why the relief requested should not be granted. The motion shall state the grounds upon which relief is asked, and shall be supported by the affidavit of the applicant or his or her attorney setting forth a concise statement of the facts upon which the motion is based.

(2) The order shall clearly state that if the lien claimant fails to appear at the time and place noted the lien shall be released, with prejudice, and that the lien claimant shall be ordered to pay the costs requested by the applicant including reasonable attorneys' fees.

(3) If no action to foreclose the lien claim has been filed, the clerk of the court shall assign a cause number to the application and obtain from the applicant a filing fee ~~((of thirty five dollars))~~ pursuant to RCW 36.18.016. If an action has been filed to foreclose the lien claim, the application shall be made a part of that action.

(4) If, following a hearing on the matter, the court determines that the lien is frivolous and made without reasonable cause, or clearly excessive, the court shall issue an order releasing the lien if frivolous and made without reasonable cause, or reducing the lien if clearly excessive, and awarding costs and reasonable attorneys' fees to the applicant to be paid by the lien claimant. If the court determines that the lien is not frivolous and was made with reasonable cause, and is not clearly excessive, the court shall issue an order so stating and

awarding costs and reasonable attorneys' fees to the lien claimant to be paid by the applicant.

(5) Proceedings under this section shall not affect other rights and remedies available to the parties under this chapter or otherwise.

Sec. 4. RCW 60.70.060 and 1995 c 19 s 2 are each amended to read as follows:

(1) Any person whose real or personal property is subject to a recorded claim of common law lien who believes the claim of lien is invalid, may petition the superior court of the county in which the claim of lien has been recorded for an order, which may be granted ex parte, directing the lien claimant to appear before the court at a time no earlier than six nor later than twenty-one days following the date of service of the petition and order on the lien claimant, and show cause, if any, why the claim of lien should not be stricken and other relief provided for by this section should not be granted. The petition shall state the grounds upon which relief is requested, and shall be supported by the affidavit of the petitioner or his or her attorney setting forth a concise statement of the facts upon which the motion is based. The order shall be served upon the lien claimant by personal service, or, where the court determines that service by mail is likely to give actual notice, the court may order that service be made by any person over eighteen years of age, who is competent to be a witness, other than a party, by mailing copies of the petition and order to the lien claimant at his or her last known address or any other address determined by the court to be appropriate. Two copies shall be mailed, postage prepaid, one by ordinary first class mail and the other by a form of mail requiring a signed receipt showing when and to whom it was delivered. The envelopes must bear the return address of the sender.

(2) The order shall clearly state that if the lien claimant fails to appear at the time and place noted, the claim of lien shall be stricken and released and that the lien claimant shall be ordered to pay the costs incurred by the petitioner, including reasonable attorneys' fees.

(3) The clerk of the court shall assign a cause number to the petition and obtain from the petitioner a filing fee (~~(of thirty five dollars)~~) pursuant to RCW 36.18.012.

(4) If, following a hearing on the matter, the court determines that the claim of lien is invalid, the court shall issue an order striking and releasing the claim of lien and awarding costs and reasonable attorneys' fees to the petitioner to be paid by the lien claimant. If the court determines that the claim of lien is valid, the court shall issue an order so stating and may award costs and reasonable attorneys' fees to the lien claimant to be paid by the petitioner.

Passed by the Senate February 11, 2006.

Passed by the House February 28, 2006.

Approved by the Governor March 24, 2006.

Filed in Office of Secretary of State March 24, 2006.

CHAPTER 193

[Engrossed Substitute Senate Bill 6776]

UNAUTHORIZED SALE OF TELEPHONE RECORDS

AN ACT Relating to prohibiting the unauthorized sale of telephone records; reenacting and amending RCW 9A.82.010; adding a new section to chapter 9.26A RCW; and prescribing penalties.

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

NEW SECTION. Sec. 1. A new section is added to chapter 9.26A RCW to read as follows:

(1) A person is guilty of the unauthorized sale or procurement of telephone records if the person:

(a) Intentionally sells the telephone record of any resident of this state without the authorization of the customer to whom the record pertains;

(b) By fraudulent, deceptive, or false means obtains the telephone record of any resident of this state to whom the record pertains;

(c) Knowingly purchases the telephone record of any resident of this state without the authorization of the customer to whom the record pertains; or

(d) Knowingly receives the telephone record of any resident of this state without the authorization of the customer to whom the record pertains.

(2) This section does not apply to:

(a) Any action by a government agency, or any officer, employee, or agent of such agency, to obtain telephone records in connection with the performance of the official duties of the agency;

(b) A telecommunications company that obtains, uses, discloses, or permits access to any telephone record, either directly or indirectly through its agents, that is:

(i) With the lawful consent of the customer or subscriber;

(ii) Authorized by law;

(iii) Necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services; or

(iv) In connection with the sale or transfer of all or part of its business, or the purchase or acquisition of a portion or all of a business, or the migration of a customer from one carrier to another.

(3) A violation of subsection (1)(a), (b), or (c) of this section is a class C felony. A violation of subsection (1)(d) of this section is a gross misdemeanor.

(4) A person who violates this section is subject to legal action for injunctive relief and either actual damages, including mental pain and suffering, or liquidated damages of five thousand dollars per violation, whichever is greater. Reasonable attorneys' fees and other costs of litigation are also recoverable.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Telecommunications company" has the meaning provided in RCW 9.26A.100 and includes "radio communications service companies" as defined in RCW 80.04.010.

(b) "Telephone record" means information retained by a telecommunications company that relates to the telephone number dialed by the

customer or the incoming number or call directed to a customer, or other data related to such calls typically contained on a customer telephone bill such as the time the call started and ended, the duration of the call, the time of day the call was made, and any charges applied. "Telephone record" does not include any information collected and retained by customers using caller identification or other similar technologies.

(c) "Procure" means to obtain by any means, whether electronically, in writing, or in oral form, with or without consideration.

Sec. 2. RCW 9A.82.010 and 2003 c 119 s 6, 2003 c 113 s 3, and 2003 c 53 s 85 are each reenacted and amended to read as follows:

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

(1)(a) "Beneficial interest" means:

(i) The interest of a person as a beneficiary under a trust established under Title 11 RCW in which the trustee for the trust holds legal or record title to real property;

(ii) The interest of a person as a beneficiary under any other trust arrangement under which a trustee holds legal or record title to real property for the benefit of the beneficiary; or

(iii) The interest of a person under any other form of express fiduciary arrangement under which one person holds legal or record title to real property for the benefit of the other person.

(b) "Beneficial interest" does not include the interest of a stockholder in a corporation or the interest of a partner in a general partnership or limited partnership.

(c) A beneficial interest is considered to be located where the real property owned by the trustee is located.

(2) "Control" means the possession of a sufficient interest to permit substantial direction over the affairs of an enterprise.

(3) "Creditor" means a person making an extension of credit or a person claiming by, under, or through a person making an extension of credit.

(4) "Criminal profiteering" means any act, including any anticipatory or completed offense, committed for financial gain, that is chargeable or indictable under the laws of the state in which the act occurred and, if the act occurred in a state other than this state, would be chargeable or indictable under the laws of this state had the act occurred in this state and punishable as a felony and by imprisonment for more than one year, regardless of whether the act is charged or indicted, as any of the following:

(a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;

(b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;

(c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;

(d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;

(e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, 9A.56.080, and 9A.56.083;

(f) Unlawful sale of subscription television services, as defined in RCW 9A.56.230;

(g) Theft of telecommunication services or unlawful manufacture of a telecommunication device, as defined in RCW 9A.56.262 and 9A.56.264;

(h) Child selling or child buying, as defined in RCW 9A.64.030;

- (i) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and 9A.68.050;
- (j) Gambling, as defined in RCW 9.46.220 and 9.46.215 and 9.46.217;
- (k) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;
- (l) Unlawful production of payment instruments, unlawful possession of payment instruments, unlawful possession of a personal identification device, unlawful possession of fictitious identification, or unlawful possession of instruments of financial fraud, as defined in RCW 9A.56.320;
- (m) Extortionate extension of credit, as defined in RCW 9A.82.020;
- (n) Advancing money for use in an extortionate extension of credit, as defined in RCW 9A.82.030;
- (o) Collection of an extortionate extension of credit, as defined in RCW 9A.82.040;
- (p) Collection of an unlawful debt, as defined in RCW 9A.82.045;
- (q) Delivery or manufacture of controlled substances or possession with intent to deliver or manufacture controlled substances under chapter 69.50 RCW;
- (r) Trafficking in stolen property, as defined in RCW 9A.82.050;
- (s) Leading organized crime, as defined in RCW 9A.82.060;
- (t) Money laundering, as defined in RCW 9A.83.020;
- (u) Obstructing criminal investigations or prosecutions in violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130, 9A.76.070, or 9A.76.180;
- (v) Fraud in the purchase or sale of securities, as defined in RCW 21.20.010;
- (w) Promoting pornography, as defined in RCW 9.68.140;
- (x) Sexual exploitation of children, as defined in RCW 9.68A.040, 9.68A.050, and 9.68A.060;
- (y) Promoting prostitution, as defined in RCW 9A.88.070 and 9A.88.080;
- (z) Arson, as defined in RCW 9A.48.020 and 9A.48.030;
- (aa) Assault, as defined in RCW 9A.36.011 and 9A.36.021;
- (bb) Assault of a child, as defined in RCW 9A.36.120 and 9A.36.130;
- (cc) A pattern of equity skimming, as defined in RCW 61.34.020;
- (dd) Commercial telephone solicitation in violation of RCW 19.158.040(1);
- (ee) Trafficking in insurance claims, as defined in RCW 48.30A.015;
- (ff) Unlawful practice of law, as defined in RCW 2.48.180;
- (gg) Commercial bribery, as defined in RCW 9A.68.060;
- (hh) Health care false claims, as defined in RCW 48.80.030;
- (ii) Unlicensed practice of a profession or business, as defined in RCW 18.130.190(7);
- (jj) Improperly obtaining financial information, as defined in RCW 9.35.010;
- (kk) Identity theft, as defined in RCW 9.35.020;
- (ll) Unlawful shipment of cigarettes in violation of RCW 70.155.105(6) (a) or (b); ~~((e))~~
- (mm) Unlawful shipment of cigarettes in violation of RCW 82.24.110(2); or
- (nn) Unauthorized sale or procurement of telephone records in violation of section 1 of this act.

(5) "Dealer in property" means a person who buys and sells property as a business.

(6) "Debtor" means a person to whom an extension of credit is made or a person who guarantees the repayment of an extension of credit or in any manner undertakes to indemnify the creditor against loss resulting from the failure of a person to whom an extension is made to repay the same.

(7) "Documentary material" means any book, paper, document, writing, drawing, graph, chart, photograph, phonograph record, magnetic tape, computer printout, other data compilation from which information can be obtained or from which information can be translated into usable form, or other tangible item.

(8) "Enterprise" includes any individual, sole proprietorship, partnership, corporation, business trust, or other profit or nonprofit legal entity, and includes any union, association, or group of individuals associated in fact although not a legal entity, and both illicit and licit enterprises and governmental and nongovernmental entities.

(9) "Extortionate extension of credit" means an extension of credit with respect to which it is the understanding of the creditor and the debtor at the time the extension is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(10) "Extortionate means" means the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(11) "Financial institution" means any bank, trust company, savings and loan association, savings bank, mutual savings bank, credit union, or loan company under the jurisdiction of the state or an agency of the United States.

(12) "Pattern of criminal profiteering activity" means engaging in at least three acts of criminal profiteering, one of which occurred after July 1, 1985, and the last of which occurred within five years, excluding any period of imprisonment, after the commission of the earliest act of criminal profiteering. In order to constitute a pattern, the three acts must have the same or similar intent, results, accomplices, principals, victims, or methods of commission, or be otherwise interrelated by distinguishing characteristics including a nexus to the same enterprise, and must not be isolated events. However, in any civil proceedings brought pursuant to RCW 9A.82.100 by any person other than the attorney general or county prosecuting attorney in which one or more acts of fraud in the purchase or sale of securities are asserted as acts of criminal profiteering activity, it is a condition to civil liability under RCW 9A.82.100 that the defendant has been convicted in a criminal proceeding of fraud in the purchase or sale of securities under RCW 21.20.400 or under the laws of another state or of the United States requiring the same elements of proof, but such conviction need not relate to any act or acts asserted as acts of criminal profiteering activity in such civil action under RCW 9A.82.100.

(13) "Real property" means any real property or interest in real property, including but not limited to a land sale contract, lease, or mortgage of real property.

(14) "Records" means any book, paper, writing, record, computer program, or other material.

(15) "Repayment of an extension of credit" means the repayment, satisfaction, or discharge in whole or in part of a debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

(16) "Stolen property" means property that has been obtained by theft, robbery, or extortion.

(17) "To collect an extension of credit" means to induce in any way a person to make repayment thereof.

(18) "To extend credit" means to make or renew a loan or to enter into an agreement, tacit or express, whereby the repayment or satisfaction of a debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or shall be deferred.

(19) "Traffic" means to sell, transfer, distribute, dispense, or otherwise dispose of stolen property to another person, or to buy, receive, possess, or obtain control of stolen property, with intent to sell, transfer, distribute, dispense, or otherwise dispose of the property to another person.

(20)(a) "Trustee" means:

(i) A person acting as a trustee under a trust established under Title 11 RCW in which the trustee holds legal or record title to real property;

(ii) A person who holds legal or record title to real property in which another person has a beneficial interest; or

(iii) A successor trustee to a person who is a trustee under (a)(i) or (ii) of this subsection.

(b) "Trustee" does not mean a person appointed or acting as:

(i) A personal representative under Title 11 RCW;

(ii) A trustee of any testamentary trust;

(iii) A trustee of any indenture of trust under which a bond is issued; or

(iv) A trustee under a deed of trust.

(21) "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in the state in full or in part because the debt was incurred or contracted:

(a) In violation of any one of the following:

(i) Chapter 67.16 RCW relating to horse racing;

(ii) Chapter 9.46 RCW relating to gambling;

(b) In a gambling activity in violation of federal law; or

(c) In connection with the business of lending money or a thing of value at a rate that is at least twice the permitted rate under the applicable state or federal law relating to usury.

Passed by the Senate February 8, 2006.

Passed by the House March 1, 2006.

Approved by the Governor March 24, 2006.

Filed in Office of Secretary of State March 24, 2006.

CHAPTER 194

[Substitute Senate Bill 6840]

ENERGY EFFICIENCY

AN ACT Relating to energy efficiency; and amending RCW 19.260.020, 19.260.030, 19.260.040, and 19.260.050.

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

Sec. 1. RCW 19.260.020 and 2005 c 298 s 2 are each amended to read as follows:

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

(1) "Automatic commercial ice cube machine" means a factory-made assembly, not necessarily shipped in one package, consisting of a condensing unit and ice-making section operating as an integrated unit with means for making and harvesting ice cubes. It may also include integrated components for storing or dispensing ice, or both.

(2) "Ballast" means a device used with an electric discharge lamp to obtain necessary circuit conditions, such as voltage, current, and waveform, for starting and operating the lamp.

(3) "Commercial clothes washer" means a soft mount horizontal or vertical-axis clothes washer that: (a) Has a clothes container compartment no greater than 3.5 cubic feet in the case of a horizontal-axis product or no greater than 4.0 cubic feet in the case of a vertical-axis product; and (b) is designed for use by more than one household, such as in multifamily housing, apartments, or coin laundries.

(4) "Commercial prerinse spray valve" means a handheld device designed and marketed for use with commercial dishwashing and warewashing equipment and that sprays water on dishes, flatware, and other food service items for the purpose of removing food residue prior to their cleaning.

(5)(a) "Commercial refrigerators and freezers" means refrigerators, freezers, or refrigerator-freezers designed for use by commercial or institutional facilities for the purpose of storing or merchandising food products, beverages, or ice at specified temperatures that: (i) Incorporate most components involved in the vapor-compression cycle and the refrigerated compartment in a single cabinet; and (ii) may be configured with either solid or transparent doors as a reach-in cabinet, pass-through cabinet, roll-in cabinet, or roll-through cabinet.

(b) "Commercial refrigerators and freezers" does not include: (i) Products with 85 cubic feet or more of internal volume; (ii) walk-in refrigerators or freezers; (iii) consumer products that are federally regulated pursuant to 42 U.S.C. Sec. 6291 et seq.; (iv) products without doors; or (v) freezers specifically designed for ice cream.

(6) "Compensation" means money or any other valuable thing, regardless of form, received or to be received by a person for services rendered.

(7) "Department" means the department of community, trade, and economic development.

(8) "High-intensity discharge lamp" means a lamp in which light is produced by the passage of an electric current through a vapor or gas, and in which the light-producing arc is stabilized by bulb wall temperature and the arc tube has a bulb wall loading in excess of three watts per square centimeter.

(9) (~~"Illuminated exit sign" means an internally illuminated sign that is designed to be permanently fixed in place to identify a building exit and consists of an electrically powered integral light source that illuminates the legend "EXIT" and any directional indicators and provides contrast between the legend, any directional indicators, and the background.~~

~~(10)(a)~~ "Low voltage dry type distribution transformer" means a distribution transformer that: (i) Has an input voltage of 600 volts or less; (ii) is air cooled; (iii) does not use oil as a coolant; and (iv) is rated for operation at a frequency of 60 hertz.

~~(b)~~ "Low voltage dry type transformer" does not include: (i) Transformers with multiple voltage taps, with the highest voltage tap equaling at least twenty percent more than the lowest voltage tap; or (ii) transformers, such as those commonly known as drive transformers, rectifier transformers, auto transformers, uninterruptible power system transformers, impedance transformers, regulating transformers, sealed and nonventilating transformers, machine tool transformers, welding transformers, grounding transformers, or testing transformers, that are designed to be used in a special purpose application and are unlikely to be used in general purpose applications.

~~(11))~~ "Metal halide lamp" means a high-intensity discharge lamp in which the major portion of the light is produced by radiation of metal halides and their products of dissociation, possibly in combination with metallic vapors.

~~((12))~~ (10) "Metal halide lamp fixture" means a light fixture designed to be operated with a metal halide lamp and a ballast for a metal halide lamp.

~~((13))~~ (11) "Pass-through cabinet" means a commercial refrigerator or freezer with hinged or sliding doors on both the front and rear of the unit.

~~((14))~~ (12) "Probe-start metal halide ballast" means a ballast used to operate metal halide lamps which does not contain an igniter and which instead starts lamps by using a third starting electrode "probe" in the arc tube.

~~((15))~~ (13) "Reach-in cabinet" means a commercial refrigerator or freezer with hinged or sliding doors or lids, but does not include roll-in or roll-through cabinets or pass-through cabinets.

~~((16))~~ (14)(a) "Roll-in cabinet" means a commercial refrigerator or freezer with hinged or sliding doors that allow wheeled racks of product to be rolled into the unit.

(b) "Roll-through cabinet" means a commercial refrigerator or freezer with hinged or sliding doors on two sides of the cabinet that allow wheeled racks of product to be rolled through the unit.

~~((17))~~ (15)(a) "Single-voltage external AC to DC power supply" means a device that: (i) Is designed to convert line voltage alternating current input into lower voltage direct current output; (ii) is able to convert to only one DC output voltage at a time; (iii) is sold with, or intended to be used with, a separate end-use product that constitutes the primary power load; (iv) is contained within a separate physical enclosure from the end-use product; (v) is connected to the end-use product via a removable or hard-wired male/female electrical connection, cable, cord, or other wiring; and (vi) has a nameplate output power less than or equal to 250 watts.

(b) "Single-voltage external AC to DC power supply" does not include: (i) Products with batteries or battery packs that physically attach directly to the power supply unit; (ii) products with a battery chemistry or type selector switch and indicator light; or (iii) products with a battery chemistry or type selector switch and a state of charge meter.

~~((18))~~ (16) "State-regulated incandescent reflector lamp" means a lamp that is not colored or designed for rough or vibration service applications, that has an inner reflective coating on the outer bulb to direct the light, an E26

medium screw base, and a rated voltage or voltage range that lies at least partially within 115 to 130 volts, and that falls into one of the following categories:

(a) A bulged reflector or elliptical reflector bulb shape and which has a diameter which equals or exceeds 2.25 inches;

(b) A reflector, parabolic aluminized reflector, or similar bulb shape and which has a diameter of 2.25 to 2.75 inches.

~~((19)) "Torchiere" means a portable electric lighting fixture with a reflective bowl that directs light upward onto a ceiling so as to produce indirect illumination on the surfaces below. "Torchiere" may include downward directed lamps in addition to the upward, indirect illumination.~~

~~(20) "Traffic signal module" means a standard (a) 8 inch or 200 mm or (b) 12 inch or 300 mm traffic signal indication, consisting of a light source, a lens, and all other parts necessary for operation.~~

~~((21)) (17) "Transformer" means a device consisting of two or more coils of insulated wire and that is designed to transfer alternating current by electromagnetic induction from one coil to another to change the original voltage or current value.~~

~~((22)) (18)(a) "Unit heater" means a self-contained, vented fan-type commercial space heater that uses natural gas or propane, and that is designed to be installed without ducts within a heated space.~~

(b) "Unit heater" does not include any products covered by federal standards established pursuant to 42 U.S.C. Sec. 6291 et seq. or any product that is a direct vent, forced flue heater with a sealed combustion burner.

Sec. 2. RCW 19.260.030 and 2005 c 298 s 3 are each amended to read as follows:

(1) This chapter applies to the following types of new products sold, offered for sale, or installed in the state: (a) Automatic commercial ice cube machines; (b) commercial clothes washers; (c) commercial prerinse spray valves; (d) commercial refrigerators and freezers; (e) ~~((illuminated exit signs; (f) low-voltage dry-type distribution transformers; (g))~~ metal halide lamp fixtures; ~~((h)) (f)~~ single-voltage external AC to DC power supplies; ~~((i)) (g)~~ state-regulated incandescent reflector lamps; ~~((j) torchieres; (k) traffic signal modules;))~~ and ~~((h)) (h)~~ unit heaters. This chapter applies equally to products whether they are sold, offered for sale, or installed as a stand-alone product or as a component of another product.

(2) This chapter does not apply to (a) new products manufactured in the state and sold outside the state, (b) new products manufactured outside the state and sold at wholesale inside the state for final retail sale and installation outside the state, (c) products installed in mobile manufactured homes at the time of construction~~((f-1))~~, or (d) products designed expressly for installation and use in recreational vehicles.

Sec. 3. RCW 19.260.040 and 2005 c 298 s 4 are each amended to read as follows:

The legislature establishes the following minimum efficiency standards for the types of new products set forth in RCW 19.260.030.

(1)(a) Automatic commercial ice cube machines must have daily energy use and daily water use no greater than the applicable values in the following table:

Equipment type	Type of cooling	Harvest rate (lbs. ice/24 hrs.)	Maximum energy use (kWh/100 lbs.)	Maximum condenser water use (gallons/100 lbs. ice)
Ice-making head	water	<500	7.80 - .0055H	200 - .022H
		>=500<1436	5.58 - .0011H	200 - .022H
		>=1436	4.0	200 - .022H
Ice-making head	air	450	10.26 - .0086H	Not applicable
		>=450	6.89 - .0011H	Not applicable
Remote condensing but not remote compressor	air	<1000	8.85 - .0038	Not applicable
		>=1000	5.10	Not applicable
Remote condensing and remote compressor	air	<934	8.85 - .0038H	Not applicable
		>=934	5.3	Not applicable
Self-contained models	water	<200	11.40 - .0190H	191 - .0315H
		>=200	7.60	191 - .0315H
Self-contained models	air	<175	18.0 - .0469H	Not applicable
		>=175	9.80	Not applicable

Where H = harvest rate in pounds per twenty-four hours which must be reported within 5% of the tested value.
 "Maximum water use" applies only to water used for the condenser.

(b) For purposes of this section, automatic commercial ice cube machines shall be tested in accordance with ARI 810-2003 test method as published by the air-conditioning and refrigeration institute. Ice-making heads include all automatic commercial ice cube machines that are not split system ice makers or self-contained models as defined in ARI 810-2003.

(2) Commercial clothes washers must have a minimum modified energy factor of 1.26. For the purposes of this section, capacity and modified energy factor are defined and measured in accordance with the current federal test method for clothes washers as found at 10 C.F.R. Sec. 430.23.

(3) Commercial prerinse spray valves must have a flow rate equal to or less than 1.6 gallons per minute when measured in accordance with the American society for testing and materials' "Standard Test Method for Prerinse Spray Valves," ASTM F2324-03.

(4)(a) Commercial refrigerators and freezers must meet the applicable requirements listed in the following table:

Equipment Type	Doors	Maximum Daily Energy Consumption (kWh)
Reach-in cabinets, pass-through cabinets, and roll-in or roll-through cabinets that are refrigerators	Solid	0.10V + 2.04
	Transparent	0.12V + 3.34
Reach-in cabinets, pass-through cabinets, and roll-in or roll-through cabinets that are "pulldown" refrigerators	Transparent	.126V + 3.51
Reach-in cabinets, pass-through cabinets, and roll-in or roll-through cabinets that are freezers	Solid	0.40V + 1.38
	Transparent	0.75V + 4.10

Reach-in cabinets that are refrigerator-freezers with an AV of 5.19 or higher	Solid	0.27AV - 0.71
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kWh = kilowatt hours

V = total volume (ft³)

AV = adjusted volume = [1.63 x freezer volume (ft³)] + refrigerator volume (ft³)

(b) For purposes of this section, "pulldown" designates products designed to take a fully stocked refrigerator with beverages at 90 degrees F and cool those beverages to a stable temperature of 38 degrees F within 12 hours or less. Daily energy consumption shall be measured in accordance with the American national standards institute/American society of heating, refrigerating and air-conditioning engineers test method 117-2002, except that the back-loading doors of pass-through and roll-through refrigerators and freezers must remain closed throughout the test, and except that the controls of all appliances must be adjusted to obtain the following product temperatures.

Product or compartment type	Integrated average product temperature in degrees Fahrenheit
Refrigerator	38 ± 2
Freezer	0 ± 2

~~(5) (Illuminated exit signs must have an input power demand of five watts or less per illuminated face. For the purposes of this section, input power demand is measured in accordance with the United States environmental protection agency's energy star exit sign program's conditions for testing, version 3.0. Illuminated exit signs must meet all applicable building and safety codes.~~

~~(6)(a) Low voltage dry type distribution transformers shall have efficiencies not less than the applicable values in the following table when tested at thirty five percent of the rated output power:~~

Single Phase		Three Phase			
Rated power output in kVa	Minimum efficiency %	Rated power output in kVa	Minimum efficiency %		
≥ 15	<25	97.7	≥ 15	<30	97.0
≥ 25	<37.5	98.0	≥ 30	<45	97.5
≥ 37.5	<50	98.2	≥ 45	<75	97.7
≥ 50	<75	98.3	≥ 75	<112.5	98.0
≥ 75	<100	98.5	≥ 112.5	<150	98.2
≥ 100	<167	98.6	≥ 150	<225	98.3
≥ 167	<250	98.7	≥ 225	<300	98.5
≥ 250	<333	98.8	≥ 300	<500	98.6
333		98.9	≥ 500	<750	98.7
—		—	≥ 750	<1000	98.8
—		—	1000		98.9

kVa = kilovolt amperes

~~(b) For the purposes of this section, low-voltage dry-type distribution transformer efficiency is measured in accordance with the national electrical manufacturers association TP 2-1998 test method.~~

~~(7)) Metal halide lamp fixtures designed to be operated with lamps rated greater than or equal to 150 watts but less than or equal to 500 watts shall not contain a probe-start metal halide lamp ballast.~~

~~((8)) (6)(a) Single-voltage external AC to DC power supplies shall meet the requirements in the following table:~~

Nameplate output	Minimum Efficiency in Active Mode
< 1 Watt	0.49 * Nameplate Output
> or = 1 Watt and < or = 49 Watts	0.09 * Ln (Nameplate Output) + 0.49
> 49 Watts	0.84
	Maximum Energy Consumption in No-Load Mode
< 10 Watts	0.5 Watts
> or = 10 Watts and < or = 250 Watts	0.75 Watts

Where Ln (Nameplate Output) - Natural Logarithm of the nameplate output expressed in Watts

~~(b) For the purposes of this section, efficiency of single-voltage external AC to DC power supplies shall be measured in accordance with the United States environmental protection agency's "Test Method for Calculating the Energy Efficiency of Single-Voltage External AC to DC and AC to AC Power Supplies," by Ecos Consulting and Power Electronics Application Center, dated August 11, 2004.~~

~~((9)) (7)(a) State-regulated incandescent reflector lamps ((that are not 50 watt elliptical reflector lamps must meet the minimum efficacies in the following table:~~

Wattage	Minimum average lamp efficacy (lumens per watt)
40-50	10.5
51-66	11.0
67-85	12.5
86-115	14.0
116-155	14.5
156-205	15.0

~~(b) Lamp efficacy must be measured in accordance with the applicable federal test method as found at 10 C.F.R. Sec. 430.23.~~

~~(10) Torchierees may not use more than 190 watts. A torchiere is deemed to use more than 190 watts if any commercially available lamp or combination of lamps can be inserted in a socket and cause the torchiere to draw more than 190 watts when operated at full brightness.~~

~~(11)(a) Traffic signal modules must have maximum and nominal wattage that do not exceed the applicable values in the following table:~~

Module Type	Maximum Wattage (at 74°C)	Nominal Wattage (at 25°C)
12" red ball (or 300 mm circular)	17	11
8" red ball (or 200 mm circular)	13	8
12" red arrow (or 300 mm arrow)	12	9
<hr/>		
12" green ball (or 300 mm circular)	15	15
8" green ball (or 200 mm circular)	12	12
12" green arrow (or 300 mm arrow)	11	11

mm = millimeter

(b) For the purposes of this section, maximum wattage and nominal wattage must be measured in accordance with and under the testing conditions specified by the institute for transportation engineers "Interim LED Purchase Specification, Vehicle Traffic Control Signal Heads, Part 2: Light Emitting Diode Vehicle Traffic Signal Modules.") shall meet the minimum average lamp efficacy requirements for federally regulated incandescent reflector lamps contained in 42 U.S.C. Sec. 6295(i)(1)(A).

(b) The following types of incandescent lamps are exempt from these requirements:

(i) Lamps rated at fifty watts or less of the following types: BR 30, ER 30, BR 40, and ER 40;

(ii) Lamps rated at sixty-five watts of the following types: BR 30, BR 40, and ER 40; and

(iii) R 20 lamps of forty-five watts or less.

~~((12))~~ (8) Unit heaters must be equipped with intermittent ignition devices and must have either power venting or an automatic flue damper.

Sec. 4. RCW 19.260.050 and 2005 c 298 s 5 are each amended to read as follows:

(1) ~~((On or after January 1, 2007,))~~ No new commercial prerinse spray valve, commercial clothes washer, commercial refrigerator or freezer, ~~((illuminated exit sign, low voltage dry type distribution transformer, single-voltage external AC to DC power supply,))~~ state-regulated incandescent reflector lamp, ~~((torchiere, traffic signal module,))~~ or unit heater manufactured on or after January 1, 2007, may be sold or offered for sale in the state unless the efficiency of the new product meets or exceeds the efficiency standards set forth in RCW 19.260.040. ~~((On or after January 1, 2008,))~~ No new automatic commercial ice cube machine, single-voltage external AC to DC power supply, or metal halide lamp fixtures manufactured on or after January 1, 2008, may be sold or offered for sale in the state unless the efficiency of the new product meets or exceeds the efficiency standards set forth in RCW 19.260.040.

(2) On or after January 1, 2008, no new commercial prerinse spray valve, commercial clothes washer, commercial refrigerator or freezer, ~~((illuminated exit sign, low voltage dry type distribution transformer,))~~ single-voltage external AC to DC power supply, state-regulated incandescent reflector lamp, ~~((torchiere, traffic signal module,))~~ or unit heater manufactured on or after

January 1, 2007, may be installed for compensation in the state unless the efficiency of the new product meets or exceeds the efficiency standards set forth in RCW 19.260.040. On or after January 1, 2009, no new automatic commercial ice cube machine or metal halide lamp fixtures manufactured on or after January 1, 2008, may be installed for compensation in the state unless the efficiency of the new product meets or exceeds the efficiency standards set forth in RCW 19.260.040.

(3) Standards for metal halide lamp fixtures and state-regulated incandescent reflector lamps are effective on the dates in subsections (1) and (2) of this section.

Passed by the Senate March 4, 2006.

Passed by the House March 1, 2006.

Approved by the Governor March 24, 2006.

Filed in Office of Secretary of State March 24, 2006.

CHAPTER 195

[Engrossed Substitute House Bill 1010]

ELECTRIC UTILITY PLANNING

AN ACT Relating to electric utility planning; and adding a new chapter to Title 19 RCW.

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

NEW SECTION. Sec. 1. It is the intent of the legislature to encourage the development of new safe, clean, and reliable energy resources to meet demand in Washington for affordable and reliable electricity. To achieve this end, the legislature finds it essential that electric utilities in Washington develop comprehensive resource plans that explain the mix of generation and demand-side resources they plan to use to meet their customers' electricity needs in both the short term and the long term. The legislature intends that information obtained from integrated resource planning under this chapter will be used to assist in identifying and developing new energy generation, conservation and efficiency resources, and related infrastructure to meet the state's electricity needs.

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

(1) "Commission" means the utilities and transportation commission.

(2) "Conservation and efficiency resources" means any reduction in electric power consumption that results from increases in the efficiency of energy use, production, transmission, or distribution.

(3) "Consumer-owned utility" includes a municipal electric utility formed under Title 35 RCW, a public utility district formed under Title 54 RCW, an irrigation district formed under chapter 87.03 RCW, a cooperative formed under chapter 23.86 RCW, a mutual corporation or association formed under chapter 24.06 RCW, a port district formed under Title 53 RCW, or a water-sewer district formed under Title 57 RCW, that is engaged in the business of distributing electricity to one or more retail electric customers in the state.

(4) "Department" means the department of community, trade, and economic development.

(5) "Electric utility" means a consumer-owned or investor-owned utility.

(6) "Full requirements customer" means an electric utility that relies on the Bonneville power administration for all power needed to supply its total load requirement other than that served by nondispatchable generating resources totaling no more than six megawatts or renewable resources.

(7) "Governing body" means the elected board of directors, city council, commissioners, or board of any consumer-owned utility.

(8) "High efficiency cogeneration" means the sequential production of electricity and useful thermal energy from a common fuel source, where, under normal operating conditions, the facility has a useful thermal energy output of no less than thirty-three percent of the total energy output.

(9) "Integrated resource plan" means an analysis describing the mix of generating resources and conservation and efficiency resources that will meet current and projected needs at the lowest reasonable cost to the utility and its ratepayers and that complies with the requirements specified in section 3(1) of this act.

(10) "Investor-owned utility" means a corporation owned by investors that meets the definition in RCW 80.04.010 and is engaged in distributing electricity to more than one retail electric customer in the state.

(11) "Lowest reasonable cost" means the lowest cost mix of generating resources and conservation and efficiency resources determined through a detailed and consistent analysis of a wide range of commercially available resources. At a minimum, this analysis must consider resource cost, market-volatility risks, demand-side resource uncertainties, resource dispatchability, resource effect on system operation, the risks imposed on the utility and its ratepayers, public policies regarding resource preference adopted by Washington state or the federal government, and the cost of risks associated with environmental effects including emissions of carbon dioxide.

(12) "Plan" means either an "integrated resource plan" or a "resource plan."

(13) "Renewable resources" means electricity generation facilities fueled by: (a) Water; (b) wind; (c) solar energy; (d) geothermal energy; (e) landfill gas; (f) biomass energy utilizing animal waste, 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; (g) byproducts of pulping or wood manufacturing processes, including but not limited to bark, wood chips, sawdust, and lignin in spent pulping liquors; (h) ocean thermal, wave, or tidal power; or (i) gas from sewage treatment facilities.

(14) "Resource plan" means an assessment that estimates electricity loads and resources over a defined period of time and complies with the requirements in section 3(2) of this act.

NEW SECTION. Sec. 3. Each electric utility must develop a plan consistent with this section.

(1) Utilities with more than twenty-five thousand customers that are not full requirements customers shall develop or update an integrated resource plan by September 1, 2008. At a minimum, progress reports reflecting changing conditions and the progress of the integrated resource plan must be produced every two years thereafter. An updated integrated resource plan must be developed at least every four years subsequent to the 2008 integrated resource plan. The integrated resource plan, at a minimum, must include:

(a) A range of forecasts, for at least the next ten years, of projected customer demand which takes into account econometric data and customer usage;

(b) An assessment of commercially available conservation and efficiency resources. Such assessment may include, as appropriate, high efficiency cogeneration, demand response and load management programs, and currently employed and new policies and programs needed to obtain the conservation and efficiency resources;

(c) An assessment of commercially available, utility scale renewable and nonrenewable generating technologies;

(d) A comparative evaluation of renewable and nonrenewable generating resources, including transmission and distribution delivery costs, and conservation and efficiency resources using "lowest reasonable cost" as a criterion;

(e) The integration of the demand forecasts and resource evaluations into a long-range assessment describing the mix of supply side generating resources and conservation and efficiency resources that will meet current and projected needs at the lowest reasonable cost and risk to the utility and its ratepayers; and

(f) A short-term plan identifying the specific actions to be taken by the utility consistent with the long-range integrated resource plan.

(2) All other utilities may elect to develop a full integrated resource plan as set forth in subsection (1) of this section or, at a minimum, shall develop a resource plan that:

(a) Estimates loads for the next five and ten years;

(b) Enumerates the resources that will be maintained and/or acquired to serve those loads; and

(c) Explains why the resources in (b) of this subsection were chosen and, if the resources chosen are not renewable resources or conservation and efficiency resources, why such a decision was made.

(3) An electric utility that is required to develop a resource plan under this section must complete its initial plan by September 1, 2008.

(4) Resource plans developed under this section must be updated on a regular basis, at a minimum on intervals of two years.

(5) Plans shall not be a basis to bring legal action against electric utilities.

(6) Each electric utility shall publish its final plan either as part of an annual report or as a separate document available to the public. The report may be in an electronic form.

NEW SECTION. Sec. 4. (1) Investor-owned utilities shall submit integrated resource plans to the commission. The commission shall establish by rule the requirements for preparation and submission of integrated resource plans.

(2) The commission may adopt additional rules as necessary to clarify the requirements of section 3 of this act as they apply to investor-owned utilities.

NEW SECTION. Sec. 5. (1) The governing body of a consumer-owned utility that develops a plan under this chapter shall encourage participation of its consumers in development of the plans and progress reports and approve the plans and progress reports after it has provided public notice and hearing.

(2) Each consumer-owned utility shall transmit a copy of its plan to the department by September 1, 2008, and transmit subsequent progress reports or

plans to the department at least every two years thereafter. The department shall develop, in consultation with utilities, a common cover sheet that summarizes the essential data in their plans or progress reports.

(3) Consumer-owned utilities may develop plans of a similar type jointly with other consumer-owned utilities. Data and assessments included in joint reports must be identifiable to each individual utility.

(4) To minimize duplication of effort and maximize efficient use of utility resources, in developing their plans under section 3 of this act, consumer-owned utilities are encouraged to use resource planning concepts, techniques, and information provided to and by organizations such as the United States department of energy, the Northwest planning and conservation council, Pacific Northwest utility conference committee, and other state, regional, national, and international entities, and, for the 2008 plan, as appropriate, are encouraged to use and be consistent with relevant determinations required under Title XII - Electricity; Subtitle E, Sections 1251 - 1254 of the federal energy policy act of 2005.

NEW SECTION. Sec. 6. The department shall review the plans of consumer-owned utilities and investor-owned utilities, and data available from other state, regional, and national sources, and prepare an electronic report to the legislature aggregating the data and assessing the overall adequacy of Washington's electricity supply. The report shall include a statewide summary of utility load forecasts, load/resource balance, and utility plans for the development of thermal generation, renewable resources, and conservation and efficiency resources. The commission shall provide the department with data summarizing the plans of investor-owned utilities for use in the department's statewide summary. The department may submit its report within the biennial report required under RCW 43.21F.045.

NEW SECTION. Sec. 7. Sections 1 through 6 of this act constitute a new chapter in Title 19 RCW.

Passed by the House March 8, 2006.

Passed by the Senate March 7, 2006.

Approved by the Governor March 24, 2006.

Filed in Office of Secretary of State March 24, 2006.

CHAPTER 196

[Engrossed Substitute House Bill 1020]

ENERGY FACILITY SITE EVALUATION COUNCIL

AN ACT Relating to the energy facility site evaluation council; amending RCW 80.50.020, 80.50.060, 80.50.071, and 80.50.090; adding a new section to chapter 80.50 RCW; and creating a new section.

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

Sec. 1. RCW 80.50.020 and 2001 c 214 s 3 are each amended to read as follows:

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

(1) "Applicant" means any person who makes application for a site certification pursuant to the provisions of this chapter.

(2) "Application" means any request for approval of a particular site or sites filed in accordance with the procedures established pursuant to this chapter, unless the context otherwise requires.

(3) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

(4) "Site" means any proposed or approved location of an energy facility.

(5) "Certification" means a binding agreement between an applicant and the state which shall embody compliance to the siting guidelines, in effect as of the date of certification, which have been adopted pursuant to RCW 80.50.040 as now or hereafter amended as conditions to be met prior to or concurrent with the construction or operation of any energy facility.

(6) "Associated facilities" means storage, transmission, handling, or other related and supporting facilities connecting an energy plant with the existing energy supply, processing, or distribution system, including, but not limited to, communications, controls, mobilizing or maintenance equipment, instrumentation, and other types of ancillary transmission equipment, off-line storage or venting required for efficient operation or safety of the transmission system and overhead, and surface or subsurface lines of physical access for the inspection, maintenance, and safe operations of the transmission facility and new transmission lines constructed to operate at nominal voltages in excess of ~~((200,000))~~ 115,000 volts to connect a thermal power plant or alternative energy facilities to the northwest power grid(~~(:—PROVIDED, That)~~). 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))~~ 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;

(c) Electrical transmission facilities in excess of 115,000 volts in national interest electric transmission corridors as designated by the United States secretary of the department of energy or the federal energy regulatory commission pursuant to section 1221 of the national energy policy act, and such rules and regulations as the secretary or the federal energy regulatory commission adopts to implement the act.

(8) "Independent consultants" means those persons who have no financial interest in the applicant's proposals and who are retained by the council to evaluate the applicant's proposals, supporting studies, or to conduct additional studies.

(9) "Thermal power plant" means, for the purpose of certification, any electrical generating facility using any fuel, including nuclear materials, for distribution of electricity by electric utilities.

(10) "Energy facility" means an energy plant or transmission facilities: PROVIDED, That the following are excluded from the provisions of this chapter:

(a) Facilities for the extraction, conversion, transmission or storage of water, other than water specifically consumed or discharged by energy production or conversion for energy purposes; and

(b) Facilities operated by and for the armed services for military purposes or by other federal authority for the national defense.

(11) "Council" means the energy facility site evaluation council created by RCW 80.50.030.

(12) "Counsel for the environment" means an assistant attorney general or a special assistant attorney general who shall represent the public in accordance with RCW 80.50.080.

(13) "Construction" means on-site improvements, excluding exploratory work, which cost in excess of two hundred fifty thousand dollars.

(14) "Energy plant" means the following facilities together with their associated facilities:

(a) Any stationary thermal power plant with generating capacity of 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) Facilities which will have the capacity to receive (~~liquefied~~) 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) 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~~) 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) Any underground reservoir for receipt and storage of natural gas as defined in RCW 80.40.010 capable of delivering an average of more than one hundred million standard cubic feet of natural gas per day; and

(e) Facilities capable of processing more than twenty-five thousand barrels per day of petroleum into refined products.

(15) "Land use plan" means a comprehensive plan or land use element thereof adopted by a unit of local government pursuant to chapter(~~(s)~~) 35.63, 35A.63, (~~(or)~~) 36.70, or 36.70A RCW.

(16) "Zoning ordinance" means an ordinance of a unit of local government regulating the use of land and adopted pursuant to chapter(~~(s)~~) 35.63, 35A.63, (~~(or)~~) 36.70, or 36.70A RCW or Article XI of the state Constitution.

(17) "Alternative energy resource" means: (a) Wind; (b) solar energy; (c) geothermal energy; (d) landfill gas; (e) wave or tidal action; or (f) biomass

energy based on solid organic fuels from wood, forest, or field residues, or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic.

(18) "Secretary" means the secretary of the United States department of energy.

NEW SECTION. Sec. 2. (1) Section 1221 of the national energy policy act also authorizes a state siting authority, in those instances where applicants seek a federal construction permit otherwise authorized pursuant to section 1221 of the act, to assert jurisdiction on the basis of existing state regulatory authority.

(2) Section 1221 of the national energy policy act further authorizes a state siting authority to approve the siting of facilities or consider the interstate benefits to be achieved by proposed construction or modification as provided for in section 1221(b)(1)(A)(i)-(ii) of the act or other provisions of the act, or rules and regulations implementing the act, and to convey the views and recommendations regarding the need for and impact of a transmission facility where the federal energy regulatory commission is determined to have jurisdiction.

(3) Because the types of transmission facilities subject to section 1221 of the national energy policy act are not defined, and because the legislature recognizes that the siting of electric transmission lines at or below 115,000 volts has historically been regulated by local governments in the state, the legislature finds that the 115,000 volt threshold established in this act is appropriate to satisfy the requirements of section 1221.

NEW SECTION. Sec. 3. A new section is added to chapter 80.50 RCW to read as follows:

(1) The council shall consult with other state agencies, utilities, local municipal governments, public interest groups, tribes, and other interested persons to convey their views to the secretary and the federal energy regulatory commission regarding appropriate limits on federal regulatory authority in the siting of electrical transmission corridors in the state of Washington.

(2) The council is designated as the state authority for purposes of siting transmission facilities under the national energy policy act of 2005 and for purposes of other such rules or regulations adopted by the secretary. The council's authority regarding transmission facilities is limited to those transmission facilities that are the subject of section 1221 of the national energy policy act and this chapter.

(3) For the construction and modification of transmission facilities that are the subject of section 1221 of the national energy policy act, the council may: (a) Approve the siting of the facilities; and (b) consider the interstate benefits expected to be achieved by the proposed construction or modification of the facilities in the state.

(4) When developing recommendations as to the disposition of an application for the construction or modification of transmission facilities under this chapter, the fuel source of the electricity carried by the transmission facilities shall not be considered.

Sec. 4. RCW 80.50.060 and 2001 c 214 s 2 are each amended to read as follows:

(1) The provisions of this chapter shall apply to the construction of energy facilities which includes the new construction of energy facilities and the reconstruction or enlargement of existing energy facilities where the net increase in physical capacity or dimensions resulting from such reconstruction or enlargement meets or exceeds those capacities or dimensions set forth in RCW 80.50.020 (7) and (14). No construction of such energy facilities may be undertaken, except as otherwise provided in this chapter, after July 15, 1977, without first obtaining certification in the manner provided in this chapter.

(2) The provisions of this chapter apply to the construction, reconstruction, or enlargement of a new or existing energy facility that exclusively uses alternative energy resources and chooses to receive certification under this chapter, regardless of the generating capacity of the project.

(3) The provisions of this chapter apply to the construction of new electrical transmission facilities or the modification of existing electrical transmission facilities in a national interest electric transmission corridor designated by the secretary.

~~(4)~~ (4) The provisions of this chapter shall not apply to normal maintenance and repairs which do not increase the capacity or dimensions beyond those set forth in RCW 80.50.020 (7) and (14).

~~((4))~~ (5) Applications for certification of energy facilities made prior to July 15, 1977 shall continue to be governed by the applicable provisions of law in effect on the day immediately preceding July 15, 1977 with the exceptions of RCW 80.50.190 and 80.50.071 which shall apply to such prior applications and to site certifications prospectively from July 15, 1977.

~~((5))~~ (6) Applications for certification shall be upon forms prescribed by the council and shall be supported by such information and technical studies as the council may require.

Sec. 5. RCW 80.50.071 and 1977 ex.s. c 371 s 16 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:

(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. 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.

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.

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.

(c) 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 of the facility.

Each certificate holder, within thirty days of execution of the site certification agreement, shall deposit twenty thousand dollars, or such other amount as may be specified by council rule, to cover costs provided for by subsection (1)(c) of this section. Reasonable and necessary costs of the council directly attributable to 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.

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) 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) 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.

Sec. 6. RCW 80.50.090 and 2001 c 214 s 7 are each amended to read as follows:

(1) The council shall conduct an informational public hearing in the county of the proposed site as soon as practicable but not later than sixty days after receipt of an application for site certification(~~(- PROVIDED, That)~~). However, the place of such public hearing shall be as close as practical to the proposed site.

(2) Subsequent to the informational public hearing, the council shall conduct a public hearing to determine whether or not the proposed site is consistent and in compliance with city, county, or regional land use plans or zoning ordinances. If it is determined that the proposed site does conform with existing land use plans or zoning ordinances in effect as of the date of the application, the city, county, or regional planning authority shall not thereafter change such land use plans or zoning ordinances so as to affect the proposed site.

(3) Prior to the issuance of a council recommendation to the governor under RCW 80.50.100 a public hearing, conducted as an adjudicative proceeding under chapter 34.05 RCW, the administrative procedure act, shall be held. At such public hearing any person shall be entitled to be heard in support of or in opposition to the application for certification.

(4) Additional public hearings shall be held as deemed appropriate by the council in the exercise of its functions under this chapter.

Passed by the House March 4, 2006.

Passed by the Senate February 28, 2006.

Approved by the Governor March 24, 2006.

Filed in Office of Secretary of State March 24, 2006.

CHAPTER 197

[Engrossed House Bill 1069]

PERFORMANCE AUDITS—TAX PREFERENCES

AN ACT Relating to performance audits of tax preferences; adding new sections to chapter 43.136 RCW; and repealing RCW 43.136.010, 43.136.020, 43.136.030, 43.136.040, 43.136.050, and 43.136.070.

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

NEW SECTION. Sec. 1. The legislature recognizes that tax preferences are enacted to meet objectives which are determined to be in the public interest. However, some tax preferences may not be efficient or equitable tools for the achievement of current public policy objectives. Given the changing nature of the economy and tax structures of other states, the legislature finds that periodic performance audits of tax preferences are needed to determine if their continued existence will serve the public interest.

NEW SECTION. Sec. 2. As used in this chapter, "tax preference" means an exemption, exclusion, or deduction from the base of a state tax; a credit against a state tax; a deferral of a state tax; or a preferential state tax rate.

NEW SECTION. Sec. 3. (1) The citizen commission for performance measurement of tax preferences is created.

(2) The commission has seven members as follows:

(a) One member is the state auditor, who is a nonvoting member;

(b) One member is the chair of the joint legislative audit and review committee, who is a nonvoting member;

(c) The chair of each of the two largest caucuses of the senate and the two largest caucuses of the house of representatives shall each appoint a member. None of these appointees may be members of the legislature; and

(d) The governor shall select the seventh member.

(3) Persons appointed by the caucus chairs should be individuals who represent a balance of perspectives and constituencies, and have a basic understanding of state tax policy, government operations, and public services. These appointees should have knowledge and expertise in performance management, fiscal analysis, strategic planning, economic development, performance assessments, or closely related fields.

(4) The commission shall elect a chair from among its voting or nonvoting members. Decisions of the commission must be made using the sufficient consensus model. For the purposes of this subsection, "sufficient consensus" means the point at which the vast majority of the commission favors taking a particular action. If the commission determines that sufficient consensus cannot be reached, a vote must be taken. The commission must allow a minority report to be included with a decision of the commission, if requested by a member of the commission.

(5) Members serve for terms of four years, with the terms expiring on June 30th on the fourth year of the term. However, in the case of the initial terms, the members appointed by the chairs of senate caucuses shall serve four-year terms, the members appointed by the chairs of house of representatives caucuses shall serve three-year terms, and the member appointed by the governor shall serve a two-year term, with each of the terms expiring on June 30th of the applicable year. Appointees may be reappointed to serve more than one term.

(6) The joint legislative audit and review committee shall provide clerical, technical, and management personnel to the commission to serve as the commission's staff. The department of revenue shall provide necessary support and information to the joint legislative audit and review committee.

(7) The commission shall meet at least once a quarter and may hold additional meetings at the call of the chair or by a majority vote of the members of the commission. The members of the commission shall be compensated in accordance with RCW 43.03.220 and reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

NEW SECTION. Sec. 4. (1) The citizen commission for performance measurement of tax preferences shall develop a schedule to accomplish an orderly review of tax preferences at least once every ten years. The commission shall schedule tax preferences for review in the order the tax preferences were enacted into law, except that the commission may elect to include, anywhere in the schedule, a tax preference that has a statutory expiration date. The commission shall omit from the schedule tax preferences that are required by constitutional law, sales and use tax exemptions for machinery and equipment for manufacturing, research and development, or testing, the small business credit for the business and occupation tax, sales and use tax exemptions for food and prescription drugs, property tax relief for retired persons, and property tax valuations based on current use, and may omit any tax preference that the commission determines is a critical part of the structure of the tax system. As an

alternative to the process under section 5 of this act, the commission may recommend to the joint legislative audit and review committee an expedited review process for any tax preference that has an estimated biennial fiscal impact of ten million dollars or less.

(2) The commission shall revise the schedule as needed each year, taking into account newly enacted or terminated tax preferences. The commission shall deliver the schedule to the joint legislative audit and review committee by September 1st of each year.

(3) The commission shall provide a process for effective citizen input during its deliberations.

NEW SECTION. Sec. 5. (1) The joint legislative audit and review committee shall review tax preferences according to the schedule developed under section 4 of this act. The committee shall consider, but not be limited to, the following factors in the review:

(a) The classes of individuals, types of organizations, or types of industries whose state tax liabilities are directly affected by the tax preference;

(b) Public policy objectives that might provide a justification for the tax preference, including but not limited to the legislative history, any legislative intent, or the extent to which the tax preference encourages business growth or relocation into this state, promotes growth or retention of high wage jobs, or helps stabilize communities;

(c) Evidence that the existence of the tax preference has contributed to the achievement of any of the public policy objectives;

(d) The extent to which continuation of the tax preference might contribute to any of the public policy objectives;

(e) The extent to which the tax preference may provide unintended benefits to an individual, organization, or industry other than those the legislature intended;

(f) The extent to which terminating the tax preference may have negative effects on the category of taxpayers that currently benefit from the tax preference, and the extent to which resulting higher taxes may have negative effects on employment and the economy;

(g) The feasibility of modifying the tax preference to provide for adjustment or recapture of the tax benefits of the tax preference if the objectives are not fulfilled;

(h) Fiscal impacts of the tax preference, including past impacts and expected future impacts if it is continued. For the purposes of this subsection, "fiscal impact" includes an analysis of the general effects of the tax preference on the overall state economy, including, but not limited to, the effects of the tax preference on the consumption and expenditures of persons and businesses within the state;

(i) The extent to which termination of the tax preference would affect the distribution of liability for payment of state taxes;

(j) Consideration of similar tax preferences adopted in other states, and potential public policy benefits that might be gained by incorporating corresponding provisions in Washington.

(2) For each tax preference, the committee shall provide a recommendation as to whether the tax preference should be continued without modification, modified, scheduled for sunset review at a future date, or terminated

immediately. The committee may recommend accountability standards for the future review of a tax preference.

NEW SECTION. Sec. 6. (1) The joint legislative audit and review committee shall report its findings and recommendations for scheduled tax preferences to the citizen commission for performance measurement of tax preferences by August 30th of each year. The commission may review and comment on the report of the committee. The committee may revise its report based on the comments of the commission. The committee shall prepare a final report that includes the comments of the commission and submit the final report to the finance committee of the house of representatives and the ways and means committee of the senate by December 30th.

(2) The joint legislative audit and review committee shall submit a special report reviewing all tax preferences that have statutory expiration dates between June 30, 2005, and January 1, 2007. For the special report, the committee shall complete a review under section 5 of this act, and obtain comments of the citizen commission for performance measurement of tax preferences under subsection (1) of this section, to the extent possible. The committee shall submit the special report to the finance committee of the house of representatives and the ways and means committee of the senate by January 12, 2006.

(3) Following receipt of a report under this section, the finance committee of the house of representatives and the ways and means committee of the senate shall jointly hold a public hearing to consider the final report and any related data.

NEW SECTION. Sec. 7. Upon request of the citizen commission for performance measurement of tax preferences or the joint legislative audit and review committee, the department of revenue and the department of employment security shall provide information needed by the commission or committee to meet its responsibilities under this chapter.

NEW SECTION. Sec. 8. The following acts or parts of acts are each repealed:

(1) RCW 43.136.010 (Legislative findings—Intent) and 1982 1st ex.s. c 35 s 39;

(2) RCW 43.136.020 ("Tax preference" defined) and 1982 1st ex.s. c 35 s 40;

(3) RCW 43.136.030 (Legislative budget committee and department of revenue—Review of tax preferences—Reports) and 1982 1st ex.s. c 35 s 41;

(4) RCW 43.136.040 (Legislative budget committee review of tax preferences—Factors for consideration) and 1982 1st ex.s. c 35 s 42;

(5) RCW 43.136.050 (Powers and duties of ways and means committees) and 1982 1st ex.s. c 35 s 43; and

(6) RCW 43.136.070 (Report on existing tax preferences to be provided—Additional information to be provided) and 1982 1st ex.s. c 35 s 45.

NEW SECTION. Sec. 9. Sections 1 through 7 of this act are each added to chapter 43.136 RCW.

Passed by the House February 11, 2006.

Passed by the Senate March 3, 2006.

Approved by the Governor March 24, 2006.
Filed in Office of Secretary of State March 24, 2006.

CHAPTER 198

[House Bill 1471]

DOCUMENT AUTHENTICATION

AN ACT Relating to authentication of documents; and amending RCW 5.44.130 and 5.52.050.

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

Sec. 1. RCW 5.44.130 and Code 1881 s 434 are each amended to read as follows:

A seal of court or public office, when required to any writ, process, or proceeding to authenticate a copy of any record or document, may be affixed by making an inked, printed, or embossed impression directly on the (~~paper which~~) document and shall be (~~as~~) considered valid (~~(as if made upon a wafer or on wax)~~).

Sec. 2. RCW 5.52.050 and Code 1881 s 2356 are each amended to read as follows:

Except as (~~hereinbefore~~) otherwise provided in this chapter, any instrument in writing, duly certified, under his or her hand and official seal, by a notary public, commissioner of deeds, or clerk of a court of record, to be genuine, within the personal knowledge of such officer, may, together with such certificate, be sent by telegraph or other electronic transmission and the telegraphic or other electronic transmission copy thereof shall, prima facie, only have the same force, effect and validity, in all respects whatsoever as the original, and the burden of proof shall rest with the party denying the genuineness, or due execution of the original.

Passed by the House January 18, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 24, 2006.

Filed in Office of Secretary of State March 24, 2006.

CHAPTER 199

[Substitute House Bill 2155]

STATE PUBLICATION PRESERVATION

AN ACT Relating to state publication preservation by state library services within the office of the secretary of state; amending RCW 27.04.045, 40.06.010, 40.06.020, 40.06.030, 40.06.040, and 40.06.050; and creating a new section.

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

NEW SECTION. **Sec. 1.** The state of Washington recognizes that an informed citizenry is indispensable to the proper functioning of a democratic society. It is the basic right of citizens to know about the activities of their government, to benefit from the information developed at public expense, and to have permanent access to the information published by state agencies.

The secretary of state through the state library must ensure permanent public access to public state government publications, regardless of the format, and prescribe the conditions for use of state publications in depository libraries.

Sec. 2. RCW 27.04.045 and 2002 c 342 s 3 are each amended to read as follows:

The state librarian shall be responsible and accountable for the following functions:

(1) Establishing content-related standards for common formats and agency indexes for state agency-produced information. In developing these standards, the state librarian is encouraged to seek involvement of, and comments from, public and private entities with an interest in such standards;

(2) Managing and administering the state library;

(3) Exerting leadership in information access and the development of library services;

(4) Acquiring library materials, equipment, and supplies by purchase, exchange, gift, or otherwise; and, as appropriate, assisting the legislature, other state agencies, and other libraries in the cost-effective purchase of information resources;

(5) Employing and terminating personnel in accordance with chapter 41.06 RCW as may be necessary to implement the purposes of this chapter;

(6) Entering into agreements with other public or private entities as a means of implementing the mission, goals, and objectives of the state library and the entity with which it enters such agreements. In agreements for services between the library and other state agencies, the library may negotiate an exchange of services in lieu of monetary reimbursement for the library's indirect or overhead costs, when such an arrangement facilitates the delivery of library services;

(7) Maintaining a library at the state capitol grounds to effectively provide library and information services to members of the legislature, state officials, and state employees in connection with their official duties;

(8) Serving as the depository for newspapers published in the state of Washington thus providing a central location for a valuable historical record for scholarly, personal, and commercial reference and circulation;

(9) Promoting and facilitating electronic access to public information and services, including providing, or providing for, a service that identifies, describes, and provides location information for government information through electronic means, and that assists government agencies in making their information more readily available to the public;

(10) Collecting and distributing copies of state publications, as defined in RCW 40.06.010, prepared by any state agency for distribution. The state library shall maintain the state publications distribution center, as provided in chapter 40.06 RCW (~~the office of the secretary of state, on recommendation of the state librarian, may provide by rule for deposit with the state library of up to three copies of each publication~~) to provide copies of materials that are not available in electronic format to state depository libraries;

(11) Providing for the sale of library material in accordance with RCW 27.12.305;

(12) Providing advisory services to state agencies regarding their information needs;

(13) Providing for library and information service to residents and staff of state-supported residential institutions;

(14) Providing for library and information services to persons throughout the state who are blind and/or physically handicapped;

(15) Assisting individuals and groups such as libraries, library boards, governing bodies, and citizens throughout the state toward the establishment and development of library services;

(16) Making studies and surveys of library needs in order to provide, expand, enlarge, and otherwise improve access to library facilities and services throughout the state;

(17) Serving as an interlibrary loan, information, reference, and referral resource for all libraries in the state. The state library may charge lending fees to other libraries that charge the state library for similar services. Money paid as fees shall be retained by the state library as a recovery of costs; and

(18) Accepting and expending in accordance with the terms thereof grants of federal, state, local, or private funds. For the purpose of qualifying to receive such grants, the state librarian is authorized to make applications and reports required by the grantor.

Sec. 3. RCW 40.06.010 and 1977 ex.s. c 232 s 8 are each amended to read as follows:

As used in this chapter:

(1) (~~"Print" includes all forms of reproducing multiple copies, with the exception of typewritten correspondence and interoffice memoranda.~~

~~(2))~~ "Electronic repository" means a collection of publicly accessible electronic publications stored in a secure digital environment with redundant backup to preserve the collection.

(2) "Format" includes any media used in the publication of state information including electronic, print, audio, visual, and microfilm.

(3) "State agency" includes every state office, officer, department, division, bureau, board, commission and agency of the state, and, where applicable, all subdivisions of each.

~~((3))~~ (4) "State publication" means information published by state agencies, regardless of format, intended for distribution to state government or the public. Examples may include annual, biennial, and special reports required by law, state agency newsletters, periodicals, and magazines, (books, pamphlets, leaflets, and all other materials, other than news releases sent exclusively to the news media, typewritten correspondence and interoffice memoranda, issued in print by the state, the legislature, constitutional officers, or any state department, committee, or other state agency supported wholly or in part by state funds) and other informational material intended for general dissemination to state agencies, the public, or the legislature.

Sec. 4. RCW 40.06.020 and 2002 c 342 s 5 are each amended to read as follows:

There is hereby created as a division of the state library, and under the direction of the state librarian, a state publications distribution center. The center shall utilize the depository library system to permit citizens economical and convenient access to state publications, regardless of format. To this end the

secretary of state shall make such rules as may be deemed necessary to carry out the provisions of this chapter.

Sec. 5. RCW 40.06.030 and 1977 ex.s. c 232 s 10 are each amended to read as follows:

(1) Every state agency shall promptly ~~((deposit copies of each of its state publications with the state library in quantities as certified by the state librarian as required to meet the needs of the depository library system. Upon consent of the issuing state agency such state publications as are printed by the public printer shall be delivered directly to the center.~~

~~(2))~~ submit to the state library copies of published information that are state publications.

(a) For state publications available only in print format, each state agency shall deposit, at a minimum, two copies of each of its publications with the state library. For the purposes of broad public access, state agencies may deposit additional copies with the state library for distribution to additional depository libraries.

(b) For state publications available only in electronic format, each state agency shall deposit one copy of each of its publications with the state library.

(c) For state publications available in both print and electronic format, each state agency shall deposit two print copies and one electronic copy of the publication with the state library.

(2) Annually, each state agency shall provide the state library with a listing of all its publications made available to state government and the public during the preceding year, including those published in electronic form. The secretary of state shall, by rule, establish the annual date by which state agencies must provide the list of its publications to the state library.

(3) In the interest of economy and efficiency, the state librarian may specifically or by general rule exempt a given state publication or class of publications from the requirements of this section in full or in part.

(4) Upon consent of the issuing state agency, such state publications as are printed by the public printer shall be delivered directly to the center.

Sec. 6. RCW 40.06.040 and 2002 c 342 s 6 are each amended to read as follows:

(1) To provide economical public access to state publications, the center may enter into depository contracts with any free public library, The Evergreen State College, regional university, or state university library, or, if needed, the library of any privately incorporated college or university in this state. The requirements for eligibility to contract as a depository library shall be established by the secretary of state upon recommendations of the state librarian. The standards shall include and take into consideration the type of library, available housing and space for the publications, the number and qualifications of personnel, and availability for public use. The center may also contract with public, out-of-state libraries for the exchange of state and other publications on a reciprocal basis. Any state publication to be distributed to the public and the legislature shall be mailed at the lowest available postal rate.

(2) The office of the secretary of state through the state librarian shall preserve and make accessible state agency electronic publications deposited with the state library through an electronic repository.

Sec. 7. RCW 40.06.050 and 1963 c 233 s 5 are each amended to read as follows:

The center shall publish and distribute regularly a list of available state publications, and may publish and distribute such other descriptive (~~printed~~) matter as will facilitate the distribution of and access to state publications.

Passed by the House March 7, 2006.

Passed by the Senate March 6, 2006.

Approved by the Governor March 24, 2006.

Filed in Office of Secretary of State March 24, 2006.

CHAPTER 200

[Substitute House Bill 2345]

REGIONAL FIRE PROTECTION AUTHORITIES

AN ACT Relating to regional fire protection service authorities; amending RCW 52.26.020, 52.26.040, 52.26.050, 52.26.060, 52.26.070, 52.26.090, 52.26.100, 52.26.130, 52.26.140, and 52.26.220; and adding new sections to chapter 52.26 RCW.

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

Sec. 1. RCW 52.26.020 and 2004 c 129 s 2 are each amended to read as follows:

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

(1) "Board" means the governing body of a regional fire protection service authority.

(2) "Regional fire protection service authority" or "authority" means a municipal corporation, an independent taxing authority within the meaning of Article VII, section 1 of the state Constitution, and a taxing district within the meaning of Article VII, section 2 of the state Constitution, whose boundaries are coextensive with two or more adjacent fire protection jurisdictions and that has been created by a vote of the people under this chapter to implement a regional fire protection service authority plan.

(3) "Regional fire protection service authority planning committee" or "planning committee" means the advisory committee created under RCW 52.26.030 to create and propose to fire protection jurisdictions a regional fire protection service authority plan to design, finance, and develop fire protection and emergency service projects.

(4) "Regional fire protection service authority plan" or "plan" means a plan to develop and finance a fire protection service authority project or projects, including, but not limited to, specific capital projects, fire operations and emergency service operations pursuant to RCW 52.26.040(3)(b), and preservation and maintenance of existing or future facilities.

(5) "Fire protection jurisdiction" means a fire district, city, town, port district, or Indian tribe.

(6) "Regular property taxes" has the same meaning as in RCW 84.04.140.

Sec. 2. RCW 52.26.040 and 2004 c 129 s 4 are each amended to read as follows:

(1) A regional fire protection service authority planning committee shall adopt a regional fire protection service authority plan providing for the design,

financing, and development of fire protection and emergency services. The planning committee may consider the following factors in formulating its plan:

- (a) Land use planning criteria; and
- (b) The input of cities and counties located within, or partially within, a participating fire protection jurisdiction.

(2) The planning committee may coordinate its activities with neighboring cities, towns, and other local governments that engage in fire protection planning.

(3) The planning committee shall:

(a) Create opportunities for public input in the development of the plan;

(b) Adopt a plan proposing the creation of a regional fire protection service authority and recommending design, financing, and development of fire protection and emergency service facilities and operations, including maintenance and preservation of facilities or systems ~~(, except that no ambulance service may be recommended unless the regional fire protection service authority determines that the fire protection jurisdictions that are members of the authority are not adequately served by existing private ambulance service in which case the authority may provide for the establishment of a system of ambulance service to be operated by the authority or operated by contract after a call for bids)).~~ The plan may authorize the authority to establish a system of ambulance service to be operated by the authority or operated by contract after a call for bids. However, the authority shall not provide for the establishment of an ambulance service that would compete with any existing private ambulance service, unless the authority determines that the region served by the authority, or a substantial portion of the region served by the authority, is not adequately served by an existing private ambulance service. In determining the adequacy of an existing private ambulance service, the authority shall take into consideration objective generally accepted medical standards and reasonable levels of service which must be published by the authority. Following the preliminary conclusion by the authority that the existing private ambulance service is inadequate, and before establishing an ambulance service or issuing a call for bids, the authority shall allow a minimum of sixty days for the private ambulance service to meet the generally accepted medical standards and accepted levels of service. In the event of a second preliminary conclusion of inadequacy within a twenty-four-month period, the authority may immediately issue a call for bids or establish its own ambulance service and is not required to afford the private ambulance service another sixty-day period to meet the generally accepted medical standards and reasonable levels of service. A private ambulance service that is not licensed by the department of health or whose license is denied, suspended, or revoked is not entitled to a sixty-day period within which to demonstrate adequacy and the authority may immediately issue a call for bids or establish an ambulance service; and

(c) In the plan, recommend sources of revenue authorized by RCW 52.26.050, identify the portions of the plan that may be amended by the board of the authority without voter approval, consistent with RCW 52.26.050, and recommend a financing plan to fund selected fire protection ((service)) and emergency services and projects.

(4) Once adopted, the plan must be forwarded to the participating fire protection jurisdictions' governing bodies to initiate the election process under RCW 52.26.060.

(5) If the ballot measure is not approved, the planning committee may redefine the selected regional fire protection service authority projects, financing plan, and the ballot measure. The fire protection jurisdictions' governing bodies may approve the new plan and ballot measure, and may then submit the revised proposition to the voters at a subsequent election or a special election. If a ballot measure is not approved by the voters by the third vote, the planning committee is dissolved.

Sec. 3. RCW 52.26.050 and 2004 c 129 s 5 are each amended to read as follows:

(1) A regional fire protection service authority planning committee may, as part of a regional fire protection service authority plan, recommend the imposition of some or all of the following revenue sources, which a regional fire protection service authority may impose upon approval of the voters as provided in this chapter:

(a) Benefit charges under RCW 52.26.180 through 52.26.270;

(b) Property taxes under RCW 52.26.140 through 52.26.170 and 84.52.044 and RCW 84.09.030, 84.52.010, 84.52.052, and 84.52.069; or

(c) Both (a) and (b) of this subsection.

(2) The authority may impose taxes and benefit charges ((may not be imposed unless they are identified)) as set forth in the regional fire protection service authority plan ((and the plan is)) upon creation of the authority, or as provided for in this chapter after creation of the authority. If the plan authorizes the authority to impose benefit charges or sixty percent voter approved taxes, the plan and creation of the authority must be approved by an affirmative vote of sixty percent of the voters within the boundaries of the authority voting on a ballot proposition as set forth in RCW 52.26.060. However, if the plan provides for alternative sources of revenue that become effective if the plan and creation of the authority is approved only by a majority vote, then the plan with alternative sources of revenue and creation of the authority may be approved by an affirmative vote of the majority of those voters. If the plan does not authorize the authority to impose benefit charges or sixty percent voter approved taxes, the plan and creation of the authority must be approved by an affirmative vote of the majority of the voters within the boundaries of the authority voting on a ballot proposition as set forth in RCW 52.26.060. ((The voter approval requirement)) Except as provided in this section ((is in addition to any)), all other voter approval requirements under law for the levying of property taxes or the imposition of benefit charges apply. Revenues from these taxes and benefit charges may be used only to implement the plan as set forth in this chapter.

Sec. 4. RCW 52.26.060 and 2004 c 129 s 6 are each amended to read as follows:

The governing bodies of two or more adjacent fire protection jurisdictions, upon receipt of the regional fire protection service authority plan under RCW 52.26.040, may certify the plan to the ballot, including identification of the ~~((tax))~~ revenue options ~~((necessary))~~ specified to fund the plan. The governing bodies of the fire protection jurisdictions may draft a ballot title, give notice as

required by law for ballot measures, and perform other duties as required to put the plan before the voters of the proposed authority for their approval or rejection as a single ballot measure that both approves formation of the authority and approves the plan. Authorities may negotiate interlocal agreements necessary to implement the plan. The electorate is the voters voting within the boundaries of the proposed regional fire protection service authority. A simple majority of the total persons voting on the single ballot measure to approve the plan ~~(;)~~ and establish the authority ~~(, and approve the taxes)~~ is required for approval. However, if the plan authorizes the authority to impose benefit charges or sixty percent voter approved taxes, then the percentage of total persons voting on the single ballot measure to approve the plan and establish the authority is the same as in RCW 52.26.050. The authority must act in accordance with the general election laws of the state. The authority is liable for its proportionate share of the costs when the elections are held under RCW ~~((29A.04.320))~~ 29A.04.321 and 29A.04.330.

Sec. 5. RCW 52.26.070 and 2004 c 129 s 7 are each amended to read as follows:

If the voters approve the plan, including creation of a regional fire protection service authority and imposition of taxes and benefit charges, if any, the authority is formed on the next January 1st or July 1st, whichever occurs first. The appropriate county election officials shall, within fifteen days of the final certification of the election results, publish a notice in a newspaper or newspapers of general circulation in the authority declaring the authority formed. A party challenging the procedure or the formation of a voter-approved authority must file the challenge in writing by serving the prosecuting attorney of each county within, or partially within, the regional fire protection service authority and the attorney general within thirty days after the final certification of the election. Failure to challenge within that time forever bars further challenge of the authority's valid formation.

Sec. 6. RCW 52.26.090 and 2004 c 129 s 9 are each amended to read as follows:

(1) The governing board of the authority is responsible for the execution of the voter-approved plan. Participating jurisdictions shall review the plan every ten years. The board ~~((shall))~~ may:

(a) Levy ~~((and impose))~~ taxes and impose benefit charges as authorized in the plan and approved by authority voters;

(b) Enter into agreements with federal, state, local, and regional entities and departments as necessary to accomplish authority purposes and protect the authority's investments;

(c) Accept gifts, grants, or other contributions of funds that will support the purposes and programs of the authority;

(d) Monitor and audit the progress and execution of fire protection and emergency service projects to protect the investment of the public and annually make public its findings;

(e) Pay for services and enter into leases and contracts, including professional service contracts;

(f) Hire, manage, and terminate employees; and

(g) Exercise ~~((other))~~ powers and perform duties as ~~((may be reasonable))~~ the board determines necessary to carry out the purposes, functions, and projects of the authority in accordance with Title 52 RCW if one of the fire protection jurisdictions is a fire district, unless provided otherwise in the regional fire protection service authority plan, or in accordance with the statutes identified in the plan if none of the fire protection jurisdictions is a fire district.

~~(2) ((An authority may acquire, hold, or dispose of real property.~~

~~(3) An authority may exercise the powers of eminent domain.~~

~~(4))~~ An authority may enforce fire codes as provided under chapter 19.27 RCW.

Sec. 7. RCW 52.26.100 and 2004 c 129 s 10 are each amended to read as follows:

(1) Except as otherwise provided in the regional fire protection service authority plan, all powers, duties, and functions of a participating fire protection jurisdiction pertaining to ~~((providing))~~ fire protection and emergency services ~~((may))~~ shall be transferred~~((, by resolution,))~~ to the regional fire protection service authority on its creation date.

(2)(a) Except as otherwise provided in the regional fire protection service authority plan, and on the creation date of the regional fire protection service authority, all reports, documents, surveys, books, records, files, papers, or written material in the possession of the participating fire protection jurisdiction pertaining to ~~((the))~~ fire protection and emergency services powers, functions, and duties ~~((transferred))~~ shall be delivered to the ~~((custody of the))~~ regional fire protection service authority~~((:));~~ all real property and personal property including cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the participating fire protection jurisdiction in carrying out the fire protection and emergency services powers, functions, and duties ~~((transferred))~~ shall be ~~((made available))~~ transferred to the regional fire protection service authority~~((:));~~ and all funds, credits, or other assets held by the participating fire protection jurisdiction in connection with the fire protection and emergency services powers, functions, and duties ~~((transferred))~~ shall be ~~((assigned))~~ transferred and credited to the regional fire protection service authority.

(b) Except as otherwise provided in the regional fire protection service authority plan, any appropriations made to the participating fire protection jurisdiction for carrying out the fire protection and emergency services powers, functions, and duties ~~((transferred))~~ shall~~((, on the effective date of the resolution,))~~ be transferred and credited to the regional fire protection service authority.

(c) Except as otherwise provided in the regional fire protection service authority plan, whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the governing body of the participating fire protection jurisdiction shall make a determination as to the proper allocation.

(3) Except as otherwise provided in the regional fire protection service authority plan, all rules and all pending business before the participating fire protection jurisdiction pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the regional fire protection service

authority~~(-)~~, and all existing contracts and obligations shall remain in full force and shall be performed by the regional fire protection service authority.

(4) The transfer of the powers, duties, functions, and personnel of the participating fire protection jurisdiction shall not affect the validity of any act performed before ~~((the effective date of the resolution))~~ creation of the regional fire protection service authority.

(5) If apportionments of budgeted funds are required because of the transfers ~~((directed by the resolution))~~, the treasurer ~~((under RCW 52.26.170))~~ for the authority shall certify the apportionments.

(6)(a) Subject to (c) of this subsection, all employees of the participating fire protection jurisdictions are transferred to the jurisdiction of the regional fire protection service authority on its creation date. Upon transfer, unless an agreement for different terms of transfer is reached between the collective bargaining representatives of the transferring employees and the participating fire protection jurisdictions, an employee is entitled to the employee rights, benefits, and privileges to which he or she would have been entitled as an employee of a participating fire protection jurisdiction, including rights to:

(i) Compensation at least equal to the level at the time of transfer;

(ii) Retirement, vacation, sick leave, and any other accrued benefit;

(iii) Promotion and service time accrual; and

(iv) The length or terms of probationary periods, including no requirement for an additional probationary period if one had been completed before the transfer date.

(b) If any or all of the participating fire protection jurisdictions provide for civil service in their fire departments, the collective bargaining representatives of the transferring employees and the participating fire protection jurisdictions must negotiate regarding the establishment of a civil service system within the authority. This subsection does not apply if none of the participating fire protection districts provide for civil service.

(c) Nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified as provided by law. ~~((RCW 35.13.215 through 35.13.235 apply to the transfer of employees under this section.))~~

NEW SECTION. Sec. 8. A new section is added to chapter 52.26 RCW to read as follows:

(1) Subject to subsection (2) of this section, a regional fire protection service authority may, by resolution of its board, provide for civil service for its employees in the same manner, with the same powers, and with the same force and effect as provided by chapter 41.08 RCW for cities, towns, and municipalities, including restrictions against the discharge of an employee because of residence outside the limits of the regional fire protection service authority.

(2) If an agreement is reached to provide for civil service under RCW 52.26.100(6), the regional fire protection service authority shall establish such a system as is required by the agreement.

NEW SECTION. Sec. 9. A new section is added to chapter 52.26 RCW to read as follows:

Territory that is annexed to a participating jurisdiction is annexed to the authority as of the effective date of the annexation. The statutes regarding transfer of assets and employees do not apply to the participating jurisdictions in the annexation.

Sec. 10. RCW 52.26.130 and 2004 c 129 s 14 are each amended to read as follows:

~~((Unless contrary to this section, chapter 39.42 RCW applies to debt and bonding under this section. The authority may borrow money, but may not issue any debt of its own for more than ten years' duration. An authority may issue notes or other evidences of indebtedness with a maturity of not more than twenty years. An authority may, when authorized by the plan, enter into agreements with the state to pledge taxes or other revenues of the authority for the purpose of paying in part or whole principal and interest on bonds issued by the authority. The contracts pledging revenues and taxes are binding for the term of the agreement, but not to exceed twenty-five years, and no tax pledged by an agreement may be eliminated or modified if it would impair the pledge of the agreement.))~~ (1) An authority may incur general indebtedness for authority purposes, issue bonds, notes, or other evidences of indebtedness not to exceed an amount, together with any outstanding nonvoter approved general obligation debt, equal to three-fourths of one percent of the value of the taxable property within the authority. The maximum term of the obligations may not exceed twenty years. The obligations may pledge benefit charges and may pledge payments to an authority from the state, the federal government, or any fire protection jurisdiction under an interlocal contract. The interlocal contracts pledging revenues and taxes are binding for a term not to exceed twenty-five years, and taxes or other revenue pledged by an interlocal contract may not be eliminated or modified if it would impair the pledge of the contract.

(2) An authority may also issue general obligation bonds for capital purposes not to exceed an amount, together with any outstanding general obligation debt, equal to one and one-half percent of the value of the taxable property within the authority. The authority may provide for the retirement of the bonds by excess property tax levies. The voters of the authority must approve a proposition authorizing the bonds and levies by an affirmative vote of three-fifths of those voting on the proposition at an election. At the election, the total number of persons voting must constitute not less than forty percent of the voters in the authority who voted at the last preceding general state election. The maximum term of the bonds may not exceed twenty-five years. Elections shall be held as provided in RCW 39.36.050.

(3) Obligations of an authority shall be issued and sold in accordance with chapters 39.46 and 39.50 RCW, as applicable.

Sec. 11. RCW 52.26.140 and 2004 c 129 s 15 are each amended to read as follows:

(1) To carry out the purposes for which a regional fire protection service authority is created, as authorized in the plan and approved by the voters, the governing board of an authority may annually levy the following taxes:

(a) An ad valorem tax on all taxable property located within the authority not to exceed fifty cents per thousand dollars of assessed value;

(b) An ad valorem tax on all property located within the authority not to exceed fifty cents per thousand dollars of assessed value and which will not cause the combined levies to exceed the constitutional or statutory limitations. This levy, or any portion of this levy, may also be made when dollar rates of other taxing units are released by agreement with the other taxing units from their authorized levies; and

(c) An ad valorem tax on all taxable property located within the authority not to exceed fifty cents per thousand dollars of assessed value if the authority has at least one full-time, paid employee, or contracts with another municipal corporation for the services of at least one full-time, paid employee. This levy may be made only if it will not affect dollar rates which other taxing districts may lawfully claim nor cause the combined levies to exceed the constitutional or statutory limitations or both.

(2) Levies in excess of the amounts provided in subsection (1) of this section or in excess of the aggregate dollar rate limitations or both may be made for any authority purpose when so authorized at a special election under RCW 84.52.052. Any such tax when levied must be certified to the proper county officials for the collection of the tax as for other general taxes. The taxes when collected shall be placed in the appropriate authority fund or funds as provided by law, and must be paid out on warrants of the auditor of the county in which all, or the largest portion of, the authority is located, upon authorization of the governing board of the authority.

~~(3) ((Authorities are additionally authorized to incur general indebtedness and to issue general obligation bonds for capital purposes as provided in RCW 52.26.130.)) Authorities may provide for the retirement of general indebtedness by excess property tax levies(~~, when the voters of the authority have approved a proposition authorizing such indebtedness and levies by an affirmative vote of three fifths of those voting on the proposition at such an election, at which election the total number of persons voting shall constitute not less than forty percent of the voters in the authority who voted at the last preceding state general election. Elections must be held as provided in RCW 39.36.050. The maximum term of any bonds issued under the authority of this section may not exceed ten years and must be issued and sold in accordance with chapter 39.46 RCW~~)) as set forth in RCW 52.26.130.~~

(4) For purposes of this ~~((section))~~ chapter, the term "value of the taxable property" has the same meaning as in RCW 39.36.015.

Sec. 12. RCW 52.26.220 and 2004 c 129 s 28 are each amended to read as follows:

(1) Notwithstanding any other provision in this chapter to the contrary, any benefit charge authorized by this chapter is not effective unless a proposition to impose the benefit charge is approved by a sixty percent majority of the voters of the regional fire protection service authority voting at a general election or at a special election called by the authority for that purpose, held within the authority. A ballot measure that contains an authorization to impose benefit charges and that is approved by the voters pursuant to RCW 52.26.060 meets the proposition approval requirement of this section. An election held under this section must be held not more than twelve months prior to the date on which the first charge is to be assessed. A benefit charge approved at an election expires in

six years or fewer as authorized by the voters, unless subsequently reapproved by the voters.

(2) The ballot must be submitted so as to enable the voters favoring the authorization of a regional fire protection service authority benefit charge to vote "Yes" and those opposed to vote "No." The ballot question is as follows:

"Shall the regional fire protection service authority composed of (insert the participating fire protection jurisdictions) be authorized to impose benefit charges each year for . . . (insert number of years not to exceed six) years, not to exceed an amount equal to sixty percent of its operating budget, and be prohibited from imposing an additional property tax under RCW 52.26.140(1)(c)?

YES NO

(3) Authorities renewing the benefit charge may elect to use the following alternative ballot:

"Shall the regional fire protection service authority composed of (insert the participating fire protection jurisdictions) be authorized to continue voter-authorized benefit charges each year for . . . (insert number of years not to exceed six) years, not to exceed an amount equal to sixty percent of its operating budget, and be prohibited from imposing an additional property tax under RCW 52.26.140(1)(c)?

YES NO

Passed by the House March 6, 2006.
Passed by the Senate March 3, 2006.
Approved by the Governor March 24, 2006.
Filed in Office of Secretary of State March 24, 2006.

CHAPTER 201

[Engrossed Substitute House Bill 2352]

NET METERING

AN ACT Relating to net metering; and amending RCW 80.60.010, 80.60.020, 80.60.030, and 80.60.040.

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

Sec. 1. RCW 80.60.010 and 2000 c 158 s 1 are each amended to read as follows:

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

- (1) "Commission" means the utilities and transportation commission.
- (2) "Customer-generator" means a user of a net metering system.
- (3) "Electrical company" means a company owned by investors that meets the definition of RCW 80.04.010.
- (4) "Electric cooperative" means a cooperative or association organized under chapter 23.86 or 24.06 RCW.

(5) "Electric utility" means any electrical company, public utility district, irrigation district, port district, electric cooperative, or municipal electric utility that is engaged in the business of distributing electricity to retail electric customers in the state.

(6) "Irrigation district" means an irrigation district under chapter 87.03 RCW.

(7) "Municipal electric utility" means a city or town that owns or operates an electric utility authorized by chapter 35.92 RCW.

(8) "Net metering" means measuring the difference between the electricity supplied by an electric utility and the electricity generated by a customer-generator ~~((that is fed back to the electric utility))~~ over the applicable billing period.

(9) "Net metering system" means a fuel cell ~~((or)),~~ a facility that produces electricity and used and useful thermal energy from a common fuel source, or a facility for the production of electrical energy that generates renewable energy, and that:

~~((a))~~ ~~((Uses as its fuel either solar, wind, or hydropower;~~

~~((b))~~ ~~((Has ((a)) an electrical generating capacity of not more than ((twenty-five)) one hundred kilowatts;~~

~~((c))~~ ~~((b)) Is located on the customer-generator's premises;~~

~~((d))~~ ~~((c)) Operates in parallel with the electric utility's transmission and distribution facilities; and~~

~~((e))~~ ~~((d)) Is intended primarily to offset part or all of the customer-generator's requirements for electricity.~~

(10) "Port district" means a port district within which an industrial development district has been established as authorized by Title 53 RCW.

(11) "Public utility district" means a district authorized by chapter 54.04 RCW.

(12) "Renewable energy" means energy generated by a facility that uses water, wind, solar energy, or biogas from animal waste as a fuel.

Sec. 2. RCW 80.60.020 and 2000 c 158 s 2 are each amended to read as follows:

An electric utility:

(1) Shall offer to make net metering available to eligible customer-generators on a first-come, first-served basis until the cumulative generating capacity of net metering systems equals ~~((0.1))~~ 0.25 percent of the utility's peak demand during 1996 ~~((, of which not less than 0.05 percent shall be attributable to net metering systems that use as its fuel either solar, wind, or hydropower)).~~ On January 1, 2014, the cumulative generating capacity available to net metering systems will equal 0.5 percent of the utility's peak demand during 1996. Not less than one-half of the utility's 1996 peak demand available for net metering systems shall be reserved for the cumulative generating capacity attributable to net metering systems that generate renewable energy;

(2) Shall allow net metering systems to be interconnected using a standard kilowatt-hour meter capable of registering the flow of electricity in two directions, unless the commission, in the case of an electrical company, or the appropriate governing body, in the case of other electric utilities, determines, after appropriate notice and opportunity for comment:

(a) That the use of additional metering equipment to monitor the flow of electricity in each direction is necessary and appropriate for the interconnection of net metering systems, after taking into account the benefits and costs of purchasing and installing additional metering equipment; and

(b) How the cost of purchasing and installing an additional meter is to be allocated between the customer-generator and the utility;

(3) Shall charge the customer-generator a minimum monthly fee that is the same as other customers of the electric utility in the same rate class, but shall not charge the customer-generator any additional standby, capacity, interconnection, or other fee or charge unless the commission, in the case of an electrical company, or the appropriate governing body, in the case of other electric utilities, determines, after appropriate notice and opportunity for comment that:

(a) The electric utility will incur direct costs associated with interconnecting or administering net metering systems that exceed any offsetting benefits associated with these systems; and

(b) Public policy is best served by imposing these costs on the customer-generator rather than allocating these costs among the utility's entire customer base.

Sec. 3. RCW 80.60.030 and 1998 c 318 s 4 are each amended to read as follows:

Consistent with the other provisions of this chapter, the net energy measurement must be calculated in the following manner:

(1) The electric utility shall measure the net electricity produced or consumed during the billing period, in accordance with normal metering practices.

(2) If the electricity supplied by the electric utility exceeds the electricity generated by the customer-generator and fed back to the electric utility during the billing period, the customer-generator shall be billed for the net electricity supplied by the electric utility, in accordance with normal metering practices.

(3) If electricity generated by the customer-generator exceeds the electricity supplied by the electric utility, the customer-generator:

(a) Shall be billed for the appropriate customer charges for that billing period, in accordance with RCW 80.60.020; and

(b) Shall be credited for the excess kilowatt-hours generated during the billing period, with this kilowatt-hour credit appearing on the bill for the following billing period.

~~((At the beginning))~~ On April 30th of each calendar year, any remaining unused kilowatt-hour credit accumulated during the previous year shall be granted to the electric utility, without any compensation to the customer-generator.

Sec. 4. RCW 80.60.040 and 2000 c 158 s 3 are each amended to read as follows:

(1) A net metering system used by a customer-generator shall include, at the customer-generator's own expense, all equipment necessary to meet applicable safety, power quality, and interconnection requirements established by the national electrical code, national electrical safety code, the institute of electrical and electronics engineers, and underwriters laboratories.

(2) The commission, in the case of an electrical company, or the appropriate governing body, in the case of other electric utilities, after appropriate notice and opportunity for comment, may adopt by regulation additional safety, power quality, and interconnection requirements for customer-generators, including limitations on the number of customer generators and total capacity of net metering systems that may be interconnected to any distribution feeder line, circuit, or network that the commission or governing body determines are necessary to protect public safety and system reliability.

(3) An electric utility may not require a customer-generator whose net metering system meets the standards in subsections (1) and (2) of this section to comply with additional safety or performance standards, perform or pay for additional tests, or purchase additional liability insurance. However, an electric utility shall not be liable directly or indirectly for permitting or continuing to allow an attachment of a net metering system, or for the acts or omissions of the customer-generator that cause loss or injury, including death, to any third party.

Passed by the House March 6, 2006.

Passed by the Senate March 3, 2006.

Approved by the Governor March 24, 2006.

Filed in Office of Secretary of State March 24, 2006.

CHAPTER 202

[House Bill 2366]

PRIVILEGED COMMUNICATIONS—FIRE FIGHTERS

AN ACT Relating to privileged communications by fire fighters; and amending RCW 5.60.060.

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

Sec. 1. RCW 5.60.060 and 2005 c 504 s 705 are each amended to read as follows:

(1) A husband shall not be examined for or against his wife, without the consent of the wife, nor a wife for or against her husband without the consent of the husband; nor can either during marriage or afterward, be without the consent of the other, examined as to any communication made by one to the other during marriage. But this exception shall not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other, nor to a criminal action or proceeding against a spouse if the marriage occurred subsequent to the filing of formal charges against the defendant, nor to a criminal action or proceeding for a crime committed by said husband or wife against any child of whom said husband or wife is the parent or guardian, nor to a proceeding under chapter 70.96A, 70.96B, 71.05, or 71.09 RCW: PROVIDED, That the spouse of a person sought to be detained under chapter 70.96A, 70.96B, 71.05, or 71.09 RCW may not be compelled to testify and shall be so informed by the court prior to being called as a witness.

(2)(a) An attorney or counselor shall not, without the consent of his or her client, be examined as to any communication made by the client to him or her, or his or her advice given thereon in the course of professional employment.

(b) A parent or guardian of a minor child arrested on a criminal charge may not be examined as to a communication between the child and his or her attorney if the communication was made in the presence of the parent or guardian. This privilege does not extend to communications made prior to the arrest.

(3) A member of the clergy or a priest shall not, without the consent of a person making the confession, be examined as to any confession made to him or her in his or her professional character, in the course of discipline enjoined by the church to which he or she belongs.

(4) Subject to the limitations under RCW 70.96A.140 or 71.05.360 (8) and (9), a physician or surgeon or osteopathic physician or surgeon or podiatric physician or surgeon shall not, without the consent of his or her patient, be examined in a civil action as to any information acquired in attending such patient, which was necessary to enable him or her to prescribe or act for the patient, except as follows:

(a) In any judicial proceedings regarding a child's injury, neglect, or sexual abuse or the cause thereof; and

(b) Ninety days after filing an action for personal injuries or wrongful death, the claimant shall be deemed to waive the physician-patient privilege. Waiver of the physician-patient privilege for any one physician or condition constitutes a waiver of the privilege as to all physicians or conditions, subject to such limitations as a court may impose pursuant to court rules.

(5) A public officer shall not be examined as a witness as to communications made to him or her in official confidence, when the public interest would suffer by the disclosure.

(6)(a) A peer support group counselor shall not, without consent of the law enforcement officer or fire fighter making the communication, be compelled to testify about any communication made to the counselor by the officer or fire fighter while receiving counseling. The counselor must be designated as such by the sheriff, police chief, fire chief, or chief of the Washington state patrol, prior to the incident that results in counseling. The privilege only applies when the communication was made to the counselor while acting in his or her capacity as a peer support group counselor. The privilege does not apply if the counselor was an initial responding officer or fire fighter, a witness, or a party to the incident which prompted the delivery of peer support group counseling services to the law enforcement officer or fire fighter.

(b) For purposes of this section, "peer support group counselor" means a:

(i) Law enforcement officer, ~~((or))~~ fire fighter, civilian employee of a law enforcement agency, or civilian employee of a fire department, who has received training to provide emotional and moral support and counseling to an officer or fire fighter who needs those services as a result of an incident in which the officer or fire fighter was involved while acting in his or her official capacity; or

(ii) Nonemployee counselor who has been designated by the sheriff, police chief, fire chief, or chief of the Washington state patrol to provide emotional and moral support and counseling to an officer or fire fighter who needs those services as a result of an incident in which the officer or fire fighter was involved while acting in his or her official capacity.

(7) A sexual assault advocate may not, without the consent of the victim, be examined as to any communication made by the victim to the sexual assault advocate.

(a) For purposes of this section, "sexual assault advocate" means the employee or volunteer from a rape crisis center, victim assistance unit, program, or association, that provides information, medical or legal advocacy, counseling, or support to victims of sexual assault, who is designated by the victim to accompany the victim to the hospital or other health care facility and to proceedings concerning the alleged assault, including police and prosecution interviews and court proceedings.

(b) A sexual assault advocate may disclose a confidential communication without the consent of the victim if failure to disclose is likely to result in a clear, imminent risk of serious physical injury or death of the victim or another person. Any sexual assault advocate participating in good faith in the disclosing of records and communications under this section shall have immunity from any liability, civil, criminal, or otherwise, that might result from the action. In any proceeding, civil or criminal, arising out of a disclosure under this section, the good faith of the sexual assault advocate who disclosed the confidential communication shall be presumed.

Passed by the House February 7, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 24, 2006.

Filed in Office of Secretary of State March 24, 2006.

CHAPTER 203

[House Bill 2379]

NONPROBATE ASSETS

AN ACT Relating to nonprobate assets under will; and amending RCW 11.11.020 and 11.11.040.

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

Sec. 1. RCW 11.11.020 and 1998 c 292 s 105 are each amended to read as follows:

(1) Subject to community property rights, upon the death of an owner the owner's interest in any nonprobate asset specifically referred to in the owner's will belongs to the testamentary beneficiary named to receive the nonprobate asset, notwithstanding the rights of any beneficiary designated before the date of the will.

(2) A general residuary gift in an owner's will, or a will making general disposition of all of the owner's property, does not entitle the devisees or legatees to receive nonprobate assets of the owner.

(3) A disposition in a will of the owner's interest in "all nonprobate assets" or of all of a category of nonprobate asset under RCW 11.11.010(7), such as "all of my payable on death bank accounts" or similar language, is deemed to be a disposition of all the nonprobate assets the beneficiaries of which are designated before the date of the will.

(4) If the owner designates a beneficiary for a nonprobate asset after the date of the will, the specific provisions in the will ((does)) that attempt to control the disposition of that asset do not govern the disposition of that nonprobate asset, even if the subsequent beneficiary designation is later revoked. If the owner revokes the later beneficiary designation, ~~((the prior will does not govern the~~

~~disposition of the nonprobate asset)) and there is no other provision controlling the disposition of the asset, the asset shall be treated as any other general asset of the owner's estate, subject to disposition under the other applicable provisions of the will.~~ A beneficiary designation with respect to an asset that renews without the signature of the owner is deemed to have been made on the date on which the account was first opened.

Sec. 2. RCW 11.11.040 and 1998 c 292 s 108 are each amended to read as follows:

In transferring nonprobate assets, a personal representative, a financial institution, or other third party may rely conclusively and entirely upon the form of the nonprobate asset and the terms of the nonprobate asset arrangement in effect on the date of death of the owner, and a personal representative or third party may rely on information provided by a financial institution or other party who has possession or control of a nonprobate asset concerning the form of the nonprobate asset and the terms of the nonprobate asset arrangement in effect on the date of death of the owner, unless the personal representative, financial institution, or other third party has actual knowledge of the existence of a claim by a testamentary beneficiary. A financial institution or other third party is not required to inquire as to either the source or ownership of any nonprobate asset in its possession or under its control, or as to the proposed application of an asset so transferred. A transfer of a nonprobate asset in accordance with this section constitutes a complete release and discharge of the financial institution or other third party from all claims relating to the nonprobate asset, regardless of whether or not the transfer is consistent with the actual ownership of the nonprobate asset.

Passed by the House January 25, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 24, 2006.

Filed in Office of Secretary of State March 24, 2006.

CHAPTER 204

[House Bill 2380]

UNIFORM TRANSFERS TO MINORS ACT

AN ACT Relating to the uniform transfers to minors act; amending RCW 11.114.010, 11.114.020, 11.114.090, 11.114.120, 11.114.140, 11.114.180, 11.114.190, and 11.114.200; and providing an effective date.

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

Sec. 1. RCW 11.114.010 and 1991 c 193 s 1 are each amended to read as follows:

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

(1) "Adult" means an individual other than the minor who has attained the age of twenty-one years and is older than the minor.

(2) "Benefit plan" means an employer's plan for the benefit of an employee or partner.

(3) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.

(4) "Guardian" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions. Conservator means guardian for transfers made under another state's law but enforceable in this state's courts.

(5) "Court" means a superior court of the state of Washington.

(6) "Custodial property" means (a) any interest in property transferred to a custodian under this chapter and (b) the income from and proceeds of that interest in property.

(7) "Custodian" means a person so designated under RCW 11.114.090 or a successor or substitute custodian designated under RCW 11.114.180.

(8) "Financial institution" means a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law.

(9) "Legal representative" means an individual's personal representative or guardian.

(10) "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

(11) "Minor" means an individual who has not attained the age of (~~twenty-one~~) twenty-five years.

(12) "Person" means an individual, corporation, organization, or other legal entity.

(13) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(14) "Transfer" means a transaction that creates custodial property under RCW 11.114.090.

(15) "Transferor" means a person who makes a transfer under this chapter.

(16) "Trust company" means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers.

Sec. 2. RCW 11.114.020 and 1999 c 42 s 633 are each amended to read as follows:

(1) This chapter applies to a transfer that refers to this chapter in the designation under RCW 11.114.090(1) by which the transfer is made if at the time of the transfer, the transferor, the minor, or the custodian is a resident of this state or the custodial property is located in this state. The custodianship so created remains subject to this chapter despite a subsequent change in residence of a transferor, the minor, or the custodian, or the removal of custodial property from this state.

(2) A person designated as custodian under this chapter is subject to personal jurisdiction in this state with respect to any matter relating to the custodianship.

(3) A transfer that purports to be made and which is valid under the uniform transfers to minors act, the uniform gifts to minors act, or a substantially similar act of another state is governed by the law of the designated state and may be executed and is enforceable in this state if at the time of the transfer, the

transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

(4) A matter under this chapter subject to court determination is governed by the procedures provided in RCW 11.96A.080 through 11.96A.200. However, no guardian ad litem is required for the minor, except under RCW 11.114.190(1), in the case of a petition by ~~((a-[an]))~~ an unrepresented minor under the age of ~~((fourteen))~~ eighteen years.

Sec. 3. RCW 11.114.090 and 1991 c 193 s 9 are each amended to read as follows:

(1) Custodial property is created and a transfer is made if:

(a) An uncertificated security or a certificated security in registered form is either:

(i) Registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: ". as custodian for (name of minor) under the Washington uniform transfers to minors act"; or

(ii) Delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection (2) of this section;

(b) Money is paid or delivered, or a security held in the name of a broker, financial institution, or its nominee is transferred, to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: ". as custodian for (name of minor) under the Washington uniform transfers to minors act";

(c) The ownership of a life or endowment insurance policy or annuity contract is either:

(i) Registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: ". as custodian for (name of minor) under the Washington uniform transfers to minors act"; or

(ii) Assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: ". as custodian for (name of minor) under the Washington uniform transfers to minors act";

(d) An irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than the transferor, or a trust company, whose name in the notification is followed in substance by the words: ". as custodian for (name of minor) under the Washington uniform transfers to minors act";

(e) An interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: ". as custodian for (name of minor) under the Washington uniform transfers to minors act";

(f) A certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:

(i) Issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: " as custodian for (name of minor) under the Washington uniform transfers to minors act"; or

(ii) Delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in substance by the words: " as custodian for (name of minor) under the Washington uniform transfers to minors act"; or

(g) An interest in any property not described in (a) through (f) of this subsection is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in subsection (2) of this section.

(2) An instrument in the following form satisfies the requirements of subsection (1)(a)(ii) and (g) of this section:

"TRANSFER UNDER THE WASHINGTON UNIFORM TRANSFERS TO MINORS ACT

I, (name of transferor or name and representative capacity if a fiduciary) hereby transfer to (name of custodian), as custodian for (name of minor) under the Washington uniform transfers to minors act, the following: (insert a description of the custodial property sufficient to identify it).

(Electing the following paragraph is optional to the transferor):

If (name of custodian) is or becomes unable to act or to continue to act as custodian, the alternate or successor custodian shall be the first of the following persons, in order of preference and succession, who is then able and willing to act as custodian: (insert the name(s) of the alternate or successor custodian(s)).

- 1.
- 2.
- 3.

(Electing the following paragraph is optional to the transferor):

I elect to extend the custodianship to the minor's twenty-fifth birthday. I UNDERSTAND THAT ELECTING TO EXTEND CUSTODIANSHIP TO AGE TWENTY-FIVE MAY CAUSE ME TO LOSE MY ANNUAL EXCLUSION FROM FEDERAL GIFT TAX AND THAT I SHOULD CONSULT WITH AN ATTORNEY OR TAX ADVISOR BEFORE MAKING THIS ELECTION.

Dated:

.....
(Signature)

..... (name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the Washington uniform transfers to minors act.

Dated:

..... "
(Signature of Custodian)

(3) A transferor shall place the custodian in control of the custodial property as soon as practicable.

Sec. 4. RCW 11.114.120 and 1991 c 193 s 12 are each amended to read as follows:

(1) A custodian shall, as soon as custodial property is made available to the custodian:

- (a) Take control of custodial property;
- (b) Register or record title to custodial property if appropriate; and
- (c) Collect, hold, manage, invest, and reinvest custodial property.

(2) In dealing with custodial property, a custodian shall observe the standard of care applicable to fiduciaries under chapter 11.100 RCW. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. A custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor according to the same standards as apply to a fiduciary holding trust funds under RCW 11.100.060. However, the provisions of RCW 11.100.025, 11.100.040, and 11.100.140 shall not apply to a custodian.

(3) A custodian may invest in or pay premiums on life insurance or endowment policies on (a) the life of the minor only if the minor or the minor's estate is the sole beneficiary, or (b) the life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian in the capacity of custodian, is the irrevocable beneficiary.

(4) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered, or held in an account designated, in the name of the custodian, followed in substance by the words: ". as custodian for (name of minor) under the Washington uniform transfers to minors act."

(5) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available upon request for inspection by a parent or legal representative of the minor or by the minor if the minor has attained the age of (~~fourteen~~) eighteen years.

Sec. 5. RCW 11.114.140 and 1991 c 193 s 14 are each amended to read as follows:

(1) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to (a) the duty or ability of the custodian personally or of any other person to support the minor, or (b) any other income or property of the minor which may be applicable or available for that purpose.

(2) On petition of an interested person or the minor if the minor has attained the age of (~~fourteen~~) eighteen years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(3) A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.

Sec. 6. RCW 11.114.180 and 1991 c 193 s 18 are each amended to read as follows:

(1) A person nominated under RCW 11.114.030 or designated under RCW 11.114.090 as custodian may decline to serve. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under RCW 11.114.030, the person who made the nomination may nominate a substitute custodian under RCW 11.114.030; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under RCW 11.114.090(1). The custodian so designated has the rights of a successor custodian.

(2) A custodian at any time may designate a trust company or an adult other than a transferor under RCW 11.114.040 as successor custodian by executing and dating an instrument of designation. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed, and custodial property is transferred to the successor custodian.

(3) A custodian may resign at any time by delivering written notice to the minor, if the minor has attained the age of ~~((fourteen))~~ eighteen years, and to the successor custodian, and by delivering the custodial property to the successor custodian.

(4) If a custodian is ineligible, dies, or becomes incapacitated and no successor custodian has been designated as provided in this chapter, and the minor has attained the age of ~~((fourteen))~~ eighteen years, the minor may designate as successor custodian, in the manner prescribed in subsection (2) of this section, an adult member of the minor's family, a guardian of the minor, or a trust company. If the minor has not attained the age of ~~((fourteen))~~ eighteen years or fails to act within sixty days after the ineligibility, death, or incapacity, the guardian of the minor becomes successor custodian. If the minor has no guardian or the guardian declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(5) A custodian who declines to serve under subsection (1) of this section or resigns under subsection (3) of this section, or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(6) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the minor, or the minor if the minor has attained the age of ~~((fourteen))~~ eighteen years may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under RCW 11.114.040 or to require the custodian to give appropriate bond.

Sec. 7. RCW 11.114.190 and 1991 c 193 s 19 are each amended to read as follows:

(1) A minor who has attained the age of (~~fourteen~~) eighteen years, the minor's legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court (a) for an accounting by the custodian or the custodian's legal representative; or (b) for a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under RCW 11.114.170 to which the minor or the minor's legal representative was a party.

(2) A successor custodian may petition the court for an accounting by the predecessor custodian.

(3) The court, in a proceeding under this chapter or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(4) If a custodian is removed under RCW 11.114.180(6), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

Sec. 8. RCW 11.114.200 and 1991 c 193 s 20 are each amended to read as follows:

(1) Subject to RCW 11.114.220, the custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

~~((1))~~ (a) The minor's attainment of twenty-one years of age with respect to custodial property transferred under RCW 11.114.040 or 11.114.050;

~~((2))~~ (b) The minor's attainment of eighteen years of age with respect to custodial property transferred under RCW 11.114.060 or 11.114.070; or

~~((3))~~ (c) The minor's death.

(2) The transferor may, in the initial nomination of custodian, extend the custodianship to the earlier of the minor's attainment of twenty-five years of age or the minor's death unless:

(a) The governing will, trust, or instrument creating the power of appointment specifically provides otherwise if the custodian property is transferred under RCW 11.114.040, 11.114.050, or 11.114.060; or

(b) The custodial property is transferred under RCW 11.114.070. In that case, the person nominating the custodian under RCW 11.114.030 may elect to extend the custodianship. If no custodian has been nominated under RCW 11.114.030, the court establishing the custodianship under RCW 11.114.070(4) may extend the custodianship if it determines that doing so would not be contrary to the interest of the minor.

(3) An extension of the custodianship under subsection (2) of this section will be valid only if the transfer creating the custodianship is made on or after July 1, 2007.

(4) Any bank, trust company, insurance company, registered broker-dealer, investment company regulated under the federal Investment Company Act of 1940, investment advisor regulated under the federal Investment Advisors Act of 1940, or other person who makes custodianship forms available for adoption in contemplation of selling assets to or managing assets for a custodianship shall

include, in any form made available on or after July 1, 2007, an option to extend the custodianship under subsection (2) of this section and a warning to the transferor that exercising the option to extend may result in the transfer not qualifying for annual exclusion from federal gift tax. An instrument in the form described in RCW 11.114.090(2) will satisfy the requirements of this subsection.

NEW SECTION. Sec. 9. This act takes effect July 1, 2007.

Passed by the House February 7, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 24, 2006.

Filed in Office of Secretary of State March 24, 2006.

CHAPTER 205

[Substitute House Bill 2402]

ENERGY FACILITY SITE EVALUATION COUNCIL—EXPEDITED PROCESSING OF APPLICATIONS

AN ACT Relating to expedited processing of energy facilities and alternative energy resources under the energy facility site evaluation council; and amending RCW 80.50.020, 80.50.075, and 80.50.090.

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

Sec. 1. RCW 80.50.020 and 2001 c 214 s 3 are each amended to read as follows:

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

(1) "Applicant" means any person who makes application for a site certification pursuant to the provisions of this chapter.

(2) "Application" means any request for approval of a particular site or sites filed in accordance with the procedures established pursuant to this chapter, unless the context otherwise requires.

(3) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

(4) "Site" means any proposed or approved location of an energy facility.

(5) "Certification" means a binding agreement between an applicant and the state which shall embody compliance to the siting guidelines, in effect as of the date of certification, which have been adopted pursuant to RCW 80.50.040 as now or hereafter amended as conditions to be met prior to or concurrent with the construction or operation of any energy facility.

(6) "Associated facilities" means storage, transmission, handling, or other related and supporting facilities connecting an energy plant with the existing energy supply, processing, or distribution system, including, but not limited to, communications, controls, mobilizing or maintenance equipment, instrumentation, and other types of ancillary transmission equipment, off-line storage or venting required for efficient operation or safety of the transmission system and overhead, and surface or subsurface lines of physical access for the inspection, maintenance, and safe operations of the transmission facility and new transmission lines constructed to operate at nominal voltages in excess of

200,000 volts to connect a thermal power plant to the northwest power grid: PROVIDED, That common carrier railroads or motor vehicles shall not be included.

(7) "Transmission facility" means any of the following together with their associated facilities:

(a) Crude or refined petroleum or liquid petroleum product transmission pipeline of the following dimensions: A pipeline larger than six inches minimum inside diameter between valves for the transmission of these products with a total length of at least fifteen miles;

(b) Natural gas, synthetic fuel gas, or liquified petroleum gas transmission pipeline of the following dimensions: A pipeline larger than fourteen inches minimum inside diameter between valves, for the transmission of these products, with a total length of at least fifteen miles for the purpose of delivering gas to a distribution facility, except an interstate natural gas pipeline regulated by the United States federal power commission.

(8) "Independent consultants" means those persons who have no financial interest in the applicant's proposals and who are retained by the council to evaluate the applicant's proposals, supporting studies, or to conduct additional studies.

(9) "Thermal power plant" means, for the purpose of certification, any electrical generating facility using any fuel, including nuclear materials, for distribution of electricity by electric utilities.

(10) "Energy facility" means an energy plant or transmission facilities: PROVIDED, That the following are excluded from the provisions of this chapter:

(a) Facilities for the extraction, conversion, transmission or storage of water, other than water specifically consumed or discharged by energy production or conversion for energy purposes; and

(b) Facilities operated by and for the armed services for military purposes or by other federal authority for the national defense.

(11) "Council" means the energy facility site evaluation council created by RCW 80.50.030.

(12) "Counsel for the environment" means an assistant attorney general or a special assistant attorney general who shall represent the public in accordance with RCW 80.50.080.

(13) "Construction" means on-site improvements, excluding exploratory work, which cost in excess of two hundred fifty thousand dollars.

(14) "Energy plant" means the following facilities together with their associated facilities:

(a) Any stationary thermal power plant with generating capacity of 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) Facilities which will have the capacity to receive liquified natural gas in the equivalent of more than one hundred million standard cubic feet of natural gas per day, which has been transported over marine waters;

(c) Facilities which will have the capacity to receive more than an average of fifty thousand barrels per day of crude or refined petroleum or liquified petroleum gas which has been or will be transported over marine waters, except that the provisions of this chapter shall not apply to storage facilities unless occasioned by such new facility construction;

(d) Any underground reservoir for receipt and storage of natural gas as defined in RCW 80.40.010 capable of delivering an average of more than one hundred million standard cubic feet of natural gas per day; and

(e) Facilities capable of processing more than twenty-five thousand barrels per day of petroleum into refined products.

(15) "Land use plan" means a comprehensive plan or land use element thereof adopted by a unit of local government pursuant to chapter((§)) 35.63, 35A.63, ~~((§)) 36.70, or 36.70A~~ RCW.

(16) "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.

(17) "Alternative energy resource" means: (a) Wind; (b) solar energy; (c) geothermal energy; (d) landfill gas; (e) wave or tidal action; or (f) biomass energy based on solid organic fuels from wood, forest, or field residues, or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic.

Sec. 2. RCW 80.50.075 and 1989 c 175 s 172 are each amended to read as follows:

(1) Any person (~~(required to file))~~ filing an application for certification of an energy facility or an alternative energy resource facility pursuant to this chapter may apply to the council for an expedited processing of such an application. The application for expedited processing shall be submitted to the council in such form and manner and accompanied by such information as may be prescribed by council rule. The council may grant an applicant expedited processing of an application for certification upon finding that(~~(:~~

~~(a))~~ the environmental impact of the proposed energy facility(~~(:~~

~~(b) The area potentially affected;~~

~~(c) The cost and magnitude of the proposed energy facility; and~~

~~(d) The degree to which the proposed energy facility represents a change in use of the proposed site~~

~~are))~~ is not significant ((enough to warrant a full review of the application for certification under the provisions of this chapter)) or will be mitigated to a nonsignificant level under RCW 43.21C.031 and the project is found under RCW 80.50.090(2) to be consistent and in compliance with city, county, or regional land use plans or zoning ordinances.

(2) Upon granting an applicant expedited processing of an application for certification, the council shall not be required to:

(a) Commission an independent study to further measure the consequences of the proposed energy facility or alternative energy resource facility on the environment, notwithstanding the other provisions of RCW 80.50.071; nor

(b) Hold an adjudicative proceeding under chapter 34.05 RCW, the administrative procedure act, on the application.

(3) The council shall adopt rules governing the expedited processing of an application for certification pursuant to this section.

Sec. 3. RCW 80.50.090 and 2001 c 214 s 7 are each amended to read as follows:

(1) The council shall conduct an informational public hearing in the county of the proposed site as soon as practicable but not later than sixty days after receipt of an application for site certification: PROVIDED, That the place of such public hearing shall be as close as practical to the proposed site.

(2) Subsequent to the informational public hearing, the council shall conduct a public hearing to determine whether or not the proposed site is consistent and in compliance with city, county, or regional land use plans or zoning ordinances. If it is determined that the proposed site does conform with existing land use plans or zoning ordinances in effect as of the date of the application, the city, county, or regional planning authority shall not thereafter change such land use plans or zoning ordinances so as to affect the proposed site.

(3) Prior to the issuance of a council recommendation to the governor under RCW 80.50.100 a public hearing, conducted as an adjudicative proceeding under chapter 34.05 RCW, the administrative procedure act, shall be held. At such public hearing any person shall be entitled to be heard in support of or in opposition to the application for certification.

(4) Additional public hearings shall be held as deemed appropriate by the council in the exercise of its functions under this chapter.

Passed by the House March 6, 2006.

Passed by the Senate March 3, 2006.

Approved by the Governor March 24, 2006.

Filed in Office of Secretary of State March 24, 2006.

CHAPTER 206

[House Bill 2477]

ELECTIONS

AN ACT Relating to technical changes to election laws; amending RCW 29A.04.530, 29A.04.611, 29A.24.091, 29A.24.101, 29A.24.111, 29A.40.110, 29A.40.150, and 29A.48.050; and repealing RCW 29A.04.157, 29A.04.610, 29A.20.110, 29A.20.130, 29A.20.200, 29A.24.200, 29A.28.010, 29A.28.020, 29A.36.190, 29A.44.220, 29A.46.140, 29A.46.150, 29A.46.210, 29A.46.220, 29A.46.230, 29A.46.240, 29A.46.250, and 29A.72.220.

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

Sec. 1. RCW 29A.04.530 and 2005 c 243 s 2 are each amended to read as follows:

The secretary of state shall:

(1) Establish and operate, or provide by contract, training and certification programs for state and county elections administration officials and personnel, including training on the various types of election law violations and discrimination, and training programs for political party observers which conform to the rules for such programs established under RCW 29A.04.630;

(2) ~~((Establish guidelines, in consultation with state and local law enforcement or certified document examiners, for signature verification~~

~~processes. All election personnel assigned to verify signatures must receive training on the guidelines;~~

~~(3))~~ Administer tests for state and county officials and personnel who have received such training and issue certificates to those who have successfully completed the training and passed such tests;

~~((4))~~ (3) Maintain a record of those individuals who have received such training and certificates; and

~~((5))~~ (4) Provide the staffing and support services required by the board created under RCW 29A.04.510.

Sec. 2. RCW 29A.04.611 and 2004 c 271 s 151 are each amended to read as follows:

The secretary of state as chief election officer shall make reasonable rules in accordance with chapter 34.05 RCW not inconsistent with the federal and state election laws to effectuate any provision of this title and to facilitate the execution of its provisions in an orderly, timely, and uniform manner relating to any federal, state, county, city, town, and district elections. To that end the secretary shall assist local election officers by devising uniform forms and procedures.

In addition to the rule-making authority granted otherwise by this section, the secretary of state shall make rules governing the following provisions:

- (1) The maintenance of voter registration records;
- (2) The preparation, maintenance, distribution, review, and filing of precinct maps;
- (3) Standards for the design, layout, and production of ballots;
- (4) The examination and testing of voting systems for certification;
- (5) The source and scope of independent evaluations of voting systems that may be relied upon in certifying voting systems for use in this state;
- (6) Standards and procedures for the acceptance testing of voting systems by counties;
- (7) Standards and procedures for testing the programming of vote tallying software for specific primaries and elections;
- (8) Standards and procedures for the preparation and use of each type of certified voting system including procedures for the operation of counting centers where vote tallying systems are used;
- (9) Standards and procedures to ensure the accurate tabulation and canvassing of ballots;
- (10) Consistency among the counties of the state in the preparation of ballots, the operation of vote tallying systems, and the canvassing of primaries and elections;
- (11) Procedures to ensure the secrecy of a voter's ballot when a small number of ballots are counted at the polls or at a counting center;
- (12) The use of substitute devices or means of voting when a voting device at the polling place is found to be defective, the counting of votes cast on the defective device, the counting of votes cast on the substitute device, and the documentation that must be submitted to the county auditor regarding such circumstances;
- (13) Procedures for the transportation of sealed containers of voted ballots or sealed voting devices;
- (14) The acceptance and filing of documents via electronic facsimile;

- (15) Voter registration applications and records;
- (16) The use of voter registration information in the conduct of elections;
- (17) The coordination, delivery, and processing of voter registration records accepted by driver licensing agents or the department of licensing;
- (18) The coordination, delivery, and processing of voter registration records accepted by agencies designated by the governor to provide voter registration services;
- (19) Procedures to receive and distribute voter registration applications by mail;
- (20) Procedures for a voter to change his or her voter registration address within a county by telephone;
- (21) Procedures for a voter to change the name under which he or she is registered to vote;
- (22) Procedures for canceling dual voter registration records and for maintaining records of persons whose voter registrations have been canceled;
- (23) Procedures for the electronic transfer of voter registration records between county auditors and the office of the secretary of state;
- (24) Procedures and forms for declarations of candidacy;
- (25) Procedures and requirements for the acceptance and filing of declarations of candidacy by electronic means;
- (26) Procedures for the circumstance in which two or more candidates have a name similar in sound or spelling so as to cause confusion for the voter;
- (27) Filing for office;
- (28) The order of positions and offices on a ballot;
- (29) Sample ballots;
- (30) Independent evaluations of voting systems;
- (31) The testing, approval, and certification of voting systems;
- (32) The testing of vote tallying software programming;
- (33) Standards and procedures to prevent fraud and to facilitate the accurate processing and canvassing of absentee ballots and mail ballots;
- (34) Standards and procedures to guarantee the secrecy of absentee ballots and mail ballots;
- (35) Uniformity among the counties of the state in the conduct of absentee voting and mail ballot elections;
- (36) Standards and procedures to accommodate out-of-state voters, overseas voters, and service voters;
- (37) The tabulation of paper ballots before the close of the polls;
- (38) The accessibility of polling places and registration facilities that are accessible to elderly and disabled persons;
- (39) The aggregation of precinct results if reporting the results of a single precinct could jeopardize the secrecy of a person's ballot;
- (40) Procedures for conducting a statutory recount;
- (41) Procedures for filling vacancies in congressional offices if the general statutory time requirements for availability of absentee ballots, certification, canvassing, and related procedures cannot be met;
- (42) Procedures for the statistical sampling of signatures for purposes of verifying and canvassing signatures on initiative, referendum, and recall election petitions;

- (43) Standards and deadlines for submitting material to the office of the secretary of state for the voters' pamphlet;
- (44) Deadlines for the filing of ballot titles for referendum bills and constitutional amendments if none have been provided by the legislature;
- (45) Procedures for the publication of a state voters' pamphlet;
- (46) Procedures for conducting special elections regarding nuclear waste sites if the general statutory time requirements for availability of absentee ballots, certification, canvassing, and related procedures cannot be met;
- (47) Procedures for conducting partisan primary elections;
- (48) Standards and procedures for the proper conduct of voting during the early voting period to provide accessibility for the blind or visually impaired;
- (49) Standards for voting technology and systems used by the state or any political subdivision to be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation, including privacy and independence, as other voters;
- (50) All data formats for transferring voter registration data on electronic or machine-readable media for the purpose of administering the statewide voter registration list required by the Help America Vote Act (P.L. 107-252);
- (51) Defining the interaction of electronic voter registration election management systems employed by each county auditor to maintain a local copy of each county's portion of the official state list of registered voters;
- (52) Provisions and procedures to implement the state-based administrative complaint procedure as required by the Help America Vote Act (P.L. 107-252); ~~((and))~~
- (53) Facilitating the payment of local government grants to local government election officers or vendors; and
- (54) Standards for the verification of signatures on absentee, mail, and provisional ballot envelopes.

Sec. 3. RCW 29A.24.091 and 2005 c 221 s 2 are each amended to read as follows:

A filing fee of one dollar shall accompany each declaration of candidacy for precinct committee officer; a filing fee of ten dollars shall accompany the declaration of candidacy for any office with a fixed annual salary of one thousand dollars or less; a filing fee equal to one percent of the annual salary of the office at the time of filing shall accompany the declaration of candidacy for any office with a fixed annual salary of more than one thousand dollars per annum. No filing fee need accompany a declaration of candidacy for any office for which compensation is on a per diem or per meeting attended basis.

A candidate who lacks sufficient assets or income at the time of filing to pay the filing fee required by this section shall submit with his or her declaration of candidacy a ~~((nominating))~~ filing fee petition. The petition shall contain not less than a number of signatures of registered voters equal to the number of dollars of the filing fee. The signatures shall be of voters registered to vote within the jurisdiction of the office for which the candidate is filing.

When the candidacy is for:

- (1) A legislative or judicial office that includes territory from more than one county, the fee shall be paid to the secretary of state for equal division between the treasuries of the counties comprising the district.

(2) A legislative or judicial office that includes territory from only one county:

(a) The fee shall be paid to the county auditor if the candidate filed his or her declaration of candidacy with the county auditor;

(b) The fee shall be paid to the secretary of state if the candidate filed his or her declaration of candidacy with the secretary of state. The secretary of state shall then promptly transmit the fee to the county auditor of the county in which the legislative or judicial office is located.

(3) A city or town office, the fee shall be paid to the county auditor who shall transmit it to the city or town clerk for deposit in the city or town treasury.

Sec. 4. RCW 29A.24.101 and 2004 c 271 s 114 are each amended to read as follows:

(1) The ~~((nominating))~~ filing fee petition authorized by RCW 29A.24.091 must be printed on sheets of uniform color and size, must include a place for each individual to sign and print his or her name and the address, city, and county at which he or she is registered to vote, and must contain no more than twenty numbered lines.

(2) For candidates for nonpartisan office and candidates of a major political party for partisan office, the ~~((nominating))~~ filing fee petition must be in substantially the following form:

The warning prescribed by RCW 29A.72.140; followed by:

We, the undersigned registered voters of (the state of Washington or the political subdivision for which the nomination is made), hereby petition that the name of (candidate's name) be printed on the official primary ballot for the office of (insert name of office).

(3) For independent candidates and candidates of a minor political party for partisan office, the ~~((nominating))~~ filing fee petition must be in substantially the following form:

The warning prescribed by RCW 29A.72.140; followed by:

We, the undersigned registered voters of (the state of Washington or the political subdivision for which the nomination is made), hereby petition that the name of (candidate's name) be printed on the official general election ballot for the office of (insert name of office).

Sec. 5. RCW 29A.24.111 and 2004 c 271 s 161 are each amended to read as follows:

~~((Nominating))~~ Filing fee petitions may be rejected for the following reasons:

- (1) The petition is not in the proper form;
- (2) The petition clearly bears insufficient signatures;
- (3) The petition is not accompanied by a declaration of candidacy;
- (4) The time within which the petition and the declaration of candidacy could have been filed has expired.

If the petition is accepted, the officer with whom it is filed shall canvass the signatures contained on it and shall reject the signatures of those persons who are not registered voters and the signatures of those persons who are not registered to vote within the jurisdiction of the office for which the

~~((nominating))~~ filing fee petition is filed. He or she shall additionally reject any signature that appears on the ~~((nominating))~~ filing fee petitions of two or more candidates for the same office and shall also reject, each time it appears, the name of any person who signs the same petition more than once.

If the officer with whom the petition is filed refuses to accept the petition or refuses to certify the petition as bearing sufficient valid signatures, the person filing the petition may appeal that action to the superior court. The application for judicial review shall take precedence over other cases and matters and shall be speedily heard and determined.

Sec. 6. RCW 29A.40.110 and 2005 c 243 s 5 are each amended to read as follows:

(1) The opening and subsequent processing of return envelopes for any primary or election may begin upon receipt. The tabulation of absentee ballots must not commence until after 8:00 p.m. on the day of the primary or election.

(2) All received absentee return envelopes must be placed in secure locations from the time of delivery to the county auditor until their subsequent opening. After opening the return envelopes, the county canvassing board shall place all of the ballots in secure storage until after 8:00 p.m. of the day of the primary or election. Absentee ballots that are to be tabulated on an electronic vote tallying system may be taken from the inner envelopes and all the normal procedural steps may be performed to prepare these ballots for tabulation.

(3) Before opening a returned absentee ballot, the canvassing board, or its designated representatives, shall examine the postmark, statement, and signature on the return envelope that contains the security envelope and absentee ballot. ~~((They))~~ All personnel assigned to verify signatures must receive training on statewide standards for signature verification. Personnel shall verify that the voter's signature on the return envelope is the same as the signature of that voter in the registration files of the county. For any absentee ballot, a variation between the signature of the voter on the return envelope and the signature of that voter in the registration files due to the substitution of initials or the use of common nicknames is permitted so long as the surname and handwriting are clearly the same.

(4) For registered voters casting absentee ballots, the date on the return envelope to which the voter has attested determines the validity, as to the time of voting for that absentee ballot if the postmark is missing or is illegible. For out-of-state voters, overseas voters, and service voters stationed in the United States, the date on the return envelope to which the voter has attested determines the validity as to the time of voting for that absentee ballot. ~~((For any absentee ballot, a variation between the signature of the voter on the return envelope and the signature of that voter in the registration files due to the substitution of initials or the use of common nicknames is permitted so long as the surname and handwriting are clearly the same.))~~

Sec. 7. RCW 29A.40.150 and 2005 c 245 s 1 are each amended to read as follows:

The secretary of state shall produce and furnish envelopes and instructions for ~~((out-of-state voters,))~~ overseas voters ~~((;))~~ and service voters ~~((to the county auditors))~~. The information on the envelopes or instructions must explain that:

(1) Return postage is free if the ballot is mailed through the United States postal service, United States armed forces postal service, or the postal service of a United States foreign embassy;

(2) The date of the signature is considered the date of mailing;

(3) The envelope must be signed by election day;

(4) The signed declaration on the envelope is the equivalent of voter registration;

(5) A voter may fax a voted ballot and the accompanying envelope if the voter agrees to waive secrecy. The ballot will be counted if the original documents are received before certification of the election; and

(6) A voter may obtain a ballot via electronic mail, which the voter may print out, vote, and return by mail. In order to facilitate the electronic acquisition of ballots by ~~((out of state,))~~ overseas(=) and service voters, the ballot instructions shall include the web site of the office of the secretary of state.

Sec. 8. RCW 29A.48.050 and 2003 c 111 s 1205 are each amended to read as follows:

The voter shall return the ballot to the county auditor in the return identification envelope. If mailed, a ballot must be postmarked not later than the date of the primary or election. Otherwise, the ballot must be deposited at the office of the county auditor or the designated place of deposit not later than 8:00 p.m. on the date of the primary or election. All personnel assigned to verify signatures on the return envelope must receive training on statewide standards for signature verification.

NEW SECTION. Sec. 9. The following acts or parts of acts are each repealed:

(1) RCW 29A.04.157 (September primary) and 2003 c 111 s 128;

(2) RCW 29A.04.610 (Rules by secretary of state) and 2004 c 267 s 702, 2003 c 111 s 161, 1971 ex.s. c 202 s 2, & 1965 c 9 s 29.04.080;

(3) RCW 29A.20.110 (Definitions—"Convention" and "election jurisdiction") and 2003 c 111 s 505, 1977 ex.s. c 329 s 1, & 1965 c 9 s 29.24.010;

(4) RCW 29A.20.130 (Convention—Notice) and 2003 c 111 s 507;

(5) RCW 29A.20.200 (Declarations of candidacy required, exceptions—Payment of fees) and 2003 c 111 s 514, 1990 c 59 s 103, 1989 c 215 s 8, 1977 ex.s. c 329 s 7, & 1965 c 9 s 29.24.070;

(6) RCW 29A.24.200 (Lapse of election when no filing for single positions—Effect) and 2003 c 111 s 620;

(7) RCW 29A.28.010 (Major party ticket) and 2003 c 111 s 701, 1990 c 59 s 102, 1977 ex.s. c 329 s 12, & 1965 c 9 s 29.18.150;

(8) RCW 29A.28.020 (Death or disqualification—Correcting ballots—Counting votes already cast) and 2003 c 111 s 702, 2001 c 46 s 4, & 1977 ex.s. c 329 s 13;

(9) RCW 29A.36.190 (Partisan candidates qualified for general election) and 2003 c 111 s 919;

(10) RCW 29A.44.220 (Casting vote) and 2004 c 267 s 319, 2003 c 111 s 1121, 1990 c 59 s 43, 1988 c 181 s 4, 1965 ex.s. c 101 s 15, & 1965 c 9 s 29.51.100;

(11) RCW 29A.46.140 (Interference, assistance) and 2004 c 267 s 307;

(12) RCW 29A.46.150 (Prohibitions—Penalty) and 2004 c 267 s 308;

- (13) RCW 29A.46.210 (Procedures for voting) and 2004 c 267 s 310;
- (14) RCW 29A.46.220 (Opening and closing locations) and 2004 c 267 s 311;
- (15) RCW 29A.46.230 (Voters in location at closing time) and 2004 c 267 s 312;
- (16) RCW 29A.46.240 (Procedures after closing) and 2004 c 267 s 313;
- (17) RCW 29A.46.250 (Handling of ballots after closing) and 2004 c 267 s 314; and
- (18) RCW 29A.72.220 (Petitions—Signature checking—Registration information file) and 2003 c 111 s 1801.

Passed by the House February 8, 2006.

Passed by the Senate March 3, 2006.

Approved by the Governor March 24, 2006.

Filed in Office of Secretary of State March 24, 2006.

CHAPTER 207

[Engrossed Substitute House Bill 2479]

ELECTIONS—VOTING EQUIPMENT

AN ACT Relating to voting equipment; amending RCW 29A.04.611, 29A.12.080, 29A.12.101, 29A.40.110, 29A.46.020, and 29A.46.110; and adding a new section to chapter 29A.46 RCW.

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

Sec. 1. RCW 29A.04.611 and 2004 c 271 s 151 are each amended to read as follows:

The secretary of state as chief election officer shall make reasonable rules in accordance with chapter 34.05 RCW not inconsistent with the federal and state election laws to effectuate any provision of this title and to facilitate the execution of its provisions in an orderly, timely, and uniform manner relating to any federal, state, county, city, town, and district elections. To that end the secretary shall assist local election officers by devising uniform forms and procedures.

In addition to the rule-making authority granted otherwise by this section, the secretary of state shall make rules governing the following provisions:

- (1) The maintenance of voter registration records;
- (2) The preparation, maintenance, distribution, review, and filing of precinct maps;
- (3) Standards for the design, layout, and production of ballots;
- (4) The examination and testing of voting systems for certification;
- (5) The source and scope of independent evaluations of voting systems that may be relied upon in certifying voting systems for use in this state;
- (6) Standards and procedures for the acceptance testing of voting systems by counties;
- (7) Standards and procedures for testing the programming of vote tallying software for specific primaries and elections;
- (8) Standards and procedures for the preparation and use of each type of certified voting system including procedures for the operation of counting centers where vote tallying systems are used;

- (9) Standards and procedures to ensure the accurate tabulation and canvassing of ballots;
- (10) Consistency among the counties of the state in the preparation of ballots, the operation of vote tallying systems, and the canvassing of primaries and elections;
- (11) Procedures to ensure the secrecy of a voter's ballot when a small number of ballots are counted at the polls or at a counting center;
- (12) The use of substitute devices or means of voting when a voting device at the polling place is found to be defective, the counting of votes cast on the defective device, the counting of votes cast on the substitute device, and the documentation that must be submitted to the county auditor regarding such circumstances;
- (13) Procedures for the transportation of sealed containers of voted ballots or sealed voting devices;
- (14) The acceptance and filing of documents via electronic facsimile;
- (15) Voter registration applications and records;
- (16) The use of voter registration information in the conduct of elections;
- (17) The coordination, delivery, and processing of voter registration records accepted by driver licensing agents or the department of licensing;
- (18) The coordination, delivery, and processing of voter registration records accepted by agencies designated by the governor to provide voter registration services;
- (19) Procedures to receive and distribute voter registration applications by mail;
- (20) Procedures for a voter to change his or her voter registration address within a county by telephone;
- (21) Procedures for a voter to change the name under which he or she is registered to vote;
- (22) Procedures for canceling dual voter registration records and for maintaining records of persons whose voter registrations have been canceled;
- (23) Procedures for the electronic transfer of voter registration records between county auditors and the office of the secretary of state;
- (24) Procedures and forms for declarations of candidacy;
- (25) Procedures and requirements for the acceptance and filing of declarations of candidacy by electronic means;
- (26) Procedures for the circumstance in which two or more candidates have a name similar in sound or spelling so as to cause confusion for the voter;
- (27) Filing for office;
- (28) The order of positions and offices on a ballot;
- (29) Sample ballots;
- (30) Independent evaluations of voting systems;
- (31) The testing, approval, and certification of voting systems;
- (32) The testing of vote tallying software programming;
- (33) Standards and procedures to prevent fraud and to facilitate the accurate processing and canvassing of absentee ballots and mail ballots, including standards for the approval and implementation of hardware and software for automated signature verification systems;
- (34) Standards and procedures to guarantee the secrecy of absentee ballots and mail ballots;

(35) Uniformity among the counties of the state in the conduct of absentee voting and mail ballot elections;

(36) Standards and procedures to accommodate out-of-state voters, overseas voters, and service voters;

(37) The tabulation of paper ballots before the close of the polls;

(38) The accessibility of polling places and registration facilities that are accessible to elderly and disabled persons;

(39) The aggregation of precinct results if reporting the results of a single precinct could jeopardize the secrecy of a person's ballot;

(40) Procedures for conducting a statutory recount;

(41) Procedures for filling vacancies in congressional offices if the general statutory time requirements for availability of absentee ballots, certification, canvassing, and related procedures cannot be met;

(42) Procedures for the statistical sampling of signatures for purposes of verifying and canvassing signatures on initiative, referendum, and recall election petitions;

(43) Standards and deadlines for submitting material to the office of the secretary of state for the voters' pamphlet;

(44) Deadlines for the filing of ballot titles for referendum bills and constitutional amendments if none have been provided by the legislature;

(45) Procedures for the publication of a state voters' pamphlet;

(46) Procedures for conducting special elections regarding nuclear waste sites if the general statutory time requirements for availability of absentee ballots, certification, canvassing, and related procedures cannot be met;

(47) Procedures for conducting partisan primary elections;

(48) Standards and procedures for the proper conduct of voting during the early voting period to provide accessibility for the blind or visually impaired;

(49) Standards for voting technology and systems used by the state or any political subdivision to be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation, including privacy and independence, as other voters;

(50) All data formats for transferring voter registration data on electronic or machine-readable media for the purpose of administering the statewide voter registration list required by the Help America Vote Act (P.L. 107-252);

(51) Defining the interaction of electronic voter registration election management systems employed by each county auditor to maintain a local copy of each county's portion of the official state list of registered voters;

(52) Provisions and procedures to implement the state-based administrative complaint procedure as required by the Help America Vote Act (P.L. 107-252); and

(53) Facilitating the payment of local government grants to local government election officers or vendors.

Sec. 2. RCW 29A.12.080 and 2003 c 111 s 308 are each amended to read as follows:

No voting device shall be approved by the secretary of state unless it:

(1) Secures to the voter secrecy in the act of voting;

(2) Permits the voter to vote for any person for any office and upon any measure that he or she has the right to vote for;

(3) Permits the voter to vote for all the candidates of one party (~~or in part for the candidates of one or more other parties~~);

(4) Correctly registers all votes cast for any and all persons and for or against any and all measures;

(5) Provides that a vote for more than one candidate cannot be cast by one single operation of the voting device or vote tally system except when voting for president and vice president of the United States; and

(6) Except for functions or capabilities unique to this state, has been tested(~~(;)~~) and certified(~~(; and used in at least one other state or election jurisdiction)~~) by an independent testing authority designated by the United States election assistance commission.

Sec. 3. RCW 29A.12.101 and 2004 c 271 s 109 are each amended to read as follows:

The secretary of state shall not approve a vote tallying system unless it:

(1) Correctly counts votes on ballots on which the proper number of votes have been marked for any office or issue;

(2) Ignores votes marked for any office or issue where more than the allowable number of votes have been marked, but correctly counts the properly voted portions of the ballot;

(3) Accumulates a count of the specific number of ballots tallied for each precinct, total votes by candidate for each office, and total votes for and against each issue of the ballot in that precinct;

(4) Produces precinct and cumulative totals in printed form; and

(5) Except for functions or capabilities unique to this state, has been tested(~~(;)~~) and certified(~~(; and used in at least one other state or election jurisdiction)~~) by an independent testing authority designated by the United States election assistance commission.

Sec. 4. RCW 29A.40.110 and 2005 c 243 s 5 are each amended to read as follows:

(1) The opening and subsequent processing of return envelopes for any primary or election may begin upon receipt. The tabulation of absentee ballots must not commence until after 8:00 p.m. on the day of the primary or election.

(2) All received absentee return envelopes must be placed in secure locations from the time of delivery to the county auditor until their subsequent opening. After opening the return envelopes, the county canvassing board shall place all of the ballots in secure storage until after 8:00 p.m. of the day of the primary or election. Absentee ballots that are to be tabulated on an electronic vote tallying system may be taken from the inner envelopes and all the normal procedural steps may be performed to prepare these ballots for tabulation.

(3) Before opening a returned absentee ballot, the canvassing board, or its designated representatives, shall examine the postmark, statement, and signature on the return envelope that contains the security envelope and absentee ballot. They shall verify that the voter's signature on the return envelope is the same as the signature of that voter in the registration files of the county. Verification may be conducted by an automated verification system approved by the secretary of state. A variation between the signature of the voter on the return envelope and the signature of that voter in the registration files due to the substitution of initials or the use of common nicknames is permitted so long as the surname and

handwriting are clearly the same. For registered voters casting absentee ballots, the date on the return envelope to which the voter has attested determines the validity, as to the time of voting for that absentee ballot if the postmark is missing or is illegible. For out-of-state voters, overseas voters, and service voters stationed in the United States, the date on the return envelope to which the voter has attested determines the validity as to the time of voting for that absentee ballot. ~~((For any absentee ballot, a variation between the signature of the voter on the return envelope and the signature of that voter in the registration files due to the substitution of initials or the use of common nicknames is permitted so long as the surname and handwriting are clearly the same.))~~

Sec. 5. RCW 29A.46.020 and 2004 c 267 s 302 are each amended to read as follows:

"Disability access voting period" means the period of time starting twenty days before an election until ~~((one day before))~~ the day of the election.

Sec. 6. RCW 29A.46.110 and 2004 c 267 s 304 are each amended to read as follows:

~~((At the discretion of the county auditor.))~~ In-person disability access voting ~~((may take place during the period))~~ must be available starting twenty days before the day of a primary or election and ending the day ~~((before))~~ of the election. During this period, the county auditor must make available a voting system certified by the secretary of state for disability access. The auditor shall maintain a system or systems to prevent multiple voting. ~~((The end of the disability access voting period in each county will be determined by the auditor's need and ability to print and distribute poll books to the polls in order to prevent multiple voting.))~~

NEW SECTION. Sec. 7. A new section is added to chapter 29A.46 RCW to read as follows:

(1) The legislature finds that the elimination of polling places resulting from the transition to vote by mail creates barriers that restrict the ability of many voters with disabilities from achieving the independence and privacy in voting provided by the accessible voting devices required under the help America vote act. Counties adopting a vote by mail system must take appropriate steps to mitigate these impacts and to address the obligation to provide voters with disabilities an equal opportunity to vote independently and privately, to the extent that this can be achieved without incurring undue administrative and financial burden.

(2) Each county shall establish and maintain an advisory committee that includes persons with diverse disabilities and persons with expertise in providing accommodations for persons with disabilities. The committee shall assist election officials in developing a plan to identify and implement changes to improve the accessibility of elections for voters with disabilities. The plan shall include recommendations for the following:

(a) The number of polling places that will be maintained in order to ensure that people with disabilities have reasonable access to accessible voting devices, and a written explanation for how the determination was made;

(b) The locations of polling places, drop-off facilities, voting centers, and other election-related functions necessary to maximize accessibility to persons with disabilities;

(c) Outreach to voters with disabilities on the availability of disability accommodation, including in-person disability access voting; (d) Transportation of voting devices to locations convenient for voters with disabilities in order to ensure reasonable access for voters with disabilities; and

(e) Implementation of the provisions of the help America vote act related to persons with disabilities.

Counties must update the plan at least annually. The election review staff of the secretary of state shall review and evaluate the plan in conformance with the review procedure identified in RCW 29A.04.570.

(3) Counties may form a joint advisory committee to develop the plan identified in subsection (2) of this section if the total population of the joining counties does not exceed thirty thousand, and the counties are geographically adjacent.

Passed by the House February 14, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 24, 2006.

Filed in Office of Secretary of State March 24, 2006.

CHAPTER 208

[Substitute House Bill 2695]

ELECTIONS—ABSENTEE BALLOTS

AN ACT Relating to absentee or provisional ballot notice requirements; and amending RCW 29A.60.165.

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

Sec. 1. RCW 29A.60.165 and 2005 c 243 s 8 are each amended to read as follows:

(1) If the voter neglects to sign the outside envelope of an absentee or provisional ballot, the auditor shall notify the voter by ~~((telephone))~~ first class mail and advise the voter of the correct procedures for completing the unsigned affidavit. ~~((If the auditor is not able to provide the information personally to the voter by telephone, then the voter must be contacted by first class mail and advised of the correct procedures for completing the unsigned affidavit. Leaving a voice mail message for the voter is not to be considered as personally contacting the voter.))~~ If the absentee ballot is received within three business days of the final meeting of the canvassing board, or the voter has been notified by first class mail and has not responded at least three business days before the final meeting of the canvassing board, then the auditor shall attempt to notify the voter by telephone, using the voter registration record information. In order for the ballot to be counted, the voter must either:

(a) Appear in person and sign the envelope no later than the day before the certification of the primary or election; or

(b) Sign a copy of the envelope provided by the auditor, and return it to the auditor no later than the day before the certification of the primary or election.

(2)(a) If the handwriting of the signature on an absentee or provisional ballot envelope is not the same as the handwriting of the signature on the registration file, the auditor shall notify the voter by ~~((telephone))~~ first class mail, enclosing a copy of the envelope affidavit, and advise the voter of the

correct procedures for updating his or her signature on the voter registration file. ~~((If the auditor is not able to provide the information personally to the voter by telephone, then the voter must be contacted by first class mail and advised of the correct procedures for completing the unsigned affidavit. Leaving a voice mail message for the voter is not to be considered as personally contacting the voter.))~~ If the absentee or provisional ballot is received within three business days of the final meeting of the canvassing board, or the voter has been notified by first class mail and has not responded at least three business days before the final meeting of the canvassing board, then the auditor shall attempt to notify the voter by telephone, using the voter registration record information. In order for the ballot to be counted, the voter must either:

(i) Appear in person and sign a new registration form no later than the day before the certification of the primary or election; or

(ii) Sign a copy of the affidavit provided by the auditor and return it to the auditor no later than the day before the certification of the primary or election. The voter may enclose with the affidavit a photocopy of a valid government or tribal issued identification document that includes the voter's current signature. If the signature on the copy of the affidavit does not match the signature on file or the signature on the copy of the identification document, the voter must appear in person and sign a new registration form no later than the day before the certification of the primary or election in order for the ballot to be counted.

(b) If the signature on an absentee or provisional ballot envelope is not the same as the signature on the registration file because the name is different, the ballot may be counted as long as the handwriting is clearly the same. The auditor shall send the voter a change-of-name form under RCW 29A.08.440 and direct the voter to complete the form.

(c) If the signature on an absentee or provisional ballot envelope is not the same as the signature on the registration file because the voter used initials or a common nickname, the ballot may be counted as long as the surname and handwriting are clearly the same.

(3) A voter may not cure a missing or mismatched signature for purposes of counting the ballot in a recount.

(4) A record must be kept of all ballots with missing and mismatched signatures. The record must contain the date on which the voter was contacted or the notice was mailed, as well as the date on which the voter signed the envelope, a copy of the envelope, a new registration form, or a change-of-name form. That record is a public record under chapter 42.17 RCW and may be disclosed to interested parties on written request.

Passed by the House March 7, 2006.

Passed by the Senate March 7, 2006.

Approved by the Governor March 24, 2006.

Filed in Office of Secretary of State March 24, 2006.

CHAPTER 209

[House Bill 2520]

PUBLIC DISCLOSURE

AN ACT Relating to recodifying and making technical corrections to public disclosure law; amending RCW 7.07.050, 15.53.9018, 18.20.390, 29A.60.165, 48.31.405, 42.56.250, 42.56.270,

42.56.330, 42.56.360, 74.15.310, 74.15.320, 74.15.330, 74.42.640, and 90.64.190; adding new sections to chapter 42.56 RCW; recodifying RCW 42.17.253, 42.17.31922, and 42.17.31923; and providing an effective date.

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

Sec. 1. RCW 7.07.050 and 2005 c 172 s 6 are each amended to read as follows:

(1) There is no privilege under RCW 7.07.030 for a mediation communication that is:

(a) In an agreement evidenced by a record signed by all parties to the agreement;

(b) Made during a session of a mediation which is open, or is required by law to be open, to the public;

(c) A threat or statement of a plan to inflict bodily injury or commit a crime of violence;

(d) Intentionally used to plan a crime, attempt to commit or commit a crime, or to conceal an ongoing crime or ongoing criminal activity;

(e) Sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator;

(f) Except as otherwise provided in subsection (3) of this section, sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediation party, nonparty participant, or representative of a party based on conduct occurring during a mediation; or

(g) Sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation in a proceeding in which a child or adult protective services agency is a party, unless the public agency participates in the child or adult protection mediation.

(2) There is no privilege under RCW 7.07.030 if a court finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, that there is a need for the evidence that substantially outweighs the interest in protecting confidentiality, and that the mediation communication is sought or offered in:

(a) A criminal court proceeding involving a felony; or

(b) Except as otherwise provided in subsection (3) of this section, a proceeding to prove a claim to rescind or reform or a defense to avoid liability on a contract arising out of the mediation.

(3) A mediator may not be compelled to provide evidence of a mediation communication referred to in subsection (1)(f) or (2)(b) of this section.

(4) If a mediation communication is not privileged under subsection (1) or (2) of this section, only the portion of the communication necessary for the application of the exception from nondisclosure may be admitted. Admission of evidence under subsection (1) or (2) of this section does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.

(5) Records of mediation communications that are privileged under this chapter are exempt from the requirements of chapter ~~((42.17))~~ 42.56 RCW.

Sec. 2. RCW 15.53.9018 and 2005 c 18 s 7 are each amended to read as follows:

(1) Every registrant or licensee must file a semiannual report on forms provided by the department setting forth the number of tons of commercial feed

distributed in or into this state. The report must be filed regardless of the amount of feed distributed or inspection fees owed. The report must include:

- (a) The name and mailing address of the registrant or licensee;
- (b) The physical address of the registrant or licensee;
- (c) The name, contact information, and signature of the person filing the report;
- (d) The total number of tons distributed in or into this state;
- (e) The total number of tons on which the registrant or licensee is paying;
- (f) If the registrant or licensee is not paying inspection fees on all commercial feed he or she distributed in or into this state, information regarding the registrants or licensees that are responsible for paying the inspection fees and the number of tons involved; and
- (g) Other information required by the department by rule.

(2) Except as provided in subsections (3) through (5) of this section, each initial distributor or responsible buyer must pay to the department an inspection fee on all commercial feed distributed by such person during the reporting period. The inspection fee must accompany the report required in subsection (1) of this section. The inspection fee shall be not less than four cents nor more than twelve cents per ton as prescribed by the department by rule. These fees shall be used for enforcement and administration of this chapter and its rules.

(3) The initial distributor is not required to pay an inspection fee for commercial feed he or she distributed to a responsible buyer.

(4) In a situation where a responsible buyer is distributing to another responsible buyer, the inspection fee must be paid by the last responsible buyer to distribute the commercial feed.

(5) The initial distributor or responsible buyer is not required to pay an inspection fee for: (a) Pet food and specialty pet food distributed in packages weighing less than ten pounds; (b) distribution of bona fide experimental feeds on which accurate records and experimental programs are maintained; (c) commercial feed distributed to points outside this state; and (d) food processing byproducts from fruit, vegetable, or potato processing plants, freezing or dehydrating facilities, or juice or jelly preserving plants.

(6) Tonnage will be reported and inspection fees will be paid on (a) byproducts or products of sugar refineries; and (b) materials used in the preparation of pet foods and specialty pet food.

(7)(a) Each person made responsible by this chapter for filing a report or paying inspection fees must do so according to the following schedule:

(i) For the period January 1st through June 30th of each year, the report and inspection fees are due on July 31st of that year; and

(ii) For the period July 1st through December 31st of each year, the report and inspection fees are due on January 31st of the following year.

(b) If a complete report is not received by the due date or the appropriate inspection fees are not received by the due date, the person responsible for filing the report or paying the inspection fee must pay a late fee equal to fifteen percent of the inspection fee owed or fifty dollars, whichever is greater.

(c) The department may cancel the registration of a person's commercial feed or may cancel a person's commercial feed license if that person fails to pay the late fee. The applicant or licensee may request a hearing as authorized under chapter 34.05 RCW.

(8) If inspection fees are owed, the minimum inspection fee is twelve dollars and fifty cents.

(9) For the purpose of verifying the accuracy of reports and payment of appropriate inspection fees, the department may examine, at reasonable times, a registrant's or licensee's distribution records and may require each registrant or licensee to maintain records or file additional reports. These records must be maintained in usable condition by the registrant or licensee for a period of three years unless by rule this retention period is extended and must be submitted to the department upon request.

(10) The report required by subsection (1) of this section shall not be a public record, and any information given in such report which would reveal the business operation of the person making the report is exempt from public disclosure under chapter ~~((42.17))~~ 42.56 RCW, and information obtained by the department from other governmental agencies or other sources that is used to verify information received in the report is exempt from public disclosure under chapter ~~((42.17))~~ 42.56 RCW. However, this subsection does not prevent the use of information concerning the business operation of a person if any action, suit, or proceeding instituted under the authority of this chapter, including any civil action for collection of unpaid inspection fees, which action is hereby authorized and which shall be as an action at law in the name of the director of the department.

(11) Any commercial feed obtained by a consumer or contract feeder outside the jurisdiction of this state and brought into this state for use is subject to all the provisions of this chapter, including inspection fees.

Sec. 3. RCW 18.20.390 and 2005 c 33 s 2 are each amended to read as follows:

(1) To ensure the proper delivery of services and the maintenance and improvement in quality of care through self-review, any boarding home licensed under this chapter may maintain a quality assurance committee that, at a minimum, includes:

- (a) A licensed registered nurse under chapter 18.79 RCW;
- (b) The administrator; and
- (c) Three other members from the staff of the boarding home.

(2) When established, the quality assurance committee shall meet at least quarterly to identify issues that may adversely affect quality of care and services to residents and to develop and implement plans of action to correct identified quality concerns or deficiencies in the quality of care provided to residents.

(3) To promote quality of care through self-review without the fear of reprisal, and to enhance the objectivity of the review process, the department shall not require, and the long-term care ombudsman program shall not request, disclosure of any quality assurance committee records or reports, unless the disclosure is related to the committee's compliance with this section, if:

- (a) The records or reports are not maintained pursuant to statutory or regulatory mandate; and
- (b) The records or reports are created for and collected and maintained by the committee.

(4) If the boarding home refuses to release records or reports that would otherwise be protected under this section, the department may then request only that information that is necessary to determine whether the boarding home has a

quality assurance committee and to determine that it is operating in compliance with this section. However, if the boarding home offers the department documents generated by, or for, the quality assurance committee as evidence of compliance with boarding home requirements, the documents are protected as quality assurance committee documents under subsections (6) and (8) of this section when in the possession of the department. The department is not liable for an inadvertent disclosure, a disclosure related to a required federal or state audit, or disclosure of documents incorrectly marked as quality assurance committee documents by the facility.

(5) Good faith attempts by the committee to identify and correct quality deficiencies shall not be used as a basis for sanctions.

(6) Information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, a quality assurance committee are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude:

(a) In any civil action, the discovery of the identity of persons involved in the care that is the basis of the civil action whose involvement was independent of any quality improvement committee activity;

(b) In any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of their participation in the quality assurance committee activities.

(7) A quality assurance committee under subsection (1) of this section, RCW 70.41.200, 74.42.640, 4.24.250, or 43.70.510 may share information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, the committee, with one or more other quality assurance committees created under subsection (1) of this section, RCW 70.41.200, 74.42.640, 4.24.250, or 43.70.510 for the improvement of the quality of care and services rendered to boarding home residents. Information and documents disclosed by one quality assurance committee to another quality assurance committee and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsections (6) and (8) of this section, RCW 43.70.510(4), 70.41.200(3), 4.24.250(1), and 74.42.640 (7) and (9). The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws.

(8) Information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, a quality assurance committee are exempt from disclosure under chapter ~~((42.17))~~ 42.56 RCW.

(9) Notwithstanding any records created for the quality assurance committee, the facility shall fully set forth in the resident's records, available to the resident, the department, and others as permitted by law, the facts concerning any incident of injury or loss to the resident, the steps taken by the facility to address the resident's needs, and the resident outcome.

Sec. 4. RCW 29A.60.165 and 2005 c 243 s 8 are each amended to read as follows:

(1) If the voter neglects to sign the outside envelope of an absentee or provisional ballot, the auditor shall notify the voter by telephone and advise the voter of the correct procedures for completing the unsigned affidavit. If the auditor is not able to provide the information personally to the voter by telephone, then the voter must be contacted by first class mail and advised of the correct procedures for completing the unsigned affidavit. Leaving a voice mail message for the voter is not to be considered as personally contacting the voter. In order for the ballot to be counted, the voter must either:

(a) Appear in person and sign the envelope no later than the day before the certification of the primary or election; or

(b) Sign a copy of the envelope provided by the auditor, and return it to the auditor no later than the day before the certification of the primary or election.

(2)(a) If the handwriting of the signature on an absentee or provisional ballot envelope is not the same as the handwriting of the signature on the registration file, the auditor shall notify the voter by telephone and advise the voter of the correct procedures for updating his or her signature on the voter registration file. If the auditor is not able to provide the information personally to the voter by telephone, then the voter must be contacted by first class mail and advised of the correct procedures for completing the unsigned affidavit. Leaving a voice mail message for the voter is not to be considered as personally contacting the voter. In order for the ballot to be counted, the voter must either:

(i) Appear in person and sign a new registration form no later than the day before the certification of the primary or election; or

(ii) Sign a copy of the affidavit provided by the auditor and return it to the auditor no later than the day before the certification of the primary or election. If the signature on the copy of the affidavit does not match the signature on file, the voter must appear in person and sign a new registration form no later than the day before the certification of the primary or election in order for the ballot to be counted.

(b) If the signature on an absentee or provisional ballot envelope is not the same as the signature on the registration file because the name is different, the ballot may be counted as long as the handwriting is clearly the same. The auditor shall send the voter a change-of-name form under RCW 29A.08.440 and direct the voter to complete the form.

(c) If the signature on an absentee or provisional ballot envelope is not the same as the signature on the registration file because the voter used initials or a common nickname, the ballot may be counted as long as the surname and handwriting are clearly the same.

(3) A voter may not cure a missing or mismatched signature for purposes of counting the ballot in a recount.

(4) A record must be kept of all ballots with missing and mismatched signatures. The record must contain the date on which the voter was contacted

or the notice was mailed, as well as the date on which the voter signed the envelope, a copy of the envelope, a new registration form, or a change-of-name form. That record is a public record under chapter ~~((42.17))~~ 42.56 RCW and may be disclosed to interested parties on written request.

Sec. 5. RCW 48.31.405 and 2005 c 432 s 4 are each amended to read as follows:

(1) Except as set forth in this section, proceedings, hearings, notices, correspondence, reports, records, and other information in the possession of the commissioner relating to the supervision of any insurer under this chapter are confidential and are not subject to chapter ~~((42.17))~~ 42.56 RCW, are not subject to subpoena, and are not subject to discovery or admissible in evidence in any private civil action, except as provided by this section. However, the commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(2) The employees of the commissioner have access to these proceedings, hearings, notices, correspondence, reports, records, or information as permitted by the commissioner. Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner is permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (1) of this section.

(3) The commissioner may share the notices, correspondence, reports, records, or information with other state, federal, and international regulatory agencies, with the national association of insurance commissioners and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, if the commissioner determines that the disclosure is necessary or proper for the enforcement of the laws of this or another state of the United States, and provided that the recipient agrees to maintain the confidentiality of the documents, material, or other information. No waiver of any applicable privilege or claim of confidentiality may occur as a result of the sharing of documents, materials, or other information under this subsection.

(4) The commissioner may open the proceedings or hearings or make public the notices, correspondence, reports, records, or other information if the commissioner deems that it is in the best interest of the public or in the best interest of the insurer or its insureds, creditors, or the general public. However, the determination of whether to disclose any confidential information at the public proceedings or hearings is subject to applicable law.

(5) This section does not apply to hearings, notices, correspondence, reports, records, or other information obtained upon the appointment of a receiver for the insurer by a court of competent jurisdiction.

Sec. 6. RCW 42.56.250 and 2005 c 274 s 405 are each amended to read as follows:

The following employment and licensing information is exempt from public inspection and copying under this chapter:

(1) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination;

(2) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant;

(3) The residential addresses (~~(or)~~), residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, social security numbers, and emergency contact information of employees or volunteers of a public agency, and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, social security numbers, and emergency contact information of dependents of employees or volunteers of a public agency that are held by any public agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers of any public agency. For purposes of this subsection, "employees" includes independent provider home care workers as defined in RCW 74.39A.240;

(4) Information that identifies a person who, while an agency employee: (a) seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and (b) requests his or her identity or any identifying information not be disclosed;

(5) Investigative records compiled by an employing agency conducting a current investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment; and

(6) Except as provided in RCW 47.64.220, salary and employee benefit information collected under RCW 47.64.220(1) and described in RCW 47.64.220(2).

Sec. 7. RCW 42.56.270 and 2005 c 274 s 407 are each amended to read as follows:

The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

(2) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070;

(3) Financial and commercial information and records supplied by private persons pertaining to export services provided under chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects under RCW 43.23.035;

(4) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency;

(5) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and

industrial development corporation organized or seeking certification under chapter 31.24 RCW;

(6) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information;

(7) Financial and valuable trade information under RCW 51.36.120;

(8) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW;

(9) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010;

(10) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a horse racing license submitted pursuant to RCW 67.16.260(1)(b), liquor license, gambling license, or lottery retail license;

(11) Proprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011; ~~(and)~~

(12)(a) When supplied to and in the records of the department of community, trade, and economic development:

(i) Financial and proprietary information collected from any person and provided to the department of community, trade, and economic development pursuant to RCW 43.330.050(8) and 43.330.080(4); and

(ii) Financial or proprietary information collected from any person and provided to the department of community, trade, and economic development or the office of the governor in connection with the siting, recruitment, expansion, retention, or relocation of that person's business and until a siting decision is made, identifying information of any person supplying information under this subsection and the locations being considered for siting, relocation, or expansion of a business;

(b) When developed by the department of community, trade, and economic development based on information as described in (a)(i) of this subsection, any work product is not exempt from disclosure;

(c) For the purposes of this subsection, "siting decision" means the decision to acquire or not to acquire a site;

(d) If there is no written contact for a period of sixty days to the department of community, trade, and economic development from a person connected with siting, recruitment, expansion, retention, or relocation of that person's business, information described in (a)(ii) of this subsection will be available to the public under this chapter; and

(13) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery of, grants under chapter 43.350 RCW, to

the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information.

Sec. 8. RCW 42.56.330 and 2005 c 274 s 413 are each amended to read as follows:

The following information relating to public utilities and transportation is exempt from disclosure under this chapter:

(1) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095;

(2) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers, except that this information may be released to the division of child support or the agency or firm providing child support enforcement for another state under Title IV-D of the federal social security act, for the establishment, enforcement, or modification of a support order;

(3) The names, residential addresses, residential telephone numbers, and other individually identifiable records held by an agency in relation to a vanpool, carpool, or other ride-sharing program or service; however, these records may be disclosed to other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides;

(4) The personally identifying information of current or former participants or applicants in a paratransit or other transit service operated for the benefit of persons with disabilities or elderly persons;

(5) The personally identifying information of persons who acquire and use transit passes and other fare payment media including, but not limited to, stored value smart cards and magnetic strip cards, except that an agency may disclose this information to a person, employer, educational institution, or other entity that is responsible, in whole or in part, for payment of the cost of acquiring or using a transit pass or other fare payment media, or to the news media when reporting on public transportation or public safety. This information may also be disclosed at the agency's discretion to governmental agencies or groups concerned with public transportation or public safety;

(6) Records of any person that belong to a public utility district or a municipally owned electrical utility, unless the law enforcement authority provides the public utility district or municipally owned electrical utility with a written statement in which the authority states that it suspects that the particular person to whom the records pertain has committed a crime and the authority has a reasonable belief that the records could determine or help determine whether the suspicion might be true. Information obtained in violation of this subsection is inadmissible in any criminal proceeding; ~~((and))~~

(7) Any information obtained by governmental agencies that is collected by the use of a motor carrier intelligent transportation system or any comparable information equipment attached to a truck, tractor, or trailer; however, the information may be given to other governmental agencies or the owners of the truck, tractor, or trailer from which the information is obtained. As used in this subsection, "motor carrier" has the same definition as provided in RCW 81.80.010; and

(8) The personally identifying information of persons who acquire and use transponders or other technology to facilitate payment of tolls. This information may be disclosed in aggregate form as long as the data does not contain any personally identifying information. For these purposes aggregate data may include the census tract of the account holder as long as any individual personally identifying information is not released. Personally identifying information may be released to law enforcement agencies only for toll enforcement purposes. Personally identifying information may be released to law enforcement agencies for other purposes only if the request is accompanied by a court order.

Sec. 9. RCW 42.56.360 and 2005 c 274 s 416 are each amended to read as follows:

(1) The following health care information is exempt from disclosure under this chapter:

(a) Information obtained by the board of pharmacy as provided in RCW 69.45.090;

(b) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420;

(c) Information and documents created specifically for, and collected and maintained by a quality improvement committee under RCW 43.70.510 or 70.41.200, or by a peer review committee under RCW 4.24.250, or by a quality assurance committee pursuant to RCW 74.42.640 or 18.20.390, regardless of which agency is in possession of the information and documents;

(d)(i) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310;

(ii) If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this subsection (1)(d) as exempt from disclosure;

(iii) If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality;

(e) Records of the entity obtained in an action under RCW 18.71.300 through 18.71.340;

(f) Except for published statistical compilations and reports relating to the infant mortality review studies that do not identify individual cases and sources of information, any records or documents obtained, prepared, or maintained by the local health department for the purposes of an infant mortality review conducted by the department of health under RCW 70.05.170; and

(g) Complaints filed under chapter 18.130 RCW after July 27, 1997, to the extent provided in RCW 18.130.095(1).

(2) Chapter 70.02 RCW applies to public inspection and copying of health care information of patients.

Sec. 10. RCW 74.15.310 and 2005 c 473 s 3 are each amended to read as follows:

(1) The department shall establish and maintain a toll-free telephone number, and an interactive web-based system through which persons may obtain information regarding child day-care centers and family day-care providers. This number shall be available twenty-four hours a day for persons to request information. The department shall respond to recorded messages left at the number within two business days. The number shall be published in reasonably available printed and electronic media. The number shall be easily identifiable as a number through which persons may obtain information regarding child day-care centers and family day-care providers as set forth in this section.

(2) Through the toll-free telephone line established by this section, the department shall provide information to callers about: (a) Whether a day-care provider is licensed; (b) whether a day-care provider's license is current; (c) the general nature of any enforcement against the providers; (d) how to report suspected or observed noncompliance with licensing requirements; (e) how to report alleged abuse or neglect in a day care; (f) how to report health, safety, and welfare concerns in a day care; (g) how to receive follow-up assistance, including information on the office of the family and children's ombudsman; and (h) how to receive referral information on other agencies or entities that may be of further assistance to the caller.

(3) Beginning in January 2006, the department shall print the toll-free number established by this section on the face of new licenses issued to child day-care centers and family day-care providers.

(4) This section shall not be construed to require the disclosure of any information that is exempt from public disclosure under chapter ~~((42.17))~~ 42.56 RCW.

Sec. 11. RCW 74.15.320 and 2005 c 473 s 4 are each amended to read as follows:

(1) Every child day-care center and family day-care provider shall prominently post the following items, clearly visible to parents and staff:

(a) The license issued under this chapter;

(b) The department's toll-free telephone number established by RCW 74.15.310;

(c) The notice of any pending enforcement action. The notice must be posted immediately upon receipt. The notice must be posted for at least two weeks or until the violation causing the enforcement action is corrected, whichever is longer;

(d) A notice that inspection reports and any notices of enforcement actions for the previous three years are available from the licensee and the department; and

(e) Any other information required by the department.

(2) The department shall disclose, upon request, the receipt, general nature, and resolution or current status of all complaints on record with the department after July 24, 2005, against a child day-care center or family day-care provider that result in an enforcement action.

This section shall not be construed to require the disclosure of any information that is exempt from public disclosure under chapter ~~((42.17))~~ 42.56 RCW.

Sec. 12. RCW 74.15.330 and 2005 c 473 s 5 are each amended to read as follows:

(1) Every child day-care center and family day-care provider shall have readily available for review by the department, parents, and the public a copy of each inspection report and notice of enforcement action received by the center or provider from the department for the past three years. This subsection only applies to reports and notices received on or after July 24, 2005.

(2) The department shall make available to the public during business hours all inspection reports and notices of enforcement actions involving child day-care centers and family day-care providers consistent with chapter ~~((42.17))~~ 42.56 RCW. The department shall include in the inspection report a statement of the corrective measures taken by the center or provider.

Sec. 13. RCW 74.42.640 and 2005 c 33 s 3 are each amended to read as follows:

(1) To ensure the proper delivery of services and the maintenance and improvement in quality of care through self-review, each facility may maintain a quality assurance committee that, at a minimum, includes:

- (a) The director of nursing services;
- (b) A physician designated by the facility; and
- (c) Three other members from the staff of the facility.

(2) When established, the quality assurance committee shall meet at least quarterly to identify issues that may adversely affect quality of care and services to residents and to develop and implement plans of action to correct identified quality concerns or deficiencies in the quality of care provided to residents.

(3) To promote quality of care through self-review without the fear of reprisal, and to enhance the objectivity of the review process, the department shall not require, and the long-term care ombudsman program shall not request, disclosure of any quality assurance committee records or reports, unless the disclosure is related to the committee's compliance with this section, if:

- (a) The records or reports are not maintained pursuant to statutory or regulatory mandate; and
- (b) The records or reports are created for and collected and maintained by the committee.

(4) The department may request only information related to the quality assurance committee that may be necessary to determine whether a facility has a quality assurance committee and that it is operating in compliance with this section.

(5) Good faith attempts by the committee to identify and correct quality deficiencies shall not be used as a basis for imposing sanctions.

(6) If the facility offers the department documents generated by, or for, the quality assurance committee as evidence of compliance with nursing facility requirements, the documents are protected as quality assurance committee documents under subsections (7) and (9) of this section when in the possession of the department. The department is not liable for an inadvertent disclosure, a disclosure related to a required federal or state audit, or disclosure of documents incorrectly marked as quality assurance committee documents by the facility.

(7) Information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, a quality assurance committee are not subject to discovery or introduction into

evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the care that is the basis of the civil action whose involvement was independent of any quality improvement committee activity; and (b) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of their participation in the quality assurance committee activities.

(8) A quality assurance committee under subsection (1) of this section, RCW 18.20.390, 70.41.200, 4.24.250, or 43.70.510 may share information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, the committee, with one or more other quality assurance committees created under subsection (1) of this section, RCW 18.20.390, 70.41.200, 4.24.250, or 43.70.510 for the improvement of the quality of care and services rendered to nursing facility residents. Information and documents disclosed by one quality assurance committee to another quality assurance committee and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsections (7) and (9) of this section, RCW 18.20.390 (6) and (8), 43.70.510(4), 70.41.200(3), and 4.24.250(1). The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws.

(9) Information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, a quality assurance committee are exempt from disclosure under chapter ~~((42.17))~~ 42.56 RCW.

(10) Notwithstanding any records created for the quality assurance committee, the facility shall fully set forth in the resident's records, available to the resident, the department, and others as permitted by law, the facts concerning any incident of injury or loss to the resident, the steps taken by the facility to address the resident's needs, and the resident outcome.

(11) A facility operated as part of a hospital licensed under chapter 70.41 RCW may maintain a quality assurance committee in accordance with this section which shall be subject to the provisions of subsections (1) through (10) of this section or may conduct quality improvement activities for the facility through a quality improvement committee under RCW 70.41.200 which shall be subject to the provisions of RCW 70.41.200(9).

Sec. 14. RCW 90.64.190 and 2005 c 510 s 4 are each amended to read as follows:

This section applies to dairies, AFOs, and CAFOs, not required to apply for a permit. Information in plans, records, and reports obtained by state and local

agencies from livestock producers under chapter 510, Laws of 2005 regarding (1) number of animals; (2) volume of livestock nutrients generated; (3) number of acres covered by the plan or used for land application of livestock nutrients; (4) livestock nutrients transferred to other persons; and (5) crop yields shall be disclosable in response to a request for public records under chapter ~~((42.17))~~ 42.56 RCW only in ranges that provide meaningful information to the public while ensuring confidentiality of business information. The department of agriculture shall adopt rules to implement this section in consultation with affected state and local agencies.

NEW SECTION. Sec. 15. A new section is added to chapter 42.56 RCW to read as follows:

Records of mediation communications that are privileged under chapter 7.07 RCW are exempt from disclosure under this chapter.

NEW SECTION. Sec. 16. The following sections are each recodified as new sections in chapter 42.56 RCW:

RCW 42.17.253;
RCW 42.17.31922;
RCW 42.17.31923.

NEW SECTION. Sec. 17. This act takes effect July 1, 2006.

Passed by the House February 8, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 24, 2006.

Filed in Office of Secretary of State March 24, 2006.

CHAPTER 210

[Substitute House Bill 2543]

ENHANCED 911 ADVISORY COMMITTEE

AN ACT Relating to the enhanced 911 advisory committee; amending RCW 38.52.530; adding a new section to chapter 38.52 RCW; and providing an expiration date.

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

Sec. 1. RCW 38.52.530 and 2002 c 341 s 3 are each amended to read as follows:

The enhanced 911 advisory committee is created to advise and assist the state enhanced 911 coordinator in coordinating and facilitating the implementation and operation of enhanced 911 throughout the state. The director shall appoint members of the committee who represent diverse geographical areas of the state and include state residents who are members of the national emergency number association, the associated public communications officers Washington chapter, the Washington state fire chiefs association, the Washington association of sheriffs and police chiefs, the Washington state council of fire fighters, the Washington state council of police officers, the Washington ambulance association, the state fire protection policy board, the Washington fire commissioners association, the Washington state patrol, the association of Washington cities, the Washington state association of counties, the utilities and transportation commission or commission staff, a representative of a voice over internet protocol company, and an equal number

of representatives of large and small local exchange telephone companies and large and small radio communications service companies offering commercial mobile radio service in the state. This section expires December 31, ~~((2006))~~ 2011.

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

On an annual basis, the enhanced 911 advisory committee shall provide an update on the status of enhanced 911 service in the state to the appropriate committees in the legislature.

Passed by the House March 4, 2006.

Passed by the Senate March 1, 2006.

Approved by the Governor March 24, 2006.

Filed in Office of Secretary of State March 24, 2006.

CHAPTER 211

[House Bill 2606]

VOLUNTEER FIRE PERSONNEL—PUBLIC OFFICE

AN ACT Relating to allowing volunteer fire personnel to hold elective or appointed office; adding a new section to chapter 35.21 RCW; and adding a new section to chapter 52.30 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 35.21 RCW to read as follows:

(1) Except as otherwise prohibited by law, a volunteer member of any fire department who does not serve as fire chief for the department may be:

(a) A candidate for elective public office and serve in that public office if elected; or

(b) Appointed to any public office and serve in that public office if appointed.

(2) For purposes of this section, "volunteer" means a member of any fire department who performs voluntarily any assigned or authorized duties on behalf of or at the direction of the fire department without receiving compensation or consideration for performing such duties.

(3) For purposes of this section, "compensation" and "consideration" do not include any benefits the volunteer may have accrued or is accruing under chapter 41.24 RCW.

NEW SECTION. Sec. 2. A new section is added to chapter 52.30 RCW to read as follows:

(1) Except as otherwise prohibited by law, a volunteer member of any fire protection district who does not serve as fire chief for the district may be:

(a) A candidate for elective public office and serve in that public office if elected; or

(b) Appointed to any public office and serve in that public office if appointed.

(2) For purposes of this section, "volunteer" means a member of any fire protection district who performs voluntarily any assigned or authorized duties on behalf of or at the direction of the fire protection district without receiving compensation or consideration for performing such duties.

(3) For purposes of this section, "compensation" and "consideration" do not include any benefits the volunteer may have accrued or is accruing under chapter 41.24 RCW.

Passed by the House March 4, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 24, 2006.

Filed in Office of Secretary of State March 24, 2006.

CHAPTER 212

[House Bill 2617]

OFF-ROAD VEHICLES

AN ACT Relating to allowing local jurisdictions to allow off-road vehicles to operate on designated city or county roads; amending RCW 46.09.115, 46.09.120, 46.09.180, and 46.37.010; and reenacting and amending RCW 46.16.010 and 4.24.210.

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

Sec. 1. RCW 46.16.010 and 2005 c 350 s 1, 2005 c 323 s 2, and 2005 c 213 s 6 are each reenacted and amended to read as follows:

(1) It is unlawful for a person to operate any vehicle over and along a public highway of this state without first having obtained and having in full force and effect a current and proper vehicle license and display vehicle license number plates therefor as by this chapter provided.

(2) Failure to make initial registration before operation on the highways of this state is a traffic infraction, and any person committing this infraction shall pay a penalty of five hundred twenty-nine dollars, no part of which may be suspended or deferred.

(3) Failure to renew an expired registration before operation on the highways of this state is a traffic infraction.

(4) The licensing of a vehicle in another state by a resident of this state, as defined in RCW 46.16.028, evading the payment of any tax or license fee imposed in connection with registration, is a gross misdemeanor punishable as follows:

(a) For a first offense, up to one year in the county jail and payment of a fine of five hundred twenty-nine dollars plus twice the amount of delinquent taxes and fees, no part of which may be suspended or deferred;

(b) For a second or subsequent offense, up to one year in the county jail and payment of a fine of five hundred twenty-nine dollars plus four times the amount of delinquent taxes and fees, no part of which may be suspended or deferred;

(c) For fines levied under (b) of this subsection, an amount equal to the avoided taxes and fees owed will be deposited in the vehicle licensing fraud account created in the state treasury;

(d) The avoided taxes and fees shall be deposited and distributed in the same manner as if the taxes and fees were properly paid in a timely fashion.

(5) These provisions shall not apply to the following vehicles:

(a) Motorized foot scooters;

(b) Electric-assisted bicycles;

(c) Off-road vehicles operating on nonhighway roads under RCW 46.09.115;

(d) Farm vehicles if operated within a radius of fifteen miles of the farm where principally used or garaged, farm tractors and farm implements including trailers designed as cook or bunk houses used exclusively for animal herding temporarily operating or drawn upon the public highways, and trailers used exclusively to transport farm implements from one farm to another during the daylight hours or at night when such equipment has lights that comply with the law;

(e) Spray or fertilizer applicator rigs designed and used exclusively for spraying or fertilization in the conduct of agricultural operations and not primarily for the purpose of transportation, and nurse rigs or equipment auxiliary to the use of and designed or modified for the fueling, repairing, or loading of spray and fertilizer applicator rigs and not used, designed, or modified primarily for the purpose of transportation;

(f) Fork lifts operated during daylight hours on public highways adjacent to and within five hundred feet of the warehouses which they serve: PROVIDED FURTHER, That these provisions shall not apply to vehicles used by the state parks and recreation commission exclusively for park maintenance and operations upon public highways within state parks;

(g) "Trams" used for transporting persons to and from facilities related to the horse racing industry as regulated in chapter 67.16 RCW, as long as the public right-of-way routes over which the trams operate are not more than one mile from end to end, the public rights-of-way over which the tram operates have an average daily traffic of not more than 15,000 vehicles per day, and the activity is in conformity with federal law. The operator must be a licensed driver and at least eighteen years old. For the purposes of this section, "tram" also means a vehicle, or combination of vehicles linked together with a single mode of propulsion, used to transport persons from one location to another;

(h) "Special highway construction equipment" defined as follows: Any vehicle which is designed and used primarily for grading of highways, paving of highways, earth moving, and other construction work on highways and which is not designed or used primarily for the transportation of persons or property on a public highway and which is only incidentally operated or moved over the highway. It includes, but is not limited to, road construction and maintenance machinery so designed and used such as portable air compressors, air drills, asphalt spreaders, bituminous mixers, bucket loaders, track laying tractors, ditchers, leveling graders, finishing machines, motor graders, paving mixers, road rollers, scarifiers, earth moving scrapers and carryalls, lighting plants, welders, pumps, power shovels and draglines, self-propelled and tractor-drawn earth moving equipment and machinery, including dump trucks and tractor-dump trailer combinations which either (i) are in excess of the legal width, or (ii) which, because of their length, height, or unladen weight, may not be moved on a public highway without the permit specified in RCW 46.44.090 and which are not operated laden except within the boundaries of the project limits as defined by the contract, and other similar types of construction equipment, or (iii) which are driven or moved upon a public highway only for the purpose of crossing such highway from one property to another, provided such movement does not exceed five hundred feet and the vehicle is equipped with wheels or pads which will not damage the roadway surface.

Exclusions:

"Special highway construction equipment" does not include any of the following:

Dump trucks originally designed to comply with the legal size and weight provisions of this code notwithstanding any subsequent modification which would require a permit, as specified in RCW 46.44.090, to operate such vehicles on a public highway, including trailers, truck-mounted transit mixers, cranes and shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

(6) The following vehicles, whether operated solo or in combination, are exempt from license registration and displaying license plates as required by this chapter:

(a) A converter gear used to convert a semitrailer into a trailer or a two-axle truck or tractor into a three or more axle truck or tractor or used in any other manner to increase the number of axles of a vehicle. Converter gear includes an auxiliary axle, booster axle, dolly, and jeep axle.

(b) A tow dolly that is used for towing a motor vehicle behind another motor vehicle. The front or rear wheels of the towed vehicle are secured to and rest on the tow dolly that is attached to the towing vehicle by a tow bar.

(c) An off-road vehicle operated on a street, road, or highway as authorized under RCW 46.09.180.

(7)(a) A motor vehicle subject to initial or renewal registration under this section shall not be registered to a natural person unless the person at time of application:

(i) Presents an unexpired Washington state driver's license; or

(ii) Certifies that he or she is:

(A) A Washington resident who does not operate a motor vehicle on public roads; or

(B) Exempt from the requirement to obtain a Washington state driver's license under RCW 46.20.025.

(b) For shared or joint ownership, the department will set up procedures to verify that all owners meet the requirements of this subsection.

(c) A person falsifying residency is guilty of a gross misdemeanor punishable only by a fine of five hundred twenty-nine dollars.

(d) The department may adopt rules necessary to implement this subsection, including rules under which a natural person applying for registration may be exempt from the requirements of this subsection where the person provides evidence satisfactory to the department that he or she has a valid and compelling reason for not being able to meet the requirements of this subsection.

Sec. 2. RCW 46.09.115 and 2005 c 213 s 4 are each amended to read as follows:

(1) Except as otherwise provided in this section, it is lawful to operate an off-road vehicle upon:

(a) A nonhighway road and in parking areas serving designated off-road vehicle areas if the state, federal, local, or private authority responsible for the management of the nonhighway road authorizes the use of off-road vehicles; and

(b) A street, road, or highway as authorized under RCW 46.09.180.

(2) Operations of an off-road vehicle on a nonhighway road, or on a street, road, or highway as authorized under RCW 46.09.180, under this section is

exempt from licensing requirements of RCW 46.16.010 and vehicle lighting and equipment requirements of chapter 46.37 RCW.

(3) It is unlawful to operate an off-road vehicle upon a private nonhighway road if the road owner has not authorized the use of off-road vehicles.

(4) Nothing in this section authorizes trespass on private property.

(5) The provisions of RCW 4.24.210(5) shall apply to public landowners who allow members of the public to use public facilities accessed by a highway, street, or nonhighway road for recreational off-road vehicle use.

Sec. 3. RCW 46.09.120 and 2005 c 213 s 3 are each amended to read as follows:

(1) Except as provided in subsection (4) of this section, it is a traffic infraction for any person to operate any nonhighway vehicle:

(a) In such a manner as to endanger the property of another;

(b) On lands not owned by the operator or owner of the nonhighway vehicle without a lighted headlight and taillight between the hours of dusk and dawn, or when otherwise required for the safety of others regardless of ownership;

(c) On lands not owned by the operator or owner of the nonhighway vehicle without an adequate braking device or when otherwise required for the safety of others regardless of ownership;

(d) Without a spark arrester approved by the department of natural resources;

(e) Without an adequate, and operating, muffling device which effectively limits vehicle noise to no more than eighty-six decibels on the "A" scale at fifty feet as measured by the Society of Automotive Engineers (SAE) test procedure J 331a, except that a maximum noise level of one hundred and five decibels on the "A" scale at a distance of twenty inches from the exhaust outlet shall be an acceptable substitute in lieu of the Society of Automotive Engineers test procedure J 331a when measured:

(i) At a forty-five degree angle at a distance of twenty inches from the exhaust outlet;

(ii) With the vehicle stationary and the engine running at a steady speed equal to one-half of the manufacturer's maximum allowable ("red line") engine speed or where the manufacturer's maximum allowable engine speed is not known the test speed in revolutions per minute calculated as sixty percent of the speed at which maximum horsepower is developed; and

(iii) With the microphone placed ten inches from the side of the vehicle, one-half way between the lowest part of the vehicle body and the ground plane, and in the same lateral plane as the rearmost exhaust outlet where the outlet of the exhaust pipe is under the vehicle;

(f) On lands not owned by the operator or owner of the nonhighway vehicle upon the shoulder or inside bank or slope of any nonhighway road or highway, or upon the median of any divided highway;

(g) On lands not owned by the operator or owner of the nonhighway vehicle in any area or in such a manner so as to unreasonably expose the underlying soil, or to create an erosion condition, or to injure, damage, or destroy trees, growing crops, or other vegetation;

(h) On lands not owned by the operator or owner of the nonhighway vehicle or on any nonhighway road or trail, when these are restricted to pedestrian or animal travel;

(i) On any public lands in violation of rules and regulations of the agency administering such lands; and

(j) On a private nonhighway road in violation of RCW 46.09.115(3).

(2) It is a misdemeanor for any person to operate any nonhighway vehicle while under the influence of intoxicating liquor or a controlled substance.

(3)(a) Except for an off-road vehicle equipped with seat belts and roll bars or an enclosed passenger compartment, it is a traffic infraction for any person to operate or ride an off-road vehicle on a nonhighway road without wearing upon his or her head a motorcycle helmet fastened securely while in motion. For purposes of this section, "motorcycle helmet" has the same meaning as provided in RCW 46.37.530.

(b) Subsection (3)(a) of this section does not apply to an off-road vehicle operator operating on his or her own land.

(c) Subsection (3)(a) of this section does not apply to an off-road vehicle operator operating on agricultural lands owned or leased by the off-road vehicle operator or the operator's employer.

(4) It is not a traffic infraction to operate an off-road vehicle on a street, road, or highway as authorized under RCW 46.09.180.

Sec. 4. RCW 46.09.180 and 1977 ex.s. c 220 s 15 are each amended to read as follows:

Notwithstanding any of the provisions of this chapter, any city, county, or other political subdivision of this state, or any state agency, may regulate the operation of nonhighway vehicles on public lands, waters, and other properties under its jurisdiction, and on streets, roads, or highways within its boundaries by adopting regulations or ordinances of its governing body, provided such regulations are not less stringent than the provisions of this chapter. However, the legislative body of a city with a population of less than three thousand persons may, by ordinance, designate a street or highway within its boundaries to be suitable for use by off-road vehicles. The legislative body of a county may, by ordinance, designate a road or highway within its boundaries to be suitable for use by off-road vehicles if the road or highway is a direct connection between a city with a population of less than three thousand persons and an off-road vehicle recreation facility.

Sec. 5. RCW 46.37.010 and 2005 c 213 s 7 are each amended to read as follows:

(1) It is a traffic infraction for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this chapter or in regulations issued by the chief of the Washington state patrol, or which is equipped in any manner in violation of this chapter or the state patrol's regulations, or for any person to do any act forbidden or fail to perform any act required under this chapter or the state patrol's regulations.

(2) Nothing contained in this chapter or the state patrol's regulations shall be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this chapter or the state patrol's regulations.

(3) The provisions of the chapter and the state patrol's regulations with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers, or farm tractors except as herein made applicable.

(4) No owner or operator of a farm tractor, self-propelled unit of farm equipment, or implement of husbandry shall be guilty of a crime or subject to penalty for violation of RCW 46.37.160 as now or hereafter amended unless such violation occurs on a public highway.

(5) It is a traffic infraction for any person to sell or offer for sale vehicle equipment which is required to be approved by the state patrol as prescribed in RCW 46.37.005 unless it has been approved by the state patrol.

(6) The provisions of this chapter with respect to equipment required on vehicles shall not apply to motorcycles or motor-driven cycles except as herein made applicable.

(7) This chapter does not apply to off-road vehicles used on nonhighway roads or used on streets, roads, or highways as authorized under RCW 46.09.180.

(8) This chapter does not apply to vehicles used by the state parks and recreation commission exclusively for park maintenance and operations upon public highways within state parks.

(9) Notices of traffic infraction issued to commercial drivers under the provisions of this chapter with respect to equipment required on commercial motor vehicles shall not be considered for driver improvement purposes under chapter 46.20 RCW.

(10) Whenever a traffic infraction is chargeable to the owner or lessee of a vehicle under subsection (1) of this section, the driver shall not be arrested or issued a notice of traffic infraction unless the vehicle is registered in a jurisdiction other than Washington state, or unless the infraction is for an offense that is clearly within the responsibility of the driver.

(11) Whenever the owner or lessee is issued a notice of traffic infraction under this section the court may, on the request of the owner or lessee, take appropriate steps to make the driver of the vehicle, or any other person who directs the loading, maintenance, or operation of the vehicle, a codefendant. If the codefendant is held solely responsible and is found to have committed the traffic infraction, the court may dismiss the notice against the owner or lessee.

Sec. 6. RCW 4.24.210 and 2003 c 39 s 2 and 2003 c 16 s 2 are each reenacted and amended to read as follows:

(1) Except as otherwise provided in subsection (3) or (4) of this section, any public or private landowners or others in lawful possession and control of any lands whether designated resource, rural, or urban, or water areas or channels and lands adjacent to such areas or channels, who allow members of the public to use them for the purposes of outdoor recreation, which term includes, but is not limited to, the cutting, gathering, and removing of firewood by private persons for their personal use without purchasing the firewood from the landowner, hunting, fishing, camping, picnicking, swimming, hiking, bicycling, skateboarding or other nonmotorized wheel-based activities, hanggliding, paragliding, rock climbing, the riding of horses or other animals, clam digging, pleasure driving of off-road vehicles, snowmobiles, and other vehicles, boating, nature study, winter or water sports, viewing or enjoying historical,

archaeological, scenic, or scientific sites, without charging a fee of any kind therefor, shall not be liable for unintentional injuries to such users.

(2) Except as otherwise provided in subsection (3) or (4) of this section, any public or private landowner or others in lawful possession and control of any lands whether rural or urban, or water areas or channels and lands adjacent to such areas or channels, who offer or allow such land to be used for purposes of a fish or wildlife cooperative project, or allow access to such land for cleanup of litter or other solid waste, shall not be liable for unintentional injuries to any volunteer group or to any other users.

(3) Any public or private landowner, or others in lawful possession and control of the land, may charge an administrative fee of up to twenty-five dollars for the cutting, gathering, and removing of firewood from the land.

(4) Nothing in this section shall prevent the liability of a landowner or others in lawful possession and control for injuries sustained to users by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted. A fixed anchor used in rock climbing and put in place by someone other than a landowner is not a known dangerous artificial latent condition and a landowner under subsection (1) of this section shall not be liable for unintentional injuries resulting from the condition or use of such an anchor. Nothing in RCW 4.24.200 and ~~((4.24.210))~~ this section limits or expands in any way the doctrine of attractive nuisance. Usage by members of the public, volunteer groups, or other users is permissive and does not support any claim of adverse possession.

(5) For purposes of this section, the following are not fees:

(a) A license or permit issued for statewide use under authority of chapter 79A.05 RCW or Title 77 RCW ((is not a fee)); and

(b) A daily charge not to exceed twenty dollars per person, per day, for access to a publicly owned ORV sports park, as defined in RCW 46.09.020, or other public facility accessed by a highway, street, or nonhighway road for the purposes of off-road vehicle use.

Passed by the House March 4, 2006.

Passed by the Senate March 1, 2006.

Approved by the Governor March 24, 2006.

Filed in Office of Secretary of State March 24, 2006.

CHAPTER 213

[House Bill 2644]

PUBLIC UTILITY TAX CREDIT

AN ACT Relating to temporarily increasing the statewide cap for the public utility tax credit provided by RCW 82.16.0497; amending RCW 82.16.0497; and providing an effective date.

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

Sec. 1. RCW 82.16.0497 and 2001 c 214 s 13 are each amended to read as follows:

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

(a) "Base credit" means the maximum amount of credit against the tax imposed by this chapter that each light and power business or gas distribution

business may take each fiscal year as calculated by the department. The base credit is equal to the proportionate share that the total grants received by each light and power business or gas distribution business in the prior fiscal year bears to the total grants received by all light and power businesses and gas distribution businesses in the prior fiscal year multiplied by five million five hundred thousand dollars for fiscal year 2007, and two million five hundred thousand dollars for all other fiscal years before and after fiscal year 2007.

(b) "Billing discount" means a reduction in the amount charged for providing service to qualifying persons in Washington made by a light and power business or a gas distribution business. Billing discount does not include grants received by the light and power business or a gas distribution business.

(c) "Grant" means funds provided to a light and power business or gas distribution business by the department of community, trade, and economic development or by a qualifying organization.

(d) "Low-income home energy assistance program" means energy assistance programs for low-income households as defined on December 31, 2000, in the low-income home energy assistance act of 1981 as amended August 1, 1999, 42 U.S.C. Sec. 8623 et seq.

(e) "Qualifying person" means a Washington resident who applies for assistance and qualifies for a grant regardless of whether that person receives a grant.

(f) "Qualifying contribution" means money given by a light and power business or a gas distribution business to a qualifying organization, exclusive of money received in the prior fiscal year from its customers for the purpose of assisting other customers.

(g) "Qualifying organization" means an entity that has a contractual agreement with the department of community, trade, and economic development to administer in a specified service area low-income home energy assistance funds received from the federal government and such other funds that may be received by the entity.

(2) Subject to the limitations in this section, a light and power business or a gas distribution business may take a credit each fiscal year against the tax imposed under this chapter.

(a)(i) A credit may be taken for qualifying contributions if the dollar amount of qualifying contributions for the fiscal year in which the tax credit is taken is greater than one hundred twenty-five percent of the dollar amount of qualifying contributions given in fiscal year 2000.

(ii) If no qualifying contributions were given in fiscal year 2000, a credit shall be allowed for the first fiscal year that qualifying contributions are given. Thereafter, credit shall be allowed if the qualifying contributions given exceed one hundred twenty-five percent of qualifying contributions given in the first fiscal year.

(iii) The amount of credit shall be fifty percent of the dollar amount of qualifying contributions given in the fiscal year in which the tax credit is taken.

(b)(i) A credit may be taken for billing discounts if the dollar amount of billing discounts for the fiscal year in which the tax credit is taken is greater than one hundred twenty-five percent of the dollar amount of billing discounts given in fiscal year 2000.

(ii) If no billing discounts were given in fiscal year 2000, a credit shall be allowed in the first fiscal year that billing discounts are given. Thereafter, credit shall be allowed if the dollar amount of billing discounts given exceeds one hundred twenty-five percent of billing discounts given in the first fiscal year.

(iii) The amount of credit shall be fifty percent of the dollar amount of the billing discounts given in the fiscal year in which the tax credit is taken.

(c) The total amount of credit that may be taken for qualifying contributions and billing discounts in a fiscal year is limited to the base credit for the same fiscal year.

(3)(a)(i) Except as provided in (a)(ii) of this subsection, the total amount of credit, statewide, that may be taken in any fiscal year shall not exceed two million five hundred thousand dollars.

(ii) The total amount of credit, statewide, that may be taken in fiscal year 2007 shall not exceed five million five hundred thousand dollars.

(b) By May 1st of each year starting in 2002, the department of community, trade, and economic development shall notify the department of revenue in writing of the grants received in the current fiscal year by each light and power business and gas distribution business.

(4)(a) Not later than June 1st of each year beginning in 2002, the department shall publish the base credit for each light and power business and gas distribution business for the next fiscal year.

(b) Not later than July 1st of each year beginning in 2002, application for credit must be made to the department including but not limited to the following information: Billing discounts given by the applicant in fiscal year 2000; qualifying contributions given by the applicant in the prior fiscal year; the amount of money received in the prior fiscal year from customers for the purpose of assisting other customers; the base credit for the next fiscal year for the applicant; the qualifying contributions anticipated to be given in the next fiscal year; and billing discounts anticipated to be given in the next fiscal year. No credit under this section will be allowed to a light and power business or gas distribution business that does not file the application by July 1st.

(c) Not later than August 1st of each year beginning in 2002, the department shall notify each applicant of the amount of credit that may be taken in that fiscal year.

(d) The balance of base credits not used by other light and power businesses and gas distribution businesses shall be ratably distributed to applicants under the formula in subsection (1)(a) of this section. The total amount of credit that may be taken by an applicant is the base credit plus any ratable portion of unused base credit.

(5) The credit taken under this section is limited to the amount of tax imposed under this chapter for the fiscal year. The credit must be claimed in the fiscal year in which the billing reduction is made. Any unused credit expires. Refunds shall not be given in place of credits.

(6) No credit may be taken for billing discounts made before July 1, 2001. Within two weeks of May 8, 2001, the department of community, trade, and economic development shall notify the department of revenue in writing of the grants received in fiscal year 2001 by each light and power business and gas distribution business. Within four weeks of May 8, 2001, the department of revenue shall publish the base credit for each light and power business and gas

distribution business for fiscal year 2002. Within eight weeks of May 8, 2001, application to the department must be made showing the information required in subsection (4)(b) of this section. Within twelve weeks of May 8, 2001, the department shall notify each applicant of the amount of credit that may be taken in fiscal year 2002.

NEW SECTION. Sec. 2. This act takes effect July 1, 2006.

Passed by the House March 8, 2006.

Passed by the Senate March 7, 2006.

Approved by the Governor March 24, 2006.

Filed in Office of Secretary of State March 24, 2006.

CHAPTER 214

[House Bill 2690]

PUBLIC RETIREMENT—ADDITIONAL SERVICE CREDIT PURCHASE

AN ACT Relating to permitting members of the public employees' retirement system, the teachers' retirement system, the school employees' retirement system, the public safety employees' retirement system, plan 1 of the law enforcement officers' and fire fighters' retirement system, and the Washington state patrol retirement system to make a one-time purchase of additional service credit; adding a new section to chapter 41.40 RCW; adding a new section to chapter 41.32 RCW; adding a new section to chapter 41.35 RCW; adding a new section to chapter 41.37 RCW; adding a new section to chapter 41.26 RCW; adding a new section to chapter 43.43 RCW; repealing RCW 41.40.713, 41.40.833, 41.32.767, 41.32.877, 41.35.473, and 41.35.653; and providing an effective date.

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

NEW SECTION. Sec. 1. A new section is added to chapter 41.40 RCW under the subchapter heading "provisions applicable to plan 1, plan 2, and plan 3" to read as follows:

(1) A member eligible to retire under RCW 41.40.180, 41.40.630, or 41.40.820 may, at the time of filing a written application for retirement with the department, apply to the department to make a one-time purchase of up to five years of additional service credit.

(2) To purchase additional service credit under this section, a member shall pay the actuarial equivalent value of the resulting increase in the member's benefit.

(3) Subject to rules adopted by the department, a member purchasing additional service credit under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(4) Additional service credit purchased under this section is not membership service and shall be used exclusively to provide the member with a monthly annuity that is paid in addition to the member's retirement allowance.

NEW SECTION. Sec. 2. A new section is added to chapter 41.32 RCW under the subchapter heading "provisions applicable to plan 1, plan 2, and plan 3" to read as follows:

(1) A member eligible to retire under RCW 41.32.480, 41.32.765, or 41.32.875 may, at the time of filing a written application for retirement with the department, apply to the department to make a one-time purchase of up to five years of additional service credit.

(2) To purchase additional service credit under this section, a member shall pay the actuarial equivalent value of the resulting increase in the member's benefit.

(3) Subject to rules adopted by the department, a member purchasing additional service credit under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(4) Additional service credit purchased under this section is not membership service and shall be used exclusively to provide the member with a monthly annuity that is paid in addition to the member's retirement allowance.

NEW SECTION. Sec. 3. A new section is added to chapter 41.35 RCW under the subchapter heading "provisions applicable to plan 2 and plan 3" to read as follows:

(1) A member eligible to retire under RCW 41.35.420 or 41.35.680 may, at the time of filing a written application for retirement with the department, apply to the department to make a one-time purchase of up to five years of additional service credit.

(2) To purchase additional service credit under this section, a member shall pay the actuarial equivalent value of the resulting increase in the member's benefit.

(3) Subject to rules adopted by the department, a member purchasing additional service credit under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(4) Additional service credit purchased under this section is not membership service and shall be used exclusively to provide the member with a monthly annuity that is paid in addition to the member's retirement allowance.

NEW SECTION. Sec. 4. A new section is added to chapter 41.37 RCW to read as follows:

(1) A member eligible to retire under RCW 41.37.210 may, at the time of filing a written application for retirement with the department, apply to the department to make a one-time purchase of up to five years of additional service credit.

(2) To purchase additional service credit under this section, a member shall pay the actuarial equivalent value of the resulting increase in the member's benefit.

(3) Subject to rules adopted by the department, a member purchasing additional service credit under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(4) Additional service credit purchased under this section is not membership service and shall be used exclusively to provide the member with a monthly annuity that is paid in addition to the member's retirement allowance.

NEW SECTION. Sec. 5. A new section is added to chapter 41.26 RCW under the subchapter heading "plan 1" to read as follows:

(1) A member eligible to retire under RCW 41.26.090 may, at the time of filing a written application for retirement with the department, apply to the department to make a one-time purchase of up to five years of additional service credit.

(2) To purchase additional service credit under this section, a member shall pay the actuarial equivalent value of the resulting increase in the member's benefit.

(3) Subject to rules adopted by the department, a member purchasing additional service credit under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(4) Additional service credit purchased under this section is not membership service and shall be used exclusively to provide the member with a monthly annuity that is paid in addition to the member's retirement allowance.

NEW SECTION. Sec. 6. A new section is added to chapter 43.43 RCW to read as follows:

(1) A member eligible to retire under RCW 43.43.250 may, at the time of filing a written application for retirement with the department, apply to the department to make a one-time purchase of up to five years of additional service credit.

(2) To purchase additional service credit under this section, a member shall pay the actuarial equivalent value of the resulting increase in the member's benefit.

(3) Subject to rules adopted by the department, a member purchasing additional service credit under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(4) Additional service credit purchased under this section is not membership service and shall be used exclusively to provide the member with a monthly annuity that is paid in addition to the member's retirement allowance.

NEW SECTION. Sec. 7. The following acts or parts of acts are each repealed:

(1) RCW 41.40.713 (Purchase of additional service credit—Costs—Rules) and 2004 c 172 s 1;

(2) RCW 41.40.833 (Purchase of additional service credit—Costs—Rules) and 2004 c 172 s 2;

(3) RCW 41.32.767 (Additional service credit purchase—Rules) and 2005 c 65 s 1;

(4) RCW 41.32.877 (Additional service credit purchase—Rules) and 2005 c 65 s 2;

(5) RCW 41.35.473 (Purchase of additional service credit—Costs—Rules) and 2004 c 172 s 3; and

(6) RCW 41.35.653 (Purchase of additional service credit—Costs—Rules) and 2004 c 172 s 4.

NEW SECTION. Sec. 8. This act takes effect July 1, 2006.

Passed by the House February 11, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 24, 2006.

Filed in Office of Secretary of State March 24, 2006.

CHAPTER 215

[Substitute House Bill 2713]

SPECIAL PURPOSE DISTRICTS—BALLOT MEASURE SUPPORT, OPPOSITION

AN ACT Relating to clarifying that special district boards, councils, and commissions may publicly take positions on ballot measures; amending RCW 42.17.130; and creating a new section.

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

NEW SECTION. Sec. 1. (1) The legislature finds that the public benefits from an open and inclusive discussion of proposed ballot measures by local elected leaders, and that for twenty-five years these discussions have included the opportunity for elected boards, councils, and commissions of special purpose

districts to vote in open public meetings in order to express their support of, or opposition to, ballot propositions affecting their jurisdictions.

(2) The legislature intends to affirm and clarify the state's long-standing policy of promoting informed public discussion and understanding of ballot propositions by allowing elected boards, councils, and commissions of special purpose districts to adopt resolutions supporting or opposing ballot propositions.

Sec. 2. RCW 42.17.130 and 1979 ex.s. c 265 s 2 are each amended to read as follows:

No elective official nor any employee of his office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency(~~(= PROVIDED, That the foregoing provisions of)~~). However, this ((section shall)) does not apply to the following activities:

(1) Action taken at an open public meeting by members of an elected legislative body or by an elected board, council, or commission of a special purpose district including, but not limited to, fire districts, public hospital districts, library districts, park districts, port districts, public utility districts, school districts, sewer districts, and water districts, to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body, members of the board, council, or commission of the special purpose district, or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;

(2) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry;

(3) Activities which are part of the normal and regular conduct of the office or agency.

Passed by the House February 14, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 24, 2006.

Filed in Office of Secretary of State March 24, 2006.

CHAPTER 216

[Substitute House Bill 2780]

STATE EMPLOYMENT—PAYROLL DEDUCTIONS

AN ACT Relating to authorizing additional payroll deductions for state employees; amending RCW 41.04.230; and providing an effective date.

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

Sec. 1. RCW 41.04.230 and 2002 c 61 s 5 are each amended to read as follows:

Any official of the state authorized to disburse funds in payment of salaries and wages of public officers or employees is authorized, upon written request of the officer or employee, to deduct from the salaries or wages of the officers or employees, the amount or amounts of subscription payments, premiums, contributions, or continuation thereof, for payment of the following:

(1) Credit union deductions: PROVIDED, That twenty-five or more employees of a single state agency or a total of one hundred or more state employees of several agencies have authorized such a deduction for payment to the same credit union. An agency may, in its own discretion, establish a minimum participation requirement of fewer than twenty-five employees.

(2) Parking fee deductions: PROVIDED, That payment is made for parking facilities furnished by the agency or by the department of general administration.

(3) U.S. savings bond deductions: PROVIDED, That a person within the particular agency shall be appointed to act as trustee. The trustee will receive all contributions; purchase and deliver all bond certificates; and keep such records and furnish such bond or security as will render full accountability for all bond contributions.

(4) Board, lodging or uniform deductions when such board, lodging and uniforms are furnished by the state, or deductions for academic tuitions or fees or scholarship contributions payable to the employing institution.

(5) Dues and other fees deductions: PROVIDED, That the deduction is for payment of membership dues to any professional organization formed primarily for public employees or college and university professors: AND PROVIDED, FURTHER, That twenty-five or more employees of a single state agency, or a total of one hundred or more state employees of several agencies have authorized such a deduction for payment to the same professional organization.

(6) Labor or employee organization dues, and voluntary employee contributions to any funds, committees, or subsidiary organizations maintained by labor or employee organizations, may be deducted in the event that a payroll deduction is not provided under a collective bargaining agreement under the provisions of (~~RCW 41.06.150~~) chapter 41.80 RCW: PROVIDED, That each labor or employee organization chooses only one fund for voluntary employee contributions: PROVIDED, FURTHER, That twenty-five or more officers or employees of a single agency, or a total of one hundred or more officers or employees of several agencies have authorized such a deduction for payment to the same labor or employee organization: PROVIDED, FURTHER, That labor or employee organizations with five hundred or more members in state government may have payroll deduction for employee benefit programs.

(7) Insurance contributions to the authority for payment of premiums under contracts authorized by the state health care authority. However, enrollment or assignment by the state health care authority to participate in a health care benefit plan, as required by RCW 41.05.065(5), shall authorize a payroll deduction of premium contributions without a written consent under the terms and conditions established by the public employees' benefits board.

(8) Deductions to a bank, savings bank, or savings and loan association if (a) the bank, savings bank, or savings and loan association is authorized to do business in this state; and (b) twenty-five or more employees of a single agency,

or fewer, if a lesser number is established by such agency, or a total of one hundred or more state employees of several agencies have authorized a deduction for payment to the same bank, savings bank, or savings and loan association.

Deductions from salaries and wages of public officers and employees other than those enumerated in this section or by other law, may be authorized by the director of financial management for purposes clearly related to state employment or goals and objectives of the agency and for plans authorized by the state health care authority.

(9) Contributions to the Washington state combined fund drive.

The authority to make deductions from the salaries and wages of public officers and employees as provided for in this section shall be in addition to such other authority as may be provided by law: PROVIDED, That the state or any department, division, or separate agency of the state shall not be liable to any insurance carrier or contractor for the failure to make or transmit any such deduction.

NEW SECTION. Sec. 2. This act takes effect January 1, 2007.

Passed by the House February 13, 2006.

Passed by the Senate March 1, 2006.

Approved by the Governor March 24, 2006.

Filed in Office of Secretary of State March 24, 2006.

CHAPTER 217

[Substitute House Bill 2898]

STATE EMPLOYEES—COMMUNICATIONS

AN ACT Relating to distribution of communications by state employees; and adding a new section to chapter 42.52 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 42.52 RCW to read as follows:

(1) Nothing in this chapter prohibits a state employee from distributing communications from an employee organization or charitable organization to other state employees if the communications do not support or oppose a ballot proposition or candidate for federal, state, or local public office. Nothing in this section shall be construed to authorize any lobbying activity with public funds beyond the activity permitted by RCW 42.17.190.

(2) "Employee organization," for purposes of this section, means any organization, union, or association in which employees participate and that exists for the purpose of collective bargaining with employers or for the purpose of opposing collective bargaining or certification of a union.

Passed by the House February 14, 2006.

Passed by the Senate March 1, 2006.

Approved by the Governor March 24, 2006.

Filed in Office of Secretary of State March 24, 2006.

CHAPTER 218

[Second Substitute House Bill 2799]

TAX EXEMPTIONS—SOLAR HOT WATER SYSTEMS

AN ACT Relating to providing tax exemptions for solar hot water systems; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; providing an effective date; and providing an expiration date.

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

NEW SECTION. Sec. 1. A new section is added to chapter 82.08 RCW to read as follows:

(1) The tax levied by RCW 82.08.020 shall not apply to sales of OG-300 rated solar water heating systems, OG-100 rated solar water heating collectors, solar heat exchangers, or differential solar controllers, including repair and replacement parts for such equipment, or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving such equipment.

(2) A person taking the exemption under this section must keep records necessary for the department to verify eligibility under this section. This exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller shall retain a copy of the certificate for the seller's files.

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

(a) "OG-300 rated solar water heating system" means those fully integrated solar water heating systems that have been rated as having met the operational guidelines currently set and listed by the solar rating and certification corporation.

(b) "OG-100 rated solar water heating collector" means those collectors that convert light energy to heat and that have been rated as having met the operational guidelines currently set and listed by the solar rating and certification corporation.

(c) "Solar heat exchanger" means a device that is used to transfer heat from one fluid to another through a separating wall.

(d) "Differential solar controller" means a controlling device that reads and adjusts the temperature at the solar water heating collector and the heated water collection tank.

NEW SECTION. Sec. 2. A new section is added to chapter 82.12 RCW to read as follows:

(1) The provisions of this chapter shall not apply in respect to the use of OG-300 rated solar water heating systems, OG-100 rated solar water heating collectors, solar heat exchangers, or differential solar controllers; repair and replacement parts for such equipment; or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving such equipment.

(2) For the purposes of this section, the definitions in section 1 of this act apply.

NEW SECTION. Sec. 3. This act takes effect July 1, 2006.

NEW SECTION. Sec. 4. This act expires July 1, 2009.

Passed by the House February 11, 2006.
Passed by the Senate March 8, 2006.
Approved by the Governor March 24, 2006.
Filed in Office of Secretary of State March 24, 2006.

CHAPTER 219

[House Bill 2829]

DRIVER TRAINING SCHOOLS

AN ACT Relating to driver training schools; amending RCW 46.82.280, 46.82.300, 46.82.310, 46.82.320, 46.82.325, 46.82.330, 46.82.340, 46.82.350, 46.82.360, 46.82.370, 46.82.420, 18.235.020, and 46.20.055; adding a new section to chapter 46.82 RCW; and declaring an emergency.

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

NEW SECTION. Sec. 1. A new section is added to chapter 46.82 RCW to read as follows:

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. 2. RCW 46.82.280 and 1986 c 80 s 1 are each amended to read as follows:

~~((Unless the context clearly requires otherwise,))~~ The definitions in this section ((shall)) apply throughout this chapter unless the context clearly requires otherwise.

(1) "Behind-the-wheel instruction" means instruction in an approved driver training school instruction vehicle according to and inclusive of the minimum required curriculum. Behind-the-wheel instruction is characterized by driving experience.

(2) "Classroom" means a space dedicated to and used exclusively by a driver training instructor for the instruction of students. With prior department approval, a branch office classroom may be located within alternative facilities, such as a public or private library, school, community college, college or university, or a business training facility.

(3) "Classroom instruction" means that portion of a traffic safety education course that is characterized by classroom-based student instruction conducted by or under the direct supervision of a licensed instructor or licensed instructors.

(4) "Driver training school" means a commercial driver training school engaged in the business of giving instruction, for a fee, in the operation of automobiles.

~~((2))~~ (5) "Driver training education course" means a course of instruction in traffic safety education approved and licensed by the department of licensing that consists of classroom and behind-the-wheel instruction as documented by the minimum approved curriculum.

(6) "Director" means the director of the department of licensing of the state of Washington.

~~((3))~~ (7) "Advisory committee" means the driving instructors' advisory committee as created in this chapter.

~~((4))~~ (8) "Fraudulent practices" means any conduct or representation on the part of a ~~((licensee under this chapter tending to induce))~~ driver training school owner or instructor including:

(a) Inducing anyone to believe, or to give the impression, that a license to operate a motor vehicle or any other license granted by the director may be obtained by any means other than those prescribed by law, or furnishing or obtaining the same by illegal or improper means, or requesting, accepting, or collecting money for such purposes;

(b) Operation of a driver training school without a license, providing instruction without an instructor's license, verifying enrollment prior to being licensed, misleading or false statements on applications for a commercial driver training school license or instructor's license or on any required records or supporting documentation;

(c) Failing to fully document and maintain all required driver training school records of instruction, school operation, and instructor training;

(d) Issuing a driver training course certificate without requiring completion of the necessary behind-the-wheel and classroom instruction.

~~((5))~~ (9) "Instructor" means any person employed by or otherwise associated with a driver training school to instruct persons in the operation of ~~((automobiles))~~ an automobile.

(10) "Owner" means an individual, partnership, corporation, association, or other person or group that holds a substantial interest in a driver training school.

~~((6))~~ (11) "Place of business" means a designated location at which the business of a driver training school is transacted and its records are kept.

~~((7))~~ (12) "Person" means any individual, firm, corporation, partnership, or association.

(13) "Substantial interest holder" means a person who has actual or potential influence over the management or operation of any driver training school. Evidence of substantial interest includes, but is not limited to, one or more of the following:

(a) Directly or indirectly owning, operating, managing, or controlling a driver training school or any part of a driver training school;

(b) Directly or indirectly profiting from or assuming liability for debts of a driver training school;

(c) Is an officer or director of a driver training school;

(d) Owning ten percent or more of any class of stock in a privately or closely held corporate driver training school, or five percent or more of any class of stock in a publicly traded corporate driver training school;

(e) Furnishing ten percent or more of the capital, whether in cash, goods, or services, for the operation of a driver training school during any calendar year;
or

(f) Directly or indirectly receiving a salary, commission, royalties, or other form of compensation from the activity in which a driver training school is or seeks to be engaged.

(14) "Student" means any person enrolled in a driver training course that pays a fee for instruction.

Sec. 3. RCW 46.82.300 and 2002 c 195 s 5 are each amended to read as follows:

(1) The director shall be assisted in the duties and responsibilities of this chapter by the driver instructors' advisory committee, consisting of five members. Members of the advisory committee shall be appointed by the director for two-year terms and shall consist of a representative of the driver training schools, a representative of the driving instructors (who shall not be from the same school as the school member), a representative of the superintendent of public instruction, a representative of the department of licensing, and a representative from the Washington state traffic safety commission. Members shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. A member who is receiving a salary from the state shall not receive compensation other than travel expenses incurred in such service.

(2) The advisory committee shall meet at least semiannually and shall have additional meetings as may be called by the director. The director or the director's representative shall attend all meetings of the advisory committee and shall serve as chairman.

(3) Duties of the advisory committee shall be to:

(a) Advise and confer with the director or the director's representative on matters pertaining to the establishment of rules necessary to carry out this chapter;

~~((b))~~ ~~(Review violations of this chapter and to recommend to the director appropriate enforcement or disciplinary action as provided in this chapter;~~

~~((c))~~ Review and update when necessary a curriculum consisting of a list of items of knowledge and the processes of driving a motor vehicle specifying the minimum requirements adjudged necessary in teaching a proper and adequate course of driver education;

~~((d))~~ ~~(c)~~ Review and update instructor certification standards to be consistent with RCW 46.82.330 and take into consideration those standards required to be met by traffic safety education teachers under RCW 28A.220.020(3); and

~~((e))~~ ~~(d)~~ Prepare the examination for a driver instructor's certificate and review examination results at least once each calendar year for the purpose of updating and revising examination standards.

Sec. 4. RCW 46.82.310 and 2002 c 352 s 24 are each amended to read as follows:

(1) No person shall engage in the business of conducting a driver training school without a license issued by the director for that purpose. The school's license must be displayed before the school may:

(a) Schedule, enroll, or engage any students in a course of instruction;

(b) Issue a verification of enrollment to any student; or

(c) Begin any classroom or behind-the-wheel instruction.

(2) An application for a driver training school license shall be filed with the director, containing such information as prescribed by the director, including a uniform business identifier number, accompanied by an application fee ~~((of three hundred dollars))~~ as set by rule of the department, which shall in no event be refunded. Before an application for a driver training school license is approved, the business practices, facilities, records, and insurance of the proposed school must be inspected and reviewed by authorized representatives of the director. If an application is approved by the director, the applicant ~~((upon payment of an~~

~~additional fee of two hundred dollars~~) shall be granted a license valid for a period of one year from the date of issuance.

~~((2))~~ (3) A driver training school may apply for a license to establish a branch office or branch classroom by filing an application with the director, containing such information as prescribed by the director, accompanied by an application fee as set by rule of the department, which shall in no event be refunded. Before an application for a license to establish a branch office or branch classroom is approved, the business practices, facilities, records, and insurance of the proposed branch location must be inspected and reviewed by authorized representatives of the director. If an application is approved by the director, the applicant shall be granted a license valid for a period of one year from the date of issuance.

(4) The annual fee for renewal of a school or branch location license shall be ((two hundred fifty dollars)) set by rule of the department. Subject to the department's inspection of the business, the director shall issue a license certificate to each licensee which shall be conspicuously displayed in the place of business of the licensee. If the director has not received a renewal application ((has not been received by the director within sixty days from)) on or before the date a ((notice of)) license ((expiration was mailed to the licensee)) expires, the license will be void requiring a new application as provided for in this chapter, including payment of all fees.

~~((3))~~ (5) The person to whom a driver training school license has been issued must notify the director in writing within ((thirty)) ten business days after any change is made in the officers, directors, or location of the place of business of the school.

~~((4) Driver training school licenses shall not be transferable. In the event of any transfer of ownership in the business, an application for)~~ (6) A change involving the ownership of a driver training school requires a new license application, including payment of all fees((, must be made)).

(a) The owner relinquishing the business must notify the director in writing within ten business days.

(b) The new owner must submit an application and fee as prescribed by rule of the department for transfer of the school's license to the director within ten business days.

(c) Upon receipt of the required notification and the application and fees for license transfer, the director shall permit continuance of the business for a period not to exceed sixty days from the date of transfer pending approval of the new application for a school license.

(d) The transferred license shall remain subject to suspension, revocation, or denial in accordance with RCW 46.82.350 and 46.82.360.

~~((5) The director shall not issue or renew a school license certificate until the licensee has filed with the director evidence of liability insurance coverage with an insurance company authorized to do business in this state in the amount of not less than three hundred thousand dollars because of bodily injury or death to two or more persons in any one accident, not less than one hundred thousand dollars because of bodily injury or death to one person in one accident, and not less than fifty thousand dollars because of property damage to others in one accident, and the coverage shall include uninsured motorists coverage. The insurance coverage shall be maintained in full force and effect and the director~~

shall be notified at least ten days prior to cancellation or expiration of any such policy of insurance.

~~(6-)~~ (7) Evidence of liability insurance coverage must be filed with the director prior to the issuance or renewal of a school license, and shall meet the following standards:

(a) Coverage must be provided by a company authorized to do business in Washington state;

(b) Automobile liability coverage shall be in the amount of not less than one million dollars, and shall include property damage and uninsured motorists coverage;

(c) The required coverage shall be maintained in full force and effect for the term of the school license;

(d) Changes in insurance coverage due to cancellation or expiration require notification of the director and proof of continuing coverage within ten working days following any change; and

(e) Coverage shall be issued in the name of the school and identify the covered locations and vehicles.

(8) The increased insurance requirements of subsection ~~((5))~~ (7) of this section must be in effect by no later than one year after ~~((September 1, 1979))~~ July 1, 2006.

Sec. 5. RCW 46.82.320 and 2002 c 352 s 25 are each amended to read as follows:

(1) No person ~~((, including the owner, operator, partner, officer, or stockholder of))~~ affiliated with a driver training school shall give instruction in the operation of an automobile for a fee without a license issued by the director for that purpose. An application for an original or renewal instructor's license shall be filed with the director, containing such information as prescribed by this chapter and by the director, accompanied by an application fee ~~((of seventy-five dollars))~~ set by rule of the department, which shall in no event be refunded. An application for a renewal instructor's license must be accompanied by proof of the applicant's continuing professional development that meets the standards adopted by the director. If the ~~((application is approved by the director and the))~~ applicant satisfactorily meets the application requirements and the examination requirements as prescribed in RCW 46.82.330, the applicant shall be granted a license valid for a period of one year from the date of issuance. An instructor shall take a requalification examination every five years.

(2) ~~((The annual fee for renewal of an instructor's license shall be twenty-five dollars.))~~ The director shall issue a license certificate to each ~~((licensee which shall be))~~ qualified applicant.

(a) An employing driver training school must conspicuously ~~((displayed in the))~~ display an instructor's license at its established place of business ~~((of the employing driver training school))~~ and display copies of the instructor's license at any branch office where the instructor provides instruction.

(b) Unless revoked, canceled, or denied by the director, the license shall remain the property of the licensee in the event of termination of employment or employment by another driver training school.

(c) If the director has not received a renewal application ~~((has not been received by the director within sixty days from))~~ on or before the date a ~~((notice of))~~ license ~~((expiration was mailed to the licensee))~~ expires, the license will be

voided requiring a new application as provided for in this chapter, including examination and payment of all fees.

(d) If revoked, canceled, or denied by the director, the license must be surrendered to the department within ten days following the effective date of such action.

~~(3) ((Persons who qualify under the rules jointly adopted by the superintendent of public instruction and the director of licensing to teach only the laboratory phase, shall be subject to a ten dollar examination fee.~~

~~(4))~~ Each licensee shall be provided with a wallet-size identification card by the director at the time the license is issued which shall be carried on the instructor's person at all times while engaged in instructing.

~~((5))~~ (4) The person to whom an instructor's license has been issued shall notify the director in writing within ~~((thirty))~~ ten days of any change of employment or termination of employment, providing the name and address of the new driver training school by whom the instructor will be employed.

Sec. 6. RCW 46.82.325 and 2002 c 195 s 4 are each amended to read as follows:

~~(1) ((Persons instructing students under eighteen years of age))~~ Instructors, owners, and other persons affiliated with a school who have contact with students are required to have a background check through the Washington state patrol criminal identification system and through the federal bureau of investigation. The background check shall also include a fingerprint check using a fingerprint card. Persons covered by this section must have their background rechecked under this subsection every five years.

(2) In addition to the background check required under subsection (1) of this section, persons covered by this section must have a background check through the Washington criminal identification system at the time of application for any renewal license.

(3) The cost of the background check shall be paid by the ((instructor)) person.

~~((3) The department may waive the background check for any applicant who has had a background check within two years before applying to become an instructor:))~~

Sec. 7. RCW 46.82.330 and 1979 ex.s. c 51 s 6 are each amended to read as follows:

~~(1) ((Upon receipt and approval of an application accompanied by the proper fees, the director shall arrange for the examination of each applicant for an instructor's license and shall notify each applicant of the time and place to appear for examination.~~

~~(2) The examination prepared by the advisory committee shall consist of a knowledge test and an actual driving test conducted in a vehicle provided by the applicant. The examination shall determine: The applicant's knowledge of driving laws, rules, and regulations; the applicant's ability to safely operate a motor vehicle; and the applicant's ability to impart this knowledge to others.~~

~~(3) No))~~ The application for an instructor's license shall document the applicant's fitness, knowledge, skills, and abilities to teach the classroom and behind-the-wheel phases of a driver training education program in a commercial driver training school.

(2) An applicant shall be (~~permitted by the director to take the examination for an instructor's license until it is determined that the applicant meets the following requirements~~) eligible to apply for an original instructor's certificate if the applicant possesses and meets the following qualifications and conditions:

(a) Has been licensed to drive for five or more years and possesses a current and valid Washington driver's license or is a resident of a jurisdiction immediately adjacent to Washington state and possesses a current and valid license issued by such jurisdiction, and does not have on his or her driving record any of the violations or penalties set forth in ~~((3))~~ (2)(a) (i), (ii), or (iii) of this section. The director shall have the right to examine the driving record of the applicant from the department of licensing and from other jurisdictions and from these records determine if the applicant has had:

(i) Not more than ~~((three))~~ one moving traffic violation~~((s))~~ within the preceding twelve months or more than ~~((four))~~ two moving traffic violations in the preceding twenty-four months;

(ii) No alcohol-related traffic violation or incident within the preceding ~~((three))~~ seven years; and

(iii) No driver's license suspension, cancellation, revocation, or denial within the preceding ~~((three))~~ five years;

(b) Is a high school graduate or the equivalent and at least twenty-one years of age;

(c) Has completed an acceptable application on a form prescribed by the director; ~~((and))~~

(d) Has satisfactorily completed a ~~((sixty-hour))~~ course of instruction in the training of drivers acceptable to the director~~((The course shall include at least twelve hours of))~~ that is no less than sixty hours in length and includes instruction in classroom and behind-the-wheel teaching methods and ~~((at least six hours))~~ supervised practice behind-the-wheel teaching of driving techniques; and

(e) Has paid an examination fee as set by rule of the department and has successfully completed an instructor's examination as prepared by the advisory committee, which shall consist of a knowledge test and an actual driving test conducted in a vehicle provided by the applicant. The examination shall determine:

(i) The applicant's knowledge of driving laws and rules;

(ii) The applicant's ability to safely operate a motor vehicle; and

(iii) The applicant's ability to impart this knowledge and ability to others.

~~((4) Any person with a valid instructor's license in effect as of September 1, 1979, shall not be required to take the examination, or complete the revised course of instruction, otherwise required under this section.)~~

Sec. 8. RCW 46.82.340 and 1979 ex.s. c 51 s 7 are each amended to read as follows:

In case of the loss, mutilation, or destruction of a driver training school license certificate or an instructor's license certificate, the director shall issue a duplicate thereof upon proof of the facts and payment of a fee ~~((of two dollars))~~ as set by rule of the department.

Sec. 9. RCW 46.82.350 and 1979 ex.s. c 51 s 8 are each amended to read as follows:

~~((4))~~ The director may suspend, revoke, deny, or refuse to renew an instructor's license or a driver training school license, or impose such other disciplinary action authorized under RCW 18.235.110, upon determination that the applicant, licensee, or owner has engaged in unprofessional conduct as defined by RCW 18.235.130 or for any of the following causes:

~~((a))~~ (1) Upon determination that the licensee has made a false statement or concealed any material fact in connection with the application or license renewal;

~~((b))~~ (2) Upon ~~(conviction of)~~ determination that the applicant, licensee, owner, or any person directly or indirectly interested in the driver training school's business has been convicted of a felony, or any crime involving violence, dishonesty, deceit, indecency, degeneracy, or moral turpitude;

~~((c))~~ (3) Upon determination that the applicant, licensee, owner, or any person directly or indirectly interested in the driver training school's business previously held a driver training school license which was revoked, suspended, or refused renewal by the director;

~~((d))~~ (4) Upon determination that the applicant ~~((or))~~, licensee, or owner does not have ~~((a))~~ an established place of business as required by this chapter;

~~((e))~~ (5) Upon determination that the applicant or licensee has failed to require all persons with financial interest in the driver training school to be signatories to the application;

~~((f))~~ (6) Upon determination that the applicant ~~((or))~~, licensee, or owner has ~~(been found guilty of fraud or)~~ committed fraud, induced another to commit fraud, or engaged in fraudulent practices in relation to the business conducted under the license, or ~~((guilty of inducing))~~ has induced another to resort to fraud in relation to securing for himself, herself, or another a license to drive a motor vehicle; ~~((or~~

~~((g))~~ (7) Upon determination that the applicant, licensee, or owner has engaged in conduct that could endanger the educational welfare or personal safety of students or others;

(8) Upon determination that a licensed instructor no longer possesses and meets the qualifications and conditions set out in RCW 46.82.330(2)(a); or

(9) Upon determination that the applicant ~~((or))~~, licensee or owner failed to satisfy or fails to satisfy the other conditions stated in this chapter.

Sec. 10. RCW 46.82.360 and 1989 c 337 s 19 are each amended to read as follows:

The license of any driver training school or instructor may be suspended, revoked, denied, or refused renewal, or such other disciplinary action authorized under RCW 18.235.110 may be imposed, for failure to comply with the business practices specified in this section.

(1) No place of business shall be established nor any business of a driver training school conducted or solicited within one thousand feet of an office or building owned or leased by the department of licensing in which examinations for drivers' licenses are conducted. The distance of one thousand feet shall be measured along the public streets by the nearest route from the place of business to such building.

(2) Any automobile used by a driver training school or an instructor for instruction purposes must be equipped with:

(a) Dual controls for foot brake and clutch, or foot brake only in a vehicle equipped with an automatic transmission;

(b) An instructor's rear view mirror; and

(c) A sign in legible, printed English letters displayed on the back or top, or both, of the vehicle that:

(i) Is not less than twenty inches in horizontal width or less than ten inches in vertical height ~~((and having))~~;

(ii) Has the words "student driver," ~~((or))~~ "instruction car," or ~~((both, in legible, printed, English))~~ "driving school" in letters at least two and one-half inches in height near the top ~~((and))~~;

(iii) Has the name and telephone number of the school in similarly legible letters not less than one inch in height placed somewhere below the aforementioned words ~~((, and the street number and name and the telephone number in similarly legible letters at least one inch in height placed next below the name of the school. The))~~;

(iv) Has lettering and background colors ~~((shall be of contrasting shades so as to be))~~ that make it clearly readable at one hundred feet in clear daylight ~~((The sign shall be))~~;

(v) Is displayed at all times when instruction is being given.

(3) Instruction may not be given by an instructor to a student who is under the age of fifteen, and behind-the-wheel instruction may not be given by an instructor to a student in an automobile unless the student possesses a current and valid instruction permit issued pursuant to RCW 46.20.055 or a current and valid driver's license.

(4) No driver training school or instructor shall advertise or otherwise indicate that the issuance of a driver's license is guaranteed or assured as a result of the course of instruction offered.

(5) No driver training school or instructor shall utilize any types of advertising without using the full, legal name of the school and identifying itself as a driver training school. ~~((Hence))~~ Instruction vehicles and equipment, classrooms, driving simulators, training materials and services advertised must be available in a manner as might be expected by the average person reading the advertisement.

(6) A driver training school shall have an established place of business owned, rented, or leased by the school and regularly occupied and used exclusively for the business of giving driver instruction. The established place of business of a driver training school ~~((that applies for an initial license after July 23, 1989,))~~ shall be located in a district that is zoned for business or commercial purposes.

(a) The established place of business, branch office, or classroom or advertised address of any such driver training school shall not consist of or include a house trailer, residence, tent, temporary stand, temporary address, bus, telephone answering service if such service is the sole means of contacting the driver training school, a room or rooms in a hotel or rooming house or apartment house, or premises occupied by a single or multiple-unit dwelling house.

(b) A driver training school may lease classroom space within a public or private school that is recognized and regulated by the office of the superintendent of public instruction to conduct student instruction as approved by the director. However, such use of public or private classroom space does not

alleviate the driver training school from securing and maintaining an established place of business nor from using its own classroom on a regular basis as required by this chapter.

(c) To classify as a branch office or classroom the facility must be within a thirty-five mile radius of the established place of business.

(d) Nothing in this subsection may be construed as limiting the authority of local governments to grant conditional use permits or variances from zoning ordinances.

(7) No driver training school or instructor shall conduct any type of instruction or training on a course used by the department of licensing for testing applicants for a Washington driver's license.

(8) Each driver training school shall maintain ~~((records on all of))~~ its ~~((students, including))~~ student, instructor, vehicle, and operating records at its established place of business.

(a) Student records must include the student's name ~~((and))~~, address, and telephone number, ~~((the starting and ending))~~ date of enrollment and all dates of instruction, the student's instruction permit or driver's license number, the type of training given, ~~((and))~~ the total number of hours of instruction, and the name and signature of the instructor or instructors.

(b) Instructor records shall include the instructor's license number, the date of hire, the dates and duration of an instructor's training including initial certification as an instructor and continuing education, an abstract of the driving record for the instructor obtained within the past year, and a list of the locations where the instructor is providing student instruction.

(c) Vehicle records shall include the original insurance policies and copies of the vehicle registration for all instruction vehicles.

(d) Student and instructor records ~~((of past students))~~ shall be maintained for five years following the completion of the instruction. Vehicle records shall be maintained for five years following their issuance. All records shall be made available for inspection upon the request of the department.

(e) Upon a transfer or sale of school ownership the school records shall be transferred to and become the property and responsibility of the new owner.

(9) Each driver training school shall, at its established place of business, display, in a place where it can be seen by all clients, a copy of the required minimum curriculum ~~((compiled))~~ furnished by the ~~((driver advisory committee))~~ department and a copy of the school's own curriculum. Copies of the required minimum curriculum are to be provided to driver training schools and instructors by the director.

(10) Driver training schools and instructors shall submit to periodic inspections of their business practices, facilities, records, and insurance by authorized representatives of the director of the department of licensing.

Sec. 11. RCW 46.82.370 and 1979 ex.s. c 51 s 10 are each amended to read as follows:

Upon notification of suspension, revocation, denial, or refusal to renew a license under this chapter, a driver training school or instructor shall have the right to appeal the action being taken. An appeal may be made to the director, who shall cause a hearing to be held ~~((by the advisory committee))~~ in accordance with chapter 34.05 RCW. Filing an appeal shall stay the action pending the hearing and the director's decision. Upon conclusion of the hearing, ~~((the~~

~~advisory committee shall notify the director of its findings of fact and recommended action. Within ten days of receipt of the advisory committee's findings and recommendation,)~~ the director shall issue a decision on the appeal.

(1) A license may, however, be temporarily suspended by the director without notice pending any prosecution, investigation, or hearing where such emergency action is warranted. A licensee or applicant entitled to a hearing shall be given due notice thereof.

(2) The sending of a notice of a hearing by registered mail to the last known address of a licensee or applicant in accordance with chapter 34.05 RCW shall be deemed due notice.

(3) The director or the director's authorized representative shall preside over the ~~((advisory committee during the))~~ hearing and shall have the power to subpoena witnesses, administer oaths to witnesses, take testimony of any person, and cause depositions to be taken. A subpoena issued under the authority of this section shall be served in the same manner as a subpoena issued by a court of record. Witnesses subpoenaed under this section and persons other than officers or employees of the department of licensing shall be entitled to the same fees and mileage as are allowed in civil actions in courts of law.

Sec. 12. RCW 46.82.420 and 2004 c 126 s 2 are each amended to read as follows:

(1) The advisory committee shall ~~((compile))~~ consult with the department in the development and maintenance of a basic minimum required curriculum and the department shall furnish to each qualifying applicant for an instructor's license or a driver training school license a ~~((basic minimum required))~~ copy of such curriculum.

(2) In addition to information on the safe, lawful, and responsible operation of motor vehicles on the state's highways, the basic minimum required curriculum shall ~~((also))~~ include ~~((+))~~ information on:

(a) Intermediate driver's license issuance, passenger and driving restrictions and sanctions for violating the restrictions, and the effect of traffic violations and collisions on the driving privileges;

(b) The effects of alcohol and drug use on motor vehicle operators, including information on drug and alcohol related traffic injury and mortality rates in the state of Washington~~((;-2))~~ and the current penalties for driving under the influence of drugs or alcohol; and ~~((3) information on)~~

(c) Motorcycle awareness, approved by the Motorcycle Safety Foundation, to ensure new operators of motor vehicles have been instructed in the importance of safely sharing the road with motorcyclists.

(3) Should the director be presented with acceptable proof that any licensed instructor or driver training school is not showing proper diligence in teaching such basic minimum curriculum as required, the instructor or school shall be required to appear before the advisory committee and show cause why the license of the instructor or school should not be revoked for such negligence. If the committee does not accept such reasons as may be offered, the director may revoke the license of the instructor or school, or both.

Sec. 13. RCW 18.235.020 and 2002 c 86 s 103 are each 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 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;
- ~~((viii))~~ (ix) For hire vehicle operators under chapter 46.72 RCW;
- ~~((ix))~~ (x) Limousines under chapter 46.72A RCW;
- ~~((x))~~ (xi) Notaries public under chapter 42.44 RCW;
- ~~((xi))~~ (xii) Private investigators under chapter 18.165 RCW;
- ~~((xii))~~ (xiii) Professional boxing, martial arts, and wrestling under chapter 67.08 RCW;
- ~~((xiii))~~ (xiv) Real estate appraisers under chapter 18.140 RCW;
- ~~((xiv))~~ (xv) Real estate brokers and salespersons under chapters 18.85 and 18.86 RCW;
- ~~((xv))~~ (xvi) Security guards under chapter 18.170 RCW;
- ~~((xvi))~~ (xvii) Sellers of travel under chapter 19.138 RCW;
- ~~((xvii))~~ (xviii) Timeshares and timeshare salespersons under chapter 64.36 RCW; and
- ~~((xviii))~~ (xix) Whitewater river outfitters under chapter 79A.60 RCW.

(b) The boards and commissions having authority under this chapter are as follows:

- (i) The state board of registration for architects established in chapter 18.08 RCW;
- (ii) The cemetery board established in chapter 68.05 RCW;
- (iii) The Washington state collection agency board established in chapter 19.16 RCW;
- (iv) The state board of registration for professional engineers and land surveyors established in chapter 18.43 RCW governing licenses issued under chapters 18.43 and 18.210 RCW;
- (v) The state board of funeral directors and embalmers established in chapter 18.39 RCW;
- (vi) The state board of registration for landscape architects established in chapter 18.96 RCW; and
- (vii) The state geologist licensing board established in chapter 18.220 RCW.

(3) In addition to the authority to discipline license holders, the disciplinary authority may grant or deny licenses based on the conditions and criteria established in this chapter and the chapters specified in subsection (2) of this section. This chapter also governs any investigation, hearing, or proceeding

relating to denial of licensure or issuance of a license conditioned on the applicant's compliance with an order entered under RCW 18.235.110 by the disciplinary authority.

Sec. 14. RCW 46.20.055 and 2005 c 314 s 303 are each amended to read as follows:

(1) **Driver's instruction permit.** The department may issue a driver's instruction permit with or without a photograph to an applicant who has successfully passed all parts of the examination other than the driving test, provided the information required by RCW 46.20.091, paid a fee of twenty dollars, and meets the following requirements:

(a) Is at least fifteen and one-half years of age; or

(b) Is at least fifteen years of age and:

(i) Has submitted a proper application; and

(ii) Is enrolled in a traffic safety education program offered, approved, and accredited by the superintendent of public instruction or offered by a driver training school licensed and inspected by the department of licensing under chapter 46.82 RCW, that includes practice driving.

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

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

(b) A course of instruction offered by a licensed driver training school as defined by RCW 46.82.280(~~(4)~~) (4).

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

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

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

(b) An approved instructor, or a licensed driver with at least five years of driving experience, occupies the seat beside the driver.

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

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

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

(c) A person applying to renew an instruction permit must submit the application to the department in person.

NEW SECTION. **Sec. 15.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House February 11, 2006.

Passed by the Senate February 28, 2006.

Approved by the Governor March 24, 2006.

Filed in Office of Secretary of State March 24, 2006.

CHAPTER 220

[House Bill 2975]

SECURITIES ACT—EXEMPTIONS

AN ACT Relating to exempt transactions under the securities act of Washington; and amending RCW 21.20.320.

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

Sec. 1. RCW 21.20.320 and 1998 c 15 s 14 are each amended to read as follows:

The following transactions are exempt from RCW 21.20.040 through 21.20.300 and 21.20.327 except as expressly provided:

(1) Any isolated transaction, or sales not involving a public offering, whether effected through a broker-dealer or not; or any transaction effected in accordance with any rule by the director establishing a nonpublic offering exemption pursuant to this subsection where registration is not necessary or appropriate in the public interest or for the protection of investors.

(2) Any nonissuer transaction by a registered salesperson of a registered broker-dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940 pursuant to any rule adopted by the director.

(3) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the director may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period.

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters.

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit. A bond or other evidence of indebtedness is not offered and sold as a unit if the transaction involves:

(a) A partial interest in one or more bonds or other evidences of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels; or

(b) One of multiple bonds or other evidences of indebtedness secured by one or more real or chattel mortgages or deeds of trust, or agreements for the sale of real estate or chattels, sold to more than one purchaser as part of a single plan of financing; or

(c) A security including an investment contract other than the bond or other evidence of indebtedness.

(6) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator.

(7) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter.

(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional

buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity.

(9) Any transaction effected in accordance with the terms and conditions of any rule adopted by the director if:

(a) The aggregate offering amount does not exceed five million dollars; and

(b) The director finds that registration is not necessary in the public interest and for the protection of investors.

(10) Any offer or sale of a preorganization certificate or subscription if (a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, (b) the number of subscribers does not exceed ten, and (c) no payment is made by any subscriber.

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, if (a) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state, or (b) the issuer first files a notice specifying the terms of the offer and the director does not by order disallow the exemption within the next five full business days.

(12) Any offer (but not a sale) of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act.

(13) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock.

(14) Any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets.

(15) The offer or sale by a registered broker-dealer, or a person exempted from the registration requirements pursuant to RCW 21.20.040, acting either as principal or agent, of securities previously sold and distributed to the public: PROVIDED, That:

(a) Such securities are sold at prices reasonably related to the current market price thereof at the time of sale, and, if such broker-dealer is acting as agent, the commission collected by such broker-dealer on account of the sale thereof is not in excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics;

(b) Such securities do not constitute the whole or a part of an unsold allotment to or subscription or participation by such broker-dealer as an underwriter of such securities or as a participant in the distribution of such securities by the issuer, by an underwriter or by a person or group of persons in substantial control of the issuer or of the outstanding securities of the class being distributed; and

(c) The security has been lawfully sold and distributed in this state or any other state of the United States under this or any act regulating the sale of such securities.

(16) Any transaction by a mutual or cooperative association meeting the requirements of (a) and (b) of this subsection:

(a) The transaction:

(i) Does not involve advertising or public solicitation; or

(ii) Involves advertising or public solicitation, and:

(A) The association first files a notice of claim of exemption on a form prescribed by the director specifying the terms of the offer and the director does not by order deny the exemption within the next ten full business days; or

(B) The association is an employee cooperative and identifies itself as an employee cooperative in advertising or public solicitation.

(b) The transaction involves an instrument or interest, that:

(i)(A) Qualifies its holder to be a member or patron of the association;

(B) Represents a contribution of capital to the association by a person who is or intends to become a member or patron of the association;

(C) Represents a patronage dividend or other patronage allocation; or

(D) Represents the terms or conditions by which a member or patron purchases, sells, or markets products, commodities, or services from, to, or through the association; and

(ii) Is nontransferable except in the case of death, operation of law, bona fide transfer for security purposes only to the association, a bank, or other financial institution, intrafamily transfer, ~~((or))~~ transfer to an existing member or person who will become a member, or transfer by gift to any person organized and operated as a nonprofit organization as defined in RCW 84.36.800(4) that also possesses a current tax exempt status under the laws of the United States, and, in the case of an instrument, so states conspicuously on its face.

(17) Any transaction effected in accordance with any rule adopted by the director establishing a limited offering exemption which furthers objectives of compatibility with federal exemptions and uniformity among the states, provided that in adopting any such rule the director may require that no commission or other remuneration be paid or given to any person, directly or indirectly, for effecting sales unless the person is registered under this chapter as a broker-dealer or salesperson.

Passed by the House March 4, 2006.

Passed by the Senate March 1, 2006.

Approved by the Governor March 24, 2006.

Filed in Office of Secretary of State March 24, 2006.

CHAPTER 221

[Substitute House Bill 2985]

FOSTER CARE HEALTH UNIT

AN ACT Relating to creating a foster care health unit in the department of social and health services; amending RCW 74.13.031; adding a new section to chapter 13.34 RCW; adding a new section to chapter 74.13 RCW; creating a new section; and providing an expiration date.

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

NEW SECTION. Sec. 1. The legislature recognizes that foster children have enhanced health care needs and that it is necessary to improve the system of providing health care for foster children. The legislature further recognizes the importance of meeting the mental health needs of children in foster care, as

well as their medical and dental health care needs. The legislature finds that there must be greater coordination and integration of systems, in particular coordination between children's administration and the health and recovery services administration as well as other agencies that provide or pay for health services for foster youth, to ensure that the health care needs of children in foster care are met in a timely manner.

NEW SECTION. Sec. 2. A new section is added to chapter 13.34 RCW to read as follows:

Whenever a child is ordered removed from his or her home pursuant to this chapter, the agency charged with his or her care may authorize an evaluation and treatment for the child's routine and necessary medical, dental, or mental health care, and all necessary emergency care.

Sec. 3. RCW 74.13.031 and 2004 c 183 s 3 are each amended to read as follows:

The department shall have the duty to provide child welfare services and shall:

(1) Develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of runaway, dependent, or neglected children.

(2) Within available resources, recruit an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, teens, pregnant and parenting teens, and annually report to the governor and the legislature concerning the department's success in: (a) Meeting the need for adoptive and foster home placements; (b) reducing the foster parent turnover rate; (c) completing home studies for legally free children; and (d) implementing and operating the passport program required by RCW 74.13.285. The report shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) Investigate complaints of any recent act or failure to act on the part of a parent or caretaker that results in death, serious physical or emotional harm, or sexual abuse or exploitation, or that presents an imminent risk of serious harm, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency: PROVIDED, That an investigation is not required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. If the investigation reveals that a crime against a child may have been committed, the department shall notify the appropriate law enforcement agency.

(4) Offer, on a voluntary basis, family reconciliation services to families who are in conflict.

(5) Monitor out-of-home placements, on a timely and routine basis, to assure the safety, well-being, and quality of care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010, and annually submit a report measuring the extent to which the department achieved the specified goals to the governor and the legislature.

(6) Have authority to accept custody of children from parents and to accept custody of children from juvenile courts, where authorized to do so under law, to provide child welfare services including placement for adoption, to provide for the routine and necessary medical, dental, and mental health care, or necessary emergency care of the children, and to provide for the physical care of such children and make payment of maintenance costs if needed. Except where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency which receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

(7) Have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

(8) Have authority to purchase care for children; and shall follow in general the policy of using properly approved private agency services for the actual care and supervision of such children insofar as they are available, paying for care of such children as are accepted by the department as eligible for support at reasonable rates established by the department.

(9) Establish a children's services advisory committee which shall assist the secretary in the development of a partnership plan for utilizing resources of the public and private sectors, and advise on all matters pertaining to child welfare, licensing of child care agencies, adoption, and services related thereto. At least one member shall represent the adoption community.

(10) Have authority to provide continued foster care or group care for individuals from eighteen through twenty years of age to enable them to complete their high school or vocational school program.

(11) Refer cases to the division of child support whenever state or federal funds are expended for the care and maintenance of a child, including a child with a developmental disability who is placed as a result of an action under chapter 13.34 RCW, unless the department finds that there is good cause not to pursue collection of child support against the parent or parents of the child.

(12) Have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order; and the purchase of such care shall be subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

Notwithstanding any other provision of RCW 13.32A.170 through 13.32A.200 and 74.13.032 through 74.13.036, or of this section all services to be provided by the department of social and health services under subsections (4), (6), and (7) of this section, subject to the limitations of these subsections, may be provided by any program offering such services funded pursuant to Titles II and III of the federal juvenile justice and delinquency prevention act of 1974.

(13) Within amounts appropriated for this specific purpose, provide preventive services to families with children that prevent or shorten the duration of an out-of-home placement.

(14) Have authority to provide independent living services to youths, including individuals eighteen through twenty years of age, who are or have been in foster care.

NEW SECTION. Sec. 4. A new section is added to chapter 74.13 RCW to read as follows:

Within existing resources, the department shall establish a foster care health unit within the children's administration. The children's administration and the health and recovery services administration within the department shall integrally collaborate to accomplish the following tasks:

(1) The health unit shall review and provide recommendations to the legislature by September 1, 2006, regarding issues including, but not limited to, the following:

(a) Creation of an office within the department to consolidate and coordinate physical, dental, and mental health services provided to children who are in the custody of the department;

(b) Alternative payment structures for health care organization. The department may consider managed care as an alternative structure for health care. The department may not implement managed care for health care services for children in foster care for cost containment purposes; however, the department may institute managed care if the managed care is in the foster child's best interest;

(c) Improving coordination of health care for children in foster care, including medical, dental, and mental health care;

(d) Improving access to health information available to the children's administration for providers of health services for children in foster care, including the use of the child profile as a means to facilitate access to such information;

(e) Establishing a medical home for each child placed in foster care to ensure that appropriate, timely, and necessary quality care is available through a coordinated system of care and analyzing how a medical home might be utilized to meet the unique needs of children in foster care. In establishing a medical home, the department shall consider primary care that is accessible, continuous, comprehensive, family centered, coordinated, compassionate, and culturally effective;

(f) Examining how existing resources are being utilized to provide health care for foster children and options for improving how the resources are utilized. Particular emphasis shall be placed on the following:

(i) Whether the health care services provided to foster children are evidence-based;

(ii) Whether resources are duplicative or redundant between agencies or departments in the provision of medical, dental, or mental health services for children; and

(iii) Identification of where resources are inadequate to meet the routine and necessary medical, dental, and mental health needs of children in foster care; and

(g) Any other issues related to medical, dental, or mental health care for children in foster care.

(2)(a) The foster care health unit, in collaboration with regional medical consultants, shall develop a statewide, uniform role for the regional medical consultants with emphasis placed on the mental health needs of the children in foster care.

(b) By September 1, 2006, the department shall implement the utilization of the statewide, uniform role for the regional medical consultants developed in (a) of this subsection.

(3) This section expires January 1, 2007.

Passed by the House March 4, 2006.

Passed by the Senate March 1, 2006.

Approved by the Governor March 24, 2006.

Filed in Office of Secretary of State March 24, 2006.

CHAPTER 222

[House Bill 2991]

METROPOLITAN PARK DISTRICTS—EMPLOYEE BACKGROUND CHECKS

AN ACT Relating to a record check of a metropolitan park district's job applicants, volunteers, and independent contractors; and amending RCW 35.61.130.

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

Sec. 1. RCW 35.61.130 and 1969 c 54 s 1 are each amended to read as follows:

(1) A metropolitan park district has the right of eminent domain, and may purchase, acquire and condemn lands lying within or without the boundaries of said park district, for public parks, parkways, boulevards, aviation landings and playgrounds, and may condemn such lands to widen, alter and extend streets, avenues, boulevards, parkways, aviation landings and playgrounds, to enlarge and extend existing parks, and to acquire lands for the establishment of new parks, boulevards, parkways, aviation landings and playgrounds. The right of eminent domain shall be exercised and instituted pursuant to resolution of the board of park commissioners and conducted in the same manner and under the same procedure as is or may be provided by law for the exercise of the power of eminent domain by incorporated cities and towns of the state of Washington in the acquisition of property rights: PROVIDED, HOWEVER, Funds to pay for condemnation allowed by this section shall be raised only as specified in this chapter.

(2) The board of park commissioners shall have power to employ counsel, and to regulate, manage and control the parks, parkways, boulevards, streets, avenues, aviation landings and playgrounds under its control, and to provide for park (~~police~~) police, for a secretary of the board of park commissioners and for all necessary employees, to fix their salaries and duties.

(3) The board of park commissioners shall have power to improve, acquire, extend and maintain, open and lay out, parks, parkways, boulevards, avenues, aviation landings and playgrounds, within or without the park district, and to authorize, conduct and manage the letting of boats, or other amusement apparatus, the operation of bath houses, the purchase and sale of foodstuffs or other merchandise, the giving of vocal or instrumental concerts or other entertainments, the establishment and maintenance of aviation landings and playgrounds, and generally the management and conduct of such forms of recreation or business as it shall judge desirable or beneficial for the public, or for the production of revenue for expenditure for park purposes; and may pay out moneys for the maintenance and improvement of any such parks, parkways,

boulevards, avenues, aviation landings and playgrounds as now exist, or may hereafter be acquired, within or without the limits of said city and for the purchase of lands within or without the limits of said city, whenever it deems the purchase to be for the benefit of the public and for the interest of the park district, and for the maintenance and improvement thereof and for all expenses incidental to its duties: PROVIDED, That all parks, boulevards, parkways, aviation landings and playgrounds shall be subject to the police regulations of the city within whose limits they lie.

(4) For all employees, volunteers, or independent contractors, who may, in the course of their work or volunteer activity with the park district, have unsupervised access to children or vulnerable adults, or be responsible for collecting or disbursing cash or processing credit/debit card transactions, park districts shall establish by resolution the requirements for a record check through the Washington state patrol criminal identification system under RCW 43.43.830 through 43.43.834, 10.97.030, and 10.97.050 and through the federal bureau of investigation, including a fingerprint check using a complete Washington state criminal identification fingerprint card. The park district shall provide a copy of the record report to the employee, volunteer, or independent contractor. When necessary, as determined by the park district, prospective employees, volunteers, or independent contractors may be employed on a conditional basis pending completion of the investigation. If the prospective employee, volunteer, or independent contractor has had a record check within the previous twelve months, the park district may waive the requirement upon receiving a copy of the record. The park district may in its discretion require that the prospective employee, volunteer, or independent contractor pay the costs associated with the record check.

Passed by the House March 6, 2006.

Passed by the Senate March 3, 2006.

Approved by the Governor March 24, 2006.

Filed in Office of Secretary of State March 24, 2006.

CHAPTER 223

[Engrossed House Bill 2322]

DISHWASHING DETERGENT

AN ACT Relating to limiting the phosphorus content in dishwashing detergent; and amending RCW 70.95L.005 and 70.95L.020.

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

Sec. 1. RCW 70.95L.005 and 1993 c 118 s 1 are each amended to read as follows:

The legislature hereby finds and declares that:

(1) Phosphorus loading of surface waters can stimulate the growth of weeds and algae, and that such growth can have adverse environmental, health, and aesthetic effects;

(2) Household detergents contribute to phosphorus loading, and that a limit on detergents containing phosphorus can significantly reduce the discharge of phosphorus into the state's surface and ground waters;

(3) Household detergents containing no or very low phosphorus are readily available and that over thirty percent of the United States population lives in areas with a ban on detergents containing phosphorus; ~~(and)~~

(4) Phosphorus limits on household detergents can significantly reduce treatment costs at those sewage treatment facilities that remove phosphorus from the waste stream; and

(5) While significant reductions of phosphorus from laundry detergent have been accomplished, similar progress in reducing phosphorus contributions from dishwashing detergents has not been achieved.

It is therefore the intent of the legislature to impose a statewide limit on the phosphorus content of household detergents.

Sec. 2. RCW 70.95L.020 and 1993 c 118 s 3 are each amended to read as follows:

(1) After July 1, 1994, a person may not sell or distribute for sale a laundry detergent that contains 0.5 percent or more phosphorus by weight.

(2)(a) After July 1, 1994, and until the dates specified in (b) of this subsection, a person may not sell or distribute for sale a dishwashing detergent that contains 8.7 percent or more phosphorus by weight.

(b) A person may not sell or distribute for sale a dishwashing detergent that contains 0.5 percent or more phosphorus by weight:

(i) Commencing July 1, 2008, in counties with populations, as determined by office of financial management population estimates:

(A) Greater than one hundred eighty thousand and less than two hundred twenty thousand; and

(B) Greater than three hundred ninety thousand and less than six hundred fifty thousand;

(ii) Commencing July 1, 2010, throughout the state.

(3) This section does not apply to the sale or distribution of detergents for commercial and industrial uses.

Passed by the House March 4, 2006.

Passed by the Senate March 1, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 224

[Substitute House Bill 1841]

ELECTRICAL TRAINEES

AN ACT Relating to electrical trainees and contractor licenses; and amending RCW 19.28.041 and 19.28.161.

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

Sec. 1. RCW 19.28.041 and 2002 c 249 s 2 are each amended to read as follows:

(1) It is unlawful for any person, firm, partnership, corporation, or other entity to advertise, offer to do work, submit a bid, engage in, conduct, or carry on the business of installing or maintaining wires or equipment to convey electric current, or installing or maintaining equipment to be operated by electric current as it pertains to the electrical industry, without having an unrevoked,

unsuspended, and unexpired electrical contractor license, issued by the department in accordance with this chapter. All electrical contractor licenses expire twenty-four calendar months following the day of their issue. The department may issue an electrical contractors license for a period of less than twenty-four months only for the purpose of equalizing the number of electrical contractor licenses that expire each month. Application for an electrical contractor license shall be made in writing to the department, accompanied by the required fee. The application shall state:

(a) The name and address of the applicant; in case of firms or partnerships, the names of the individuals composing the firm or partnership; in case of corporations, the names of the managing officials thereof;

(b) The location of the place of business of the applicant and the name under which the business is conducted;

(c) Employer social security number;

(d) Evidence of workers' compensation coverage for the applicant's employees working in Washington, as follows:

(i) The applicant's industrial insurance account number issued by the department;

(ii) The applicant's self-insurer number issued by the department; or

(iii) For applicants domiciled in a state or province of Canada subject to an agreement entered into under RCW 51.12.120(7), as permitted by the agreement, filing a certificate of coverage issued by the agency that administers the workers' compensation law in the applicant's state or province of domicile certifying that the applicant has secured the payment of compensation under the other state's or province's workers' compensation law;

(e) Employment security department number;

(f) State excise tax registration number;

(g) Unified business identifier (UBI) account number may be substituted for the information required by (d) of this subsection if the applicant will not employ employees in Washington, and by (e) and (f) of this subsection; and

(h) Whether a general or specialty electrical contractor license is sought and, if the latter, the type of specialty. Electrical contractor specialties include, but are not limited to: Residential, pump and irrigation, limited energy system, signs, nonresidential maintenance, restricted nonresidential maintenance, appliance repair, and a combination specialty. A general electrical contractor license shall grant to the holder the right to engage in, conduct, or carry on the business of installing or maintaining wires or equipment to carry electric current, and installing or maintaining equipment, or installing or maintaining material to fasten or insulate such wires or equipment to be operated by electric current, in the state of Washington. A specialty electrical contractor license shall grant to the holder a limited right to engage in, conduct, or carry on the business of installing or maintaining wires or equipment to carry electrical current, and installing or maintaining equipment; or installing or maintaining material to fasten or insulate such wires or equipment to be operated by electric current in the state of Washington as expressly allowed by the license.

(2) The department may verify the workers' compensation coverage information provided by the applicant under subsection (1)(d) of this section, including but not limited to information regarding the coverage of an individual employee of the applicant. If coverage is provided under the laws of another

state, the department may notify the other state that the applicant is employing employees in Washington.

(3) The application for an electrical contractor license shall be accompanied by a bond in the sum of four thousand dollars with the state of Washington named as obligee in the bond, with good and sufficient surety, to be approved by the department. The bond shall at all times be kept in full force and effect, and any cancellation or revocation thereof, or withdrawal of the surety therefrom, suspends the license issued to the principal until a new bond has been filed and approved as provided in this section. Upon approval of a bond, the department shall on the next business day deposit the fee accompanying the application in the electrical license fund and shall file the bond in the office. The department shall upon request furnish to any person, firm, partnership, corporation, or other entity a certified copy of the bond upon the payment of a fee that the department shall set by rule. The fee shall cover but not exceed the cost of furnishing the certified copy. The bond shall be conditioned that in any installation or maintenance of wires or equipment to convey electrical current, and equipment to be operated by electrical current, the principal will comply with the provisions of this chapter and with any electrical ordinance, building code, or regulation of a city or town adopted pursuant to RCW 19.28.010(3) that is in effect at the time of entering into a contract. The bond shall be conditioned further that the principal will pay for all labor, including employee benefits, and material furnished or used upon the work, taxes and contributions to the state of Washington, and all damages that may be sustained by any person, firm, partnership, corporation, or other entity due to a failure of the principal to make the installation or maintenance in accordance with this chapter or any applicable ordinance, building code, or regulation of a city or town adopted pursuant to RCW 19.28.010(3). In lieu of the surety bond required by this section the license applicant may file with the department a cash deposit or other negotiable security acceptable to the department. If the license applicant has filed a cash deposit, the department shall deposit the funds in a special trust savings account in a commercial bank, mutual savings bank, or savings and loan association and shall pay annually to the depositor the interest derived from the account.

(4) The department shall issue general or specialty electrical contractor licenses to applicants meeting all of the requirements of this chapter. The provisions of this chapter relating to the licensing of any person, firm, partnership, corporation, or other entity including the requirement of a bond with the state of Washington named as obligee therein and the collection of a fee therefor, are exclusive, and no political subdivision of the state of Washington may require or issue any licenses or bonds or charge any fee for the same or a similar purpose. No person, firm, partnership, corporation, or other entity holding more than one specialty contractor license under this chapter may be required to pay an annual fee for more than one such license or to post more than one four thousand dollar bond, equivalent cash deposit, or other negotiable security.

(5) To obtain a general or specialty electrical contractor license the applicant must designate an individual who currently possesses a valid master journeyman electrician's certificate of competency, master specialty electrician's certificate of competency in the specialty for which application has been made, or administrator's certificate as a general electrical contractor administrator or as a

specialty electrical contractor administrator in the specialty for which application has been made.

(6) Administrator certificate specialties include but are not limited to: Residential, pump and irrigation, limited energy system, signs, nonresidential maintenance, restricted nonresidential maintenance, appliance repair, and combination specialty. To obtain an administrator's certificate an individual must pass an examination as set forth in RCW 19.28.051 unless the applicant was a licensed electrical contractor at any time during 1974. Applicants who were electrical contractors licensed by the state of Washington at any time during 1974 are entitled to receive a general electrical contractor administrator's certificate without examination if the applicants apply prior to January 1, 1984. The board of electrical examiners shall certify to the department the names of all persons who are entitled to either a general or specialty electrical contractor administrator's certificate.

Sec. 2. RCW 19.28.161 and 2002 c 249 s 4 are each amended to read as follows:

(1) No person may engage in the electrical construction trade without having a valid master journeyman electrician certificate of competency, journeyman electrician certificate of competency, master specialty electrician certificate of competency, or specialty electrician certificate of competency issued by the department in accordance with this chapter. Electrician certificate of competency specialties include, but are not limited to: Residential, pump and irrigation, limited energy system, signs, nonresidential maintenance, restricted nonresidential maintenance, and appliance repair.

(2) A person who is indentured in an apprenticeship program approved under chapter 49.04 RCW for the electrical construction trade or who is learning the electrical construction trade may work in the electrical construction trade if supervised by a certified master journeyman electrician, journeyman electrician, master specialty electrician in that electrician's specialty, or specialty electrician in that electrician's specialty. All apprentices and individuals learning the electrical construction trade shall obtain an electrical training certificate from the department. The certificate shall authorize the holder to learn the electrical construction trade while under the direct supervision of a master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. The holder of the electrical training certificate shall renew the certificate biennially. At the time of renewal, the holder shall provide the department with an accurate list of the holder's employers in the electrical construction industry for the previous biennial period and the number of hours worked for each employer, and proof of sixteen hours of approved classroom electrical continuing education courses covering this chapter, the national electrical code, or electrical theory, or the equivalent electrical training courses taken as part of an approved apprenticeship program under chapter 49.04 RCW or an approved electrical training program under RCW 19.28.191(1)(h). This education requirement is effective July 1, 2007. A biennial fee shall be charged for the issuance or renewal of the certificate. The department shall set the fee by rule. The fee shall cover but not exceed the cost of administering and enforcing the trainee certification and supervision requirements of this chapter. Apprentices and individuals learning the electrical construction trade shall have

their electrical training certificates in their possession at all times that they are performing electrical work. They shall show their certificates to an authorized representative of the department at the representative's request.

(3) Any person who has been issued an electrical training certificate under this chapter may work if that person is under supervision. Supervision shall consist of a person being on the same job site and under the control of either a certified master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. Either a certified master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty shall be on the same job site as the noncertified individual for a minimum of seventy-five percent of each working day unless otherwise provided in this chapter.

(4) The ratio of noncertified individuals to certified master journeymen electricians, journeymen electricians, master specialty electricians, or specialty electricians on any one job site is as follows:

(a) When working as a specialty electrician, not more than two noncertified individuals for every certified master specialty electrician working in that electrician's specialty, specialty electrician working in that electrician's specialty, master journeyman electrician, or journeyman electrician, except that the ratio requirements are one certified master specialty electrician working in that electrician's specialty, specialty electrician working in that electrician's specialty, master journeyman electrician, or journeyman electrician working as a specialty electrician to no more than four students enrolled in and working as part of an electrical construction program at public community or technical colleges, or not-for-profit nationally accredited trade or technical schools licensed by the work force training and education coordinating board under chapter 28C.10 RCW. In meeting the ratio requirements for students enrolled in an electrical construction program at a trade school, a trade school may receive input and advice from the electrical board; and

(b) When working as a journeyman electrician, not more than one noncertified individual for every certified master journeyman electrician or journeyman electrician, except that the ratio requirements shall be one certified master journeyman electrician or journeyman electrician to no more than four students enrolled in and working as part of an electrical construction program at public community or technical colleges, or not-for-profit nationally accredited trade or technical schools licensed by the work force training and education coordinating board under chapter 28C.10 RCW. In meeting the ratio requirements for students enrolled in an electrical construction program at a trade school, a trade school may receive input and advice from the electrical board.

An individual who has a current training certificate and who has successfully completed or is currently enrolled in an approved apprenticeship program or in an electrical construction program at public community or technical colleges, or not-for-profit nationally accredited technical or trade schools licensed by the work force training and education coordinating board under chapter 28C.10 RCW, may work without direct on-site supervision during the last six months of meeting the practical experience requirements of this chapter.

(5) For the residential (as specified in WAC 296-46A-930(2)(a)), pump and irrigation (as specified in WAC 296-46A-930(2)(b)(i)), sign (as specified in WAC 296-46A-930(2)(c)), limited energy (as specified in WAC 296-46A-930(2)(e)(i)), nonresidential maintenance (as specified in WAC 296-46A-930(2)(f)(i)), restricted nonresidential maintenance as determined by the department in rule, or other new nonresidential specialties, not including appliance repair, as determined by the department in rule, either a master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty must be on the same job site as the noncertified individual for a minimum of seventy-five percent of each working day. Other specialties must meet the requirements specified in RCW 19.28.191(1)(~~(f)(ii)~~) (g)(ii). When the ratio of certified electricians to noncertified individuals on a job site is one certified electrician to three or four noncertified individuals, the certified electrician must:

(a) Directly supervise and instruct the noncertified individuals and the certified electrician may not directly make or engage in an electrical installation; and

(b) Be on the same job site as the noncertified individual for a minimum of one hundred percent of each working day.

(6) The electrical contractor shall accurately verify and attest to the electrical trainee hours worked by electrical trainees on behalf of the electrical contractor.

Passed by the House March 7, 2006.

Passed by the Senate March 7, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 225

[House Bill 2562]

FLAVORED MALT BEVERAGES

AN ACT Relating to flavored malt beverage; and amending RCW 66.04.010.

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

Sec. 1. RCW 66.04.010 and 2005 c 151 (HB 1409) s 1 are each amended to read as follows:

In this title, unless the context otherwise requires:

(1) "Alcohol" is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance. The term "alcohol" does not include alcohol in the possession of a manufacturer or distiller of alcohol fuel, as described in RCW 66.12.130, which is intended to be denatured and used as a fuel for use in motor vehicles, farm implements, and machines or implements of husbandry.

(2) "Authorized representative" means a person who:

(a) Is required to have a federal basic permit issued pursuant to the federal alcohol administration act, 27 U.S.C. Sec. 204;

(b) Has its business located in the United States outside of the state of Washington;

(c) Acquires ownership of beer or wine for transportation into and resale in the state of Washington; and which beer or wine is produced anywhere outside Washington by a brewery or winery which does not hold a certificate of approval issued by the board; and

(d) Is appointed by the brewery or winery referenced in (c) of this subsection as its exclusive authorized representative for marketing and selling its products within the United States in accordance with a written agreement between the authorized representative and such brewery or winery pursuant to this title. The board may waive the requirement for the written agreement of exclusivity in situations consistent with the normal marketing practices of certain products, such as classified growths.

(3) "Beer" means any malt beverage, flavored malt beverage, or malt liquor as these terms are defined in this chapter.

(4) "Beer distributor" means a person who buys beer from a domestic brewery, microbrewery, beer certificate of approval holder, or beer importers, or who acquires foreign produced beer from a source outside of the United States, for the purpose of selling the same pursuant to this title, or who represents such brewer or brewery as agent.

(5) "Beer importer" means a person or business within Washington who purchases beer from a beer certificate of approval holder or who acquires foreign produced beer from a source outside of the United States for the purpose of selling the same pursuant to this title.

(6) "Brewer" or "brewery" means any person engaged in the business of manufacturing beer and malt liquor. Brewer includes a brand owner of malt beverages who holds a brewer's notice with the federal bureau of alcohol, tobacco, and firearms at a location outside the state and whose malt beverage is contract-produced by a licensed in-state brewery, and who may exercise within the state, under a domestic brewery license, only the privileges of storing, selling to licensed beer distributors, and exporting beer from the state.

(7) "Board" means the liquor control board, constituted under this title.

(8) "Club" means an organization of persons, incorporated or unincorporated, operated solely for fraternal, benevolent, educational, athletic or social purposes, and not for pecuniary gain.

(9) "Consume" includes the putting of liquor to any use, whether by drinking or otherwise.

(10) "Contract liquor store" means a business that sells liquor on behalf of the board through a contract with a contract liquor store manager.

(11) "Dentist" means a practitioner of dentistry duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.32 RCW.

(12) "Distiller" means a person engaged in the business of distilling spirits.

(13) "Domestic brewery" means a place where beer and malt liquor are manufactured or produced by a brewer within the state.

(14) "Domestic winery" means a place where wines are manufactured or produced within the state of Washington.

(15) "Druggist" means any person who holds a valid certificate and is a registered pharmacist and is duly and regularly engaged in carrying on the business of pharmaceutical chemistry pursuant to chapter 18.64 RCW.

(16) "Drug store" means a place whose principal business is, the sale of drugs, medicines and pharmaceutical preparations and maintains a regular prescription department and employs a registered pharmacist during all hours the drug store is open.

(17) "Employee" means any person employed by the board.

(18) "Flavored malt beverage" means:

(a) A malt beverage containing six percent or less alcohol by volume to which flavoring or other added nonbeverage ingredients are added that contain distilled spirits of not more than forty-nine percent of the beverage's overall alcohol content; or

(b) A malt beverage containing more than six percent alcohol by volume to which flavoring or other added nonbeverage ingredients are added that contain distilled spirits of not more than one and one-half percent of the beverage's overall alcohol content.

(19) "Fund" means 'liquor revolving fund.'

~~((19))~~ (20) "Hotel" means every building or other structure kept, used, maintained, advertised or held out to the public to be a place where food is served and sleeping accommodations are offered for pay to transient guests, in which twenty or more rooms are used for the sleeping accommodation of such transient guests and having one or more dining rooms where meals are served to such transient guests, such sleeping accommodations and dining rooms being conducted in the same building and buildings, in connection therewith, and such structure or structures being provided, in the judgment of the board, with adequate and sanitary kitchen and dining room equipment and capacity, for preparing, cooking and serving suitable food for its guests: PROVIDED FURTHER, That in cities and towns of less than five thousand population, the board shall have authority to waive the provisions requiring twenty or more rooms.

~~((20))~~ (21) "Importer" means a person who buys distilled spirits from a distillery outside the state of Washington and imports such spirituous liquor into the state for sale to the board or for export.

~~((21))~~ (22) "Imprisonment" means confinement in the county jail.

~~((22))~~ (23) "Liquor" includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating; and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating. Liquor does not include confections or food products that contain one percent or less of alcohol by weight.

~~((23))~~ (24) "Manufacturer" means a person engaged in the preparation of liquor for sale, in any form whatsoever.

~~((24))~~ (25) "Malt beverage" or "malt liquor" means any beverage such as beer, ale, lager beer, stout, and porter obtained by the alcoholic fermentation of

an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than eight percent of alcohol by weight, and not less than one-half of one percent of alcohol by volume. For the purposes of this title, any such beverage containing more than eight percent of alcohol by weight shall be referred to as "strong beer."

~~((25))~~ (26) "Package" means any container or receptacle used for holding liquor.

~~((26))~~ (27) "Permit" means a permit for the purchase of liquor under this title.

~~((27))~~ (28) "Person" means an individual, copartnership, association, or corporation.

~~((28))~~ (29) "Physician" means a medical practitioner duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.71 RCW.

~~((29))~~ (30) "Prescription" means a memorandum signed by a physician and given by him to a patient for the obtaining of liquor pursuant to this title for medicinal purposes.

~~((30))~~ (31) "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; those parts of establishments where beer may be sold under this title, soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, and other public conveyances of all kinds and character, and the depots and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, and/or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

~~((31))~~ (32) "Regulations" means regulations made by the board under the powers conferred by this title.

~~((32))~~ (33) "Restaurant" means any establishment provided with special space and accommodations where, in consideration of payment, food, without lodgings, is habitually furnished to the public, not including drug stores and soda fountains.

~~((33))~~ (34) "Sale" and "sell" include exchange, barter, and traffic; and also include the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatever commonly used to describe malt or brewed liquor or of wine, by any person to any person; and also include a sale or selling within the state to a foreign consignee or his agent in the state. "Sale" and "sell" shall not include the giving, at no charge, of a reasonable amount of liquor by a person not licensed by the board to a person not licensed by the board, for personal use only. "Sale" and "sell" also does not include a raffle authorized under RCW 9.46.0315: PROVIDED, That the nonprofit organization conducting the raffle has obtained the appropriate permit from the board.

~~((34))~~ (35) "Soda fountain" means a place especially equipped with apparatus for the purpose of dispensing soft drinks, whether mixed or otherwise.

~~((35))~~ (36) "Spirits" means any beverage which contains alcohol obtained by distillation, except flavored malt beverages, but including wines exceeding twenty-four percent of alcohol by volume.

~~((36))~~ (37) "Store" means a state liquor store established under this title.

~~((37))~~ (38) "Tavern" means any establishment with special space and accommodation for sale by the glass and for consumption on the premises, of beer, as herein defined.

~~((38))~~ (39) "Winery" means a business conducted by any person for the manufacture of wine for sale, other than a domestic winery.

~~((39))~~ (40) "Wine" means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, et cetera) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than twenty-four percent of alcohol by volume, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding twenty-four percent of alcohol by volume and not less than one-half of one percent of alcohol by volume. For purposes of this title, any beverage containing no more than fourteen percent of alcohol by volume when bottled or packaged by the manufacturer shall be referred to as "table wine," and any beverage containing alcohol in an amount more than fourteen percent by volume when bottled or packaged by the manufacturer shall be referred to as "fortified wine." However, "fortified wine" shall not include: (a) Wines that are both sealed or capped by cork closure and aged two years or more; and (b) wines that contain more than fourteen percent alcohol by volume solely as a result of the natural fermentation process and that have not been produced with the addition of wine spirits, brandy, or alcohol.

This subsection shall not be interpreted to require that any wine be labeled with the designation "table wine" or "fortified wine."

~~((40))~~ (41) "Wine distributor" means a person who buys wine from a domestic winery, wine certificate of approval holder, or wine importer, or who acquires foreign produced wine from a source outside of the United States, for the purpose of selling the same not in violation of this title, or who represents such vintner or winery as agent.

~~((41))~~ (42) "Wine importer" means a person or business within Washington who purchases wine from a wine certificate of approval holder or who acquires foreign produced wine from a source outside of the United States for the purpose of selling the same pursuant to this title.

Passed by the House February 8, 2006.

Passed by the Senate March 1, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 226

[Substitute House Bill 2804]

PROPERTY TAX EXEMPTION—NONPROFIT SCHOOLS, COLLEGES

AN ACT Relating to the property tax exemption for nonprofit schools and colleges; amending RCW 84.36.050 and 84.36.805; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that independent nonprofit schools, colleges, and universities are vital educational resources to the state of Washington. For the state to be competitive in a global economy, all educational resources must be competitive and provide high-quality programs and services for students.

The legislature recognizes that independent nonprofit schools, colleges, and universities are important economic drivers in their communities, and encourages institutions to support local communities, to provide public benefit, and to respond to community expectations that they share facilities, offer programs, and attract students on par with Washington's publicly owned institutions and out-of-state schools and colleges. Further, the legislature encourages innovative programs and educational opportunities, sustainable practices, and increased use of facilities so that operations of institutions can be more cost-effective.

The legislature wishes to remove barriers that discourage institutions from being more collaborative, that make it more difficult to provide high-quality services and necessities to their students, and that discourage appropriate and beneficial use of institutional facilities by the broader community. To this end, the legislature seeks to provide consistent, predictable, and easily administrable rules for reference by the state department of revenue and schools and colleges.

Sec. 2. RCW 84.36.050 and 2001 c 126 s 2 are each amended to read as follows:

The following property is exempt from taxation:

(1) Property owned or used by or for any nonprofit school or college in this state for educational purposes or cultural or art educational programs as defined in RCW 82.04.4328. Real property so exempt shall not exceed four hundred acres ~~((in extent and, except as provided in RCW 84.36.805, shall be used exclusively for college or campus purposes))~~ including, but not limited to, buildings and grounds designed for the educational, athletic, or social programs of the institution, the housing of students, ~~((the housing of))~~ religious faculty, ~~((the housing of))~~ and the chief administrator, athletic buildings, and all other school or college facilities, the need for which would be nonexistent but for the presence of the school or college ~~((and which are))~~. The property must be principally designed to further the educational, athletic, or social functions of the college or school((s)). If the property is leased, the benefit of the exemption must inure to ~~((the user;))~~ such school or college.

(2) Real or personal property owned by a not-for-profit foundation that is established for the exclusive support of an institution of higher education, as defined in RCW 28B.10.016. If the property is ((exempt if it is)) leased to and used by the institution ((exclusively)) for college or campus purposes ((and is)), it must be principally designed to further the educational, athletic, or social functions of the institution. The exemption is only available for property

actively utilized by currently enrolled students. The benefit of the exemption must inure to the ~~((user))~~ college.

(3) Subject to subsection (4) of this section, if the property exempt under subsection (1) or (2) of this section is used by an individual or organization not entitled to a property tax exemption, except as provided in this subsection, the exemption is nullified for the assessment year in which such use occurs. The exemption is not nullified as a result of any of the uses listed in (a) or (b) of this subsection:

(a) The property is used by students, alumni, faculty, staff, or other persons or entities in a manner consistent with the educational, social, or athletic programs, including property used for related administrative and support functions, of the school or college and not for pecuniary gain or to promote business activities. Notwithstanding the foregoing, the school or college may contract with and permit the use of school or college property by persons or entities to provide school or college-related programs or services including, but not limited to, the provision of food services to students, faculty, and staff, the operation of a bookstore on campus, and the provision to the school or college of maintenance, operational, or administrative services without nullifying the exemption; or

(b) The property is used for pecuniary gain or to promote business activities for not more than seven days in the calendar year, such uses to be measured separately with respect to each specific portion of such property. If exempt property is used as a sports or educational camp or program taught, operated, or conducted by a faculty member who is required or permitted to do so as part of his or her compensation package, the days when the property is so used will not be included in calculating the seven day limitation of this subsection (3)(b).

(4) The amount of rent or donations, if any, received by the college or school for such uses described in subsection (3)(a) or (b) of this section, or by an organization entitled to a property tax exemption, must be reasonable and not exceed maintenance and operation expenses associated with the use by such user.

(5) The exemption under this section will not be nullified by an inadvertent use of the property in a manner inconsistent with the purpose for which exemption is granted, if the inadvertent use is not part of a pattern of use. A pattern of use is presumed when an inadvertent use is repeated in the same assessment year or in two or more successive assessment years.

Sec. 3. RCW 84.36.805 and 2003 c 121 s 2 are each amended to read as follows:

(1) In order to qualify for an exemption under this chapter, the nonprofit organizations, associations, or corporations must satisfy the conditions in this section.

(2) The property must be used exclusively for the actual operation of the activity for which exemption is granted, unless otherwise provided, and does not exceed an amount reasonably necessary for that purpose, except:

(a) The loan or rental of the property does not subject the property to tax if:

(i) The rents and donations received for the use of the portion of the property are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented; and

(ii) Except for the exemptions under RCW 84.36.030(4), 84.36.037, 84.36.050, and 84.36.060(1) (a) and (b), the property would be exempt from tax if owned by the organization to which it is loaned or rented;

(b) The use of the property for fund-raising activities does not subject the property to tax if the fund-raising activities are consistent with the purposes for which the exemption is granted.

(3) The property must be irrevocably dedicated to the purpose for which exemption has been granted, and on the liquidation, dissolution, or abandonment by said organization, association, or corporation, said property will not inure directly or indirectly to the benefit of any shareholder or individual, except a nonprofit organization, association, or corporation which too would be entitled to property tax exemption. This property need not be irrevocably dedicated if it is leased or rented to those qualified for exemption under this chapter or RCW 84.36.560 for leased property, but only if under the terms of the lease or rental agreement the nonprofit organization, association, or corporation receives the benefit of the exemption.

(4) The facilities and services must be available to all regardless of race, color, national origin or ancestry.

(5) The organization, association, or corporation must be duly licensed or certified where such licensing or certification is required by law or regulation.

(6) Property sold to organizations, associations, or corporations with an option to be repurchased by the seller shall not qualify for exempt status. This subsection does not apply to property sold to a nonprofit entity, as defined in RCW 84.36.560(7), by:

(a) A nonprofit as defined in RCW 84.36.800 that is exempt from income tax under section 501(c) of the federal internal revenue code;

(b) A governmental entity established under RCW 35.21.660, 35.21.670, or 35.21.730;

(c) A housing authority created under RCW 35.82.030;

(d) A housing authority meeting the definition in RCW 35.82.210(2)(a); or

(e) A housing authority established under RCW 35.82.300.

(7) The department shall have access to its books in order to determine whether the nonprofit organization, association, or corporation is exempt from taxes under this chapter.

(8) This section does not apply to exemptions granted under RCW 84.36.020, 84.36.032, 84.36.250, and 84.36.260.

Passed by the House February 13, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 227

[Engrossed Substitute Senate Bill 6802]

AIR POLLUTION CONTROL—SINGLE COUNTY AUTHORITIES

AN ACT Relating to the board of directors of single county air pollution control authorities; and amending RCW 70.94.100 and 70.94.110.

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

Sec. 1. RCW 70.94.100 and 1991 c 199 s 704 are each amended to read as follows:

(1) The governing body of each authority shall be known as the board of directors.

(2)(a) In the case of an authority comprised of one county, with a population of less than four hundred thousand people, the board shall be comprised of two appointees of the city selection committee, at least one of whom shall represent the city having the most population in the county, and two representatives to be designated by the board of county commissioners.

(b) In the case of an authority comprised of one county, with a population of equal to or greater than four hundred thousand people, the board shall be comprised of three appointees of cities, one each from the two cities with the most population in the county and one appointee of the city selection committee representing the other cities, and one representative to be designated by the board of county commissioners.

(c) In the case of an authority comprised of two, three, four, or five counties, the board shall be comprised of one appointee from each county, who shall represent the city having the most population in such county, to be designated by the mayor and city council of such city, and one representative from each county to be designated by the board of county commissioners of each county making up the authority.

(d) In the case of an authority comprised of six or more counties, the board shall be comprised of one representative from each county to be designated by the board of county commissioners of each county making up the authority, and three appointees, one each from the three largest cities within the local authority's jurisdiction to be appointed by the mayor and city council of such city.

(3) If the board of an authority otherwise would consist of an even number, the members selected as above provided shall agree upon and elect an additional member who shall be:

(a) In the case of an authority comprised of one county with a population of equal to or greater than four hundred thousand people, a citizen residing in the county who demonstrates significant professional experience in the field of public health, air quality protection, or meteorology; or

(b) In the case of an authority comprised of one county, with a population less than four hundred thousand people, or of more than one county, either a member of the governing body of one of the towns, cities or counties comprising the authority, or a private citizen residing in the authority.

(4) The terms of office of board members shall be four years.

(5) Wherever a member of a board has a potential conflict of interest in an action before the board, the member shall declare to the board the nature of the potential conflict prior to participating in the action review. The board shall, if the potential conflict of interest, in the judgment of a majority of the board, may prevent the member from a fair and objective review of the case, remove the member from participation in the action.

Sec. 2. RCW 70.94.110 and 1967 c 238 s 22 are each amended to read as follows:

There shall be a separate and distinct city selection committee for each county making up an authority. The membership of such committee shall

consist of the mayor of each incorporated city and town within such county, except that the mayors of the cities, with the most population in a county, having already designated appointees to the board of an air pollution control authority comprised of a single county shall not be members of the committee. A majority of the members of each city selection committee shall constitute a quorum.

Passed by the Senate February 13, 2006.

Passed by the House March 1, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 228

[Engrossed Substitute House Bill 1080]

CRIMINAL MISTREATMENT OF A DEPENDENT PERSON

AN ACT Relating to protecting dependent persons by changing the crimes of criminal mistreatment and abandonment of a dependent person; amending RCW 9A.42.010, 9A.42.020, 9A.42.030, 9A.42.035, 9A.42.037, 9A.42.060, 9A.42.070, and 9A.42.080; reenacting and amending RCW 9.94A.515; and prescribing penalties.

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

Sec. 1. RCW 9A.42.010 and 1997 c 392 s 508 are each amended to read as follows:

As used in this chapter:

(1) "Basic necessities of life" means food, water, shelter, clothing, and medically necessary health care, including but not limited to health-related treatment or activities, hygiene, oxygen, and medication.

(2)(a) "Bodily injury" means physical pain or injury, illness, or an impairment of physical condition;

(b) "Substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part;

(c) "Great bodily harm" means bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily part or organ.

(3) "Child" means a person under eighteen years of age.

(4) "Dependent person" means a person who, because of physical or mental disability, or because of extreme advanced age, is dependent upon another person to provide the basic necessities of life. A resident of a nursing home, as defined in RCW 18.51.010, a resident of an adult family home, as defined in RCW 70.128.010, and a frail elder or vulnerable adult, as defined in RCW 74.34.020(~~(8)~~) (13), is presumed to be a dependent person for purposes of this chapter.

(5) "Employed" means hired by a dependent person, another person acting on behalf of a dependent person, or by an organization or governmental entity, to provide to a dependent person any of the basic necessities of life. A person may be "employed" regardless of whether the person is paid for the services or, if paid, regardless of who pays for the person's services.

(6) "Parent" has its ordinary meaning and also includes a guardian and the authorized agent of a parent or guardian.

(7) "Abandons" means leaving a child or other dependent person without the means or ability to obtain one or more of the basic necessities of life.

(8) "Good samaritan" means any individual or group of individuals who: (a) Is not related to the dependent person; (b) voluntarily provides assistance or services of any type to the dependent person; (c) is not paid, given gifts, or made a beneficiary of any assets valued at five hundred dollars or more, for any reason, by the dependent person, the dependent person's family, or the dependent person's estate; and (d) does not commit or attempt to commit any other crime against the dependent person or the dependent person's estate.

Sec. 2. RCW 9A.42.020 and 1997 c 392 s 510 are each amended to read as follows:

(1) A parent of a child, the person entrusted with the physical custody of a child or dependent person, a person who has assumed the responsibility to provide to a dependent person the basic necessities of life, or a person employed to provide to the child or dependent person the basic necessities of life is guilty of criminal mistreatment in the first degree if he or she recklessly, as defined in RCW 9A.08.010, causes great bodily harm to a child or dependent person by withholding any of the basic necessities of life.

(2) Criminal mistreatment in the first degree is a class B felony.

Sec. 3. RCW 9A.42.030 and 1997 c 392 s 511 are each amended to read as follows:

(1) A parent of a child, the person entrusted with the physical custody of a child or dependent person, a person who has assumed the responsibility to provide to a dependent person the basic necessities of life, or a person employed to provide to the child or dependent person the basic necessities of life is guilty of criminal mistreatment in the second degree if he or she recklessly, as defined in RCW 9A.08.010, either (a) creates an imminent and substantial risk of death or great bodily harm, or (b) causes substantial bodily harm by withholding any of the basic necessities of life.

(2) Criminal mistreatment in the second degree is a class C felony.

Sec. 4. RCW 9A.42.035 and 2000 c 76 s 1 are each amended to read as follows:

(1) A person is guilty of the crime of criminal mistreatment in the third degree if the person is the parent of a child, is a person entrusted with the physical custody of a child or other dependent person, is a person who has assumed the responsibility to provide to a dependent person the basic necessities of life, or is a person employed to provide to the child or dependent person the basic necessities of life, and either:

(a) With criminal negligence, creates an imminent and substantial risk of substantial bodily harm to a child or dependent person by withholding any of the basic necessities of life; or

(b) With criminal negligence, causes substantial bodily harm to a child or dependent person by withholding any of the basic necessities of life.

(2) For purposes of this section, "a person who has assumed the responsibility to provide to a dependent person the basic necessities of life" means a person other than: (a) A government agency that regularly provides

assistance or services to dependent persons, including but not limited to the department of social and health services; or (b) a good samaritan as defined in RCW 9A.42.010.

(3) Criminal mistreatment in the third degree is a gross misdemeanor.

Sec. 5. RCW 9A.42.037 and 2002 c 219 s 2 are each amended to read as follows:

(1) A person is guilty of the crime of criminal mistreatment in the fourth degree if the person is the parent of a child, is a person entrusted with the physical custody of a child or other dependent person, is a person who has assumed the responsibility to provide to a dependent person the basic necessities of life, or is a person employed to provide to the child or dependent person the basic necessities of life, and either:

(a) With criminal negligence, creates an imminent and substantial risk of bodily injury to a child or dependent person by withholding any of the basic necessities of life; or

(b) With criminal negligence, causes bodily injury or extreme emotional distress manifested by more than transient physical symptoms to a child or dependent person by withholding the basic necessities of life.

(2) For purposes of this section, "a person who has assumed the responsibility to provide to a dependent person the basic necessities of life" means a person other than: (a) A government agency that regularly provides assistance or services to dependent persons, including but not limited to the department of social and health services; or (b) a good samaritan as defined in RCW 9A.42.010.

(3) Criminal mistreatment in the fourth degree is a misdemeanor.

Sec. 6. RCW 9A.42.060 and 2002 c 331 s 3 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, a person is guilty of the crime of abandonment of a dependent person in the first degree if:

(a) The person is the parent of a child, a person entrusted with the physical custody of a child or other dependent person, a person who has assumed the responsibility to provide to a dependent person the basic necessities of life, or a person employed to provide to the child or other dependent person any of the basic necessities of life;

(b) The person recklessly abandons the child or other dependent person; and

(c) As a result of being abandoned, the child or other dependent person suffers great bodily harm.

(2) A parent of a newborn who transfers the newborn to a qualified person at an appropriate location pursuant to RCW 13.34.360 is not subject to criminal liability under this section.

(3) Abandonment of a dependent person in the first degree is a class B felony.

Sec. 7. RCW 9A.42.070 and 2002 c 331 s 4 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, a person is guilty of the crime of abandonment of a dependent person in the second degree if:

(a) The person is the parent of a child, a person entrusted with the physical custody of a child or other dependent person, a person who has assumed the

responsibility to provide to a dependent person the basic necessities of life, or a person employed to provide to the child or other dependent person any of the basic necessities of life; and

(b) The person recklessly abandons the child or other dependent person; and:

(i) As a result of being abandoned, the child or other dependent person suffers substantial bodily harm; or

(ii) Abandoning the child or other dependent person creates an imminent and substantial risk that the child or other dependent person will die or suffer great bodily harm.

(2) A parent of a newborn who transfers the newborn to a qualified person at an appropriate location pursuant to RCW 13.34.360 is not subject to criminal liability under this section.

(3) Abandonment of a dependent person in the second degree is a class C felony.

Sec. 8. RCW 9A.42.080 and 2002 c 331 s 5 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, a person is guilty of the crime of abandonment of a dependent person in the third degree if:

(a) The person is the parent of a child, a person entrusted with the physical custody of a child or other dependent person, a person who has assumed the responsibility to provide to a dependent person the basic necessities of life, or a person employed to provide to the child or dependent person any of the basic necessities of life; and

(b) The person recklessly abandons the child or other dependent person; and:

(i) As a result of being abandoned, the child or other dependent person suffers bodily harm; or

(ii) Abandoning the child or other dependent person creates an imminent and substantial risk that the child or other person will suffer substantial bodily harm.

(2) A parent of a newborn who transfers the newborn to a qualified person at an appropriate location pursuant to RCW 13.34.360 is not subject to criminal liability under this section.

(3) Abandonment of a dependent person in the third degree is a gross misdemeanor.

Sec. 9. RCW 9.94A.515 and 2005 c 458 s 2 and 2005 c 183 s 9 are each reenacted and amended to read as follows:

TABLE 2	
CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL	
XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055) Malicious explosion 1 (RCW 70.74.280(1))

- Murder 1 (RCW 9A.32.030)
- XIV Murder 2 (RCW 9A.32.050)
 - Trafficking 1 (RCW 9A.40.100(1))
- XIII Malicious explosion 2 (RCW 70.74.280(2))
 - Malicious placement of an explosive 1 (RCW 70.74.270(1))
- XII Assault 1 (RCW 9A.36.011)
 - Assault of a Child 1 (RCW 9A.36.120)
 - Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))
 - Rape 1 (RCW 9A.44.040)
 - Rape of a Child 1 (RCW 9A.44.073)
 - Trafficking 2 (RCW 9A.40.100(2))
- XI Manslaughter 1 (RCW 9A.32.060)
 - Rape 2 (RCW 9A.44.050)
 - Rape of a Child 2 (RCW 9A.44.076)
- X Child Molestation 1 (RCW 9A.44.083)
 - Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
 - Kidnapping 1 (RCW 9A.40.020)
 - Leading Organized Crime (RCW 9A.82.060(1)(a))
 - Malicious explosion 3 (RCW 70.74.280(3))
 - Sexually Violent Predator Escape (RCW 9A.76.115)
- IX Abandonment of Dependent Person 1 (RCW 9A.42.060)
 - Assault of a Child 2 (RCW 9A.36.130)
 - Criminal Mistreatment 1 (RCW 9A.42.020)
 - Explosive devices prohibited (RCW 70.74.180)
 - Hit and Run—Death (RCW 46.52.020(4)(a))

- Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)
- Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
- Malicious placement of an explosive 2 (RCW 70.74.270(2))
- Robbery 1 (RCW 9A.56.200)
- Sexual Exploitation (RCW 9.68A.040)
- Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
- VIII Arson 1 (RCW 9A.48.020)
 - Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)
 - Manslaughter 2 (RCW 9A.32.070)
 - Promoting Prostitution 1 (RCW 9A.88.070)
 - Theft of Ammonia (RCW 69.55.010)
 - Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- VII Burglary 1 (RCW 9A.52.020)
 - Child Molestation 2 (RCW 9A.44.086)
 - Civil Disorder Training (RCW 9A.48.120)
 - Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)
 - Drive-by Shooting (RCW 9A.36.045)
 - Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050)
 - Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1)(b) and (c))

- Introducing Contraband 1 (RCW 9A.76.140)
- Malicious placement of an explosive 3 (RCW 70.74.270(3))
- Negligently Causing Death By Use of a Signal Preemption Device (RCW 46.37.675)
- Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)
- Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1))
- Use of a Machine Gun in Commission of a Felony (RCW 9.41.225)
- Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- VI Bail Jumping with Murder 1 (RCW 9A.76.170(3)(a))
- Bribery (RCW 9A.68.010)
- Incest 1 (RCW 9A.64.020(1))
- Intimidating a Judge (RCW 9A.72.160)
- Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
- Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
- Rape of a Child 3 (RCW 9A.44.079)
- Theft of a Firearm (RCW 9A.56.300)
- Unlawful Storage of Ammonia (RCW 69.55.020)
- V (~~Abandonment of dependent person 1 (RCW 9A.42.060))~~)
- Abandonment of Dependent Person 2 (RCW 9A.42.070)
- Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
- Bail Jumping with class A Felony (RCW 9A.76.170(3)(b))
- Child Molestation 3 (RCW 9A.44.089)

~~((Criminal Mistreatment 1 (RCW
9A.42.020)))~~

Criminal Mistreatment 2 (RCW
9A.42.030)

Custodial Sexual Misconduct 1 (RCW
9A.44.160)

Domestic Violence Court Order
Violation (RCW 10.99.040,
10.99.050, 26.09.300, 26.10.220,
26.26.138, 26.50.110, 26.52.070,
or 74.34.145)

Extortion 1 (RCW 9A.56.120)

Extortionate Extension of Credit (RCW
9A.82.020)

Extortionate Means to Collect
Extensions of Credit (RCW
9A.82.040)

Incest 2 (RCW 9A.64.020(2))

Kidnapping 2 (RCW 9A.40.030)

Perjury 1 (RCW 9A.72.020)

Persistent prison misbehavior (RCW
9.94.070)

Possession of a Stolen Firearm (RCW
9A.56.310)

Rape 3 (RCW 9A.44.060)

Rendering Criminal Assistance 1
(RCW 9A.76.070)

Sexual Misconduct with a Minor 1
(RCW 9A.44.093)

Sexually Violating Human Remains
(RCW 9A.44.105)

Stalking (RCW 9A.46.110)

Taking Motor Vehicle Without
Permission 1 (RCW 9A.56.070)

IV Arson 2 (RCW 9A.48.030)

Assault 2 (RCW 9A.36.021)

Assault 3 (of a Peace Officer with a
Projectile Stun Gun) (RCW
9A.36.031(1)(h))

Assault by Watercraft (RCW
79A.60.060)

Bribing a Witness/Bribe Received by
Witness (RCW 9A.72.090,
9A.72.100)

Cheating 1 (RCW 9.46.1961)

Commercial Bribery (RCW
9A.68.060)

Counterfeiting (RCW 9.16.035(4))

Endangerment with a Controlled
Substance (RCW 9A.42.100)

Escape 1 (RCW 9A.76.110)

Hit and Run—Injury (RCW
46.52.020(4)(b))

Hit and Run with Vessel—Injury
Accident (RCW 79A.60.200(3))

Identity Theft 1 (RCW 9.35.020(2))

Indecent Exposure to Person Under
Age Fourteen (subsequent sex
offense) (RCW 9A.88.010)

Influencing Outcome of Sporting Event
(RCW 9A.82.070)

Malicious Harassment (RCW
9A.36.080)

Residential Burglary (RCW
9A.52.025)

Robbery 2 (RCW 9A.56.210)

Theft of Livestock 1 (RCW 9A.56.080)

Threats to Bomb (RCW 9.61.160)

Trafficking in Stolen Property 1 (RCW
9A.82.050)

Unlawful factoring of a credit card or
payment card transaction (RCW
9A.56.290(4)(b))

Unlawful transaction of health
coverage as a health care service
contractor (RCW 48.44.016(3))

Unlawful transaction of health
coverage as a health maintenance
organization (RCW 48.46.033(3))

- Unlawful transaction of insurance business (RCW 48.15.023(3))
- Unlicensed practice as an insurance professional (RCW 48.17.063(3))
- Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
- Vehicular Assault, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (RCW 46.61.522)
- Willful Failure to Return from Furlough (RCW 72.66.060)
- III ~~((Abandonment of dependent person 2 (RCW 9A.42.070)))~~
- Assault 3 (Except Assault 3 of a Peace Officer With a Projectile Stun Gun) (RCW 9A.36.031 except subsection (1)(h))
- Assault of a Child 3 (RCW 9A.36.140)
- Bail Jumping with class B or C Felony (RCW 9A.76.170(3)(c))
- Burglary 2 (RCW 9A.52.030)
- Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
- Criminal Gang Intimidation (RCW 9A.46.120)
- ~~((Criminal Mistreatment 2 (RCW 9A.42.030)))~~
- Custodial Assault (RCW 9A.36.100)
- Cyberstalking (subsequent conviction or threat of death) (RCW 9.61.260(3))
- Escape 2 (RCW 9A.76.120)
- Extortion 2 (RCW 9A.56.130)
- Harassment (RCW 9A.46.020)
- Intimidating a Public Servant (RCW 9A.76.180)

- Introducing Contraband 2 (RCW 9A.76.150)
- Malicious Injury to Railroad Property (RCW 81.60.070)
- Negligently Causing Substantial Bodily Harm By Use of a Signal Preemption Device (RCW 46.37.674)
- Patronizing a Juvenile Prostitute (RCW 9.68A.100)
- Perjury 2 (RCW 9A.72.030)
- Possession of Incendiary Device (RCW 9.40.120)
- Possession of Machine Gun or Short-Barreled Shotgun or Rifle (RCW 9.41.190)
- Promoting Prostitution 2 (RCW 9A.88.080)
- Securities Act violation (RCW 21.20.400)
- Tampering with a Witness (RCW 9A.72.120)
- Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230(2))
- Theft of Livestock 2 (RCW 9A.56.083)
- Trafficking in Stolen Property 2 (RCW 9A.82.055)
- Unlawful Imprisonment (RCW 9A.40.040)
- Unlawful possession of firearm in the second degree (RCW 9.41.040(2))
- Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)
- Willful Failure to Return from Work Release (RCW 72.65.070)
- II Computer Trespass 1 (RCW 9A.52.110)
- Counterfeiting (RCW 9.16.035(3))

- Escape from Community Custody (RCW 72.09.310)
- Health Care False Claims (RCW 48.80.030)
- Identity Theft 2 (RCW 9.35.020(3))
- Improperly Obtaining Financial Information (RCW 9.35.010)
- Malicious Mischief 1 (RCW 9A.48.070)
- Possession of Stolen Property 1 (RCW 9A.56.150)
- Theft 1 (RCW 9A.56.030)
- Theft of Rental, Leased, or Lease-purchased Property (valued at one thousand five hundred dollars or more) (RCW 9A.56.096(5)(a))
- Trafficking in Insurance Claims (RCW 48.30A.015)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(a))
- Unlawful Practice of Law (RCW 2.48.180)
- Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))
- I Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
- False Verification for Welfare (RCW 74.08.055)
- Forgery (RCW 9A.60.020)
- Fraudulent Creation or Revocation of a Mental Health Advance Directive (RCW 9A.60.060)
- Malicious Mischief 2 (RCW 9A.48.080)
- Mineral Trespass (RCW 78.44.330)
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Reckless Burning 1 (RCW 9A.48.040)

Taking Motor Vehicle Without
Permission 2 (RCW 9A.56.075)
Theft 2 (RCW 9A.56.040)
Theft of Rental, Leased, or Lease-
purchased Property (valued at two
hundred fifty dollars or more but
less than one thousand five hundred
dollars) (RCW 9A.56.096(5)(b))
Transaction of insurance business
beyond the scope of licensure
(RCW 48.17.063(4))
Unlawful Issuance of Checks or Drafts
(RCW 9A.56.060)
Unlawful Possession of Fictitious
Identification (RCW 9A.56.320)
Unlawful Possession of Instruments of
Financial Fraud (RCW 9A.56.320)
Unlawful Possession of Payment
Instruments (RCW 9A.56.320)
Unlawful Possession of a Personal
Identification Device (RCW
9A.56.320)
Unlawful Production of Payment
Instruments (RCW 9A.56.320)
Unlawful Trafficking in Food Stamps
(RCW 9.91.142)
Unlawful Use of Food Stamps (RCW
9.91.144)
Vehicle Prowl 1 (RCW 9A.52.095)

Passed by the House March 4, 2006.

Passed by the Senate March 2, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 229

[Substitute House Bill 2233]

TUITION WAIVERS—VETERANS

AN ACT Relating to prioritizing tuition waivers for war veterans; amending RCW 28B.15.910; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that active military and naval veterans, reserve military and naval veterans, and national guard members called to active duty have served their country and have risked their lives to defend the lives of all Americans and the freedoms that define and distinguish our nation. The legislature intends to honor active military and naval veterans, reserve military and naval veterans, and national guard members who have served on active military or naval duty for the public service they have provided to this country by making available to all eligible admitted veterans a waiver of operating fees by a state university, a regional university, The Evergreen State College, or the community colleges as a whole, to veterans who qualify under RCW 28B.15.621.

Sec. 2. RCW 28B.15.910 and 2005 c 249 s 3 are each amended to read as follows:

(1) For the purpose of providing state general fund support to public institutions of higher education, except for revenue waived under programs listed in subsections (3) and (4) of this section, and unless otherwise expressly provided in the omnibus state appropriations act, the total amount of operating fees revenue waived, exempted, or reduced by a state university, a regional university, The Evergreen State College, or the community colleges as a whole, shall not exceed the percentage of total gross authorized operating fees revenue in this subsection. As used in this section, "gross authorized operating fees revenue" means the estimated gross operating fees revenue as estimated under RCW 82.33.020 or as revised by the office of financial management, before granting any waivers. This limitation applies to all tuition waiver programs established before or after July 1, 1992.

(a) University of Washington	21 percent
(b) Washington State University	20 percent
(c) Eastern Washington University	11 percent
(d) Central Washington University	8 percent
(e) Western Washington University	10 percent
(f) The Evergreen State College	6 percent
(g) Community colleges as a whole	35 percent

(2) The limitations in subsection (1) of this section apply to waivers, exemptions, or reductions in operating fees contained in the following:

- (a) RCW 28B.15.014;
- (b) RCW 28B.15.100;
- (c) RCW 28B.15.225;
- (d) RCW 28B.15.380;
- (e) RCW 28B.15.520;
- (f) RCW 28B.15.526;
- (g) RCW 28B.15.527;
- (h) RCW 28B.15.543;
- (i) RCW 28B.15.545;
- (j) RCW 28B.15.555;
- (k) RCW 28B.15.556;
- (l) RCW 28B.15.615;
- (m) RCW 28B.15.621(2);
- (n) RCW 28B.15.730;
- ~~((n))~~ (o) RCW 28B.15.740;

~~((p))~~ (p) RCW 28B.15.750;
~~((q))~~ (q) RCW 28B.15.756;
~~((r))~~ (r) RCW 28B.50.259; and
~~((s))~~ (s) RCW 28B.70.050(~~and~~
~~(s) RCW 28B.15.621(2))~~).

(3) The limitations in subsection (1) of this section do not apply to waivers, exemptions, or reductions in services and activities fees contained in the following:

- (a) RCW 28B.15.522;
- (b) RCW 28B.15.540; and
- (c) RCW 28B.15.558.

(4) The total amount of operating fees revenue waived, exempted, or reduced by institutions of higher education participating in the western interstate commission for higher education western undergraduate exchange program under RCW 28B.15.544 shall not exceed the percentage of total gross authorized operating fees revenue in this subsection.

- (a) Washington State University 1 percent
- (b) Eastern Washington University 3 percent
- (c) Central Washington University 3 percent

(5) The institutions of higher education will participate in outreach activities to increase the number of veterans who receive tuition waivers. Colleges and universities shall revise the application for admissions so that all applicants shall have the opportunity to advise the institution that they are veterans who need assistance. If a person indicates on the application for admissions that the person is a veteran who is in need of assistance, then the institution of higher education shall ask the person whether they have any funds disbursed in accordance with the Montgomery GI Bill available to them. Each institution shall encourage veterans to utilize funds available to them in accordance with the Montgomery GI Bill prior to providing the veteran a tuition waiver.

Passed by the House March 4, 2006.
 Passed by the Senate March 2, 2006.
 Approved by the Governor March 27, 2006.
 Filed in Office of Secretary of State March 27, 2006.

CHAPTER 230

[Substitute Senate Bill 5236]

PREVAILING WAGE PROGRAM—FUNDING

AN ACT Relating to providing additional funding to the prevailing wage program of the department of labor and industries by discontinuing the transfer of moneys from the public works administration account to the general fund-state account; amending RCW 39.12.070 and 39.12.080; and providing an effective date.

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

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

The department of labor and industries may charge fees to awarding agencies on public works for the approval of statements of intent to pay prevailing wages and the certification of affidavits of wages paid. The department may also charge fees to persons or organizations requesting the

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

The department shall set the fees permitted by this section at a level that generates revenue that is as near as practicable to the amount of the appropriation to administer this chapter, including, but not limited to, the performance of adequate wage surveys, and to investigate and enforce all alleged violations of this chapter, including, but not limited to, incorrect statements of intent to pay prevailing wage, incorrect certificates of affidavits of wages paid, and wage claims, as provided for in this chapter and chapters 49.48 and 49.52 RCW. However, the fees charged for the approval of statements of intent to pay prevailing wages and the certification of affidavits of wages paid shall be no greater than twenty-five dollars.

Sec. 2. RCW 39.12.080 and 2001 c 219 s 3 are each amended to read as follows:

The public works administration account is created in the state treasury. The department of labor and industries shall deposit in the account all moneys received from fees or civil penalties collected under RCW 39.12.050, 39.12.065, and 39.12.070. Appropriations from the account ~~((; not including moneys transferred to the general fund pursuant to RCW 39.12.070;))~~ may be made only for the purposes of administration of this chapter, including, but not limited to, the performance of adequate wage surveys, and for the investigation and enforcement of all alleged violations of this chapter as provided for in this chapter and chapters 49.48 and 49.52 RCW.

NEW SECTION. **Sec. 3.** This act takes effect July 1, 2007.

Passed by the Senate February 13, 2006.

Passed by the House March 2, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 231

[Engrossed Substitute Senate Bill 5305]

MERCURY-CONTAINING VACCINES

AN ACT Relating to the use of mercury-containing vaccines; adding a new section to chapter 70.95M RCW; and creating a new section.

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

NEW SECTION. **Sec. 1.** The legislature finds that vaccinations and immunizations are among the most important public health innovations of the

last one hundred years. The centers for disease control and prevention placed vaccinations at the top of its list of the ten greatest public health achievements of the twentieth century. In its efforts to improve public health in the world's poorest countries, the Bill and Melinda Gates foundation has identified childhood immunization as a cost-effective method of improving public health and saving the lives of millions of children around the world.

Fortunately, in Washington, safe and cost-effective vaccinations against childhood diseases are widely available through both public and private resources. The vaccines that the Washington state department of health provides to meet the requirements for the recommended childhood vaccination schedule through its universal childhood vaccine program are screened for thimerosal and preference is given toward the purchase of thimerosal-free products. The department of health currently provides thimerosal-free products for all routinely recommended childhood vaccines. Regardless of the absence of thimerosal in childhood vaccines in Washington, scientifically reputable organizations such as the centers for disease control and prevention, the national institute of medicine, the American academy of pediatrics, the food and drug administration, and the world health organization have all determined that there is no credible evidence that the use of thimerosal in vaccines poses a threat to the health and safety of children.

Notwithstanding these assurances of the safety of the vaccine supply, the legislature finds that where there is public concern over the safety of vaccines, vaccination rates may be reduced to the point that deadly, vaccine-preventable, childhood diseases return. This measure is being enacted to maintain public confidence in vaccine programs, so that the public will continue to seek vaccinations and their health benefits may continue to protect the people of Washington.

NEW SECTION. Sec. 2. A new section is added to chapter 70.95M RCW to read as follows:

(1) Beginning July 1, 2007, a person who is known to be pregnant or who is under three years of age shall not be vaccinated with a mercury-containing vaccine or injected with a mercury-containing product that contains more than 0.5 micrograms of mercury per 0.5 milliliter dose.

(2) Notwithstanding subsection (1) of this section, an influenza vaccine may contain up to 1.0 micrograms of mercury per 0.5 milliliter dose.

(3) The secretary of the department of health may, upon declaration of a public health emergency, suspend the requirements of this section for the duration of the emergency.

(4) All vaccines and products referenced under this section must meet food and drug administration licensing requirements.

Passed by the Senate March 8, 2006.

Passed by the House March 7, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 232

[Engrossed Substitute Senate Bill 5535]

OPTOMETRY—LICENSING

AN ACT Relating to optometry; amending RCW 18.53.010; and adding a new section to chapter 18.53 RCW.

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

Sec. 1. RCW 18.53.010 and 2003 c 142 s 1 are each amended to read as follows:

(1) The practice of optometry is defined as the examination of the human eye, the examination and ascertaining any defects of the human vision system and the analysis of the process of vision. The practice of optometry may include, but not necessarily be limited to, the following:

(a) The employment of any objective or subjective means or method, including the use of drugs, for diagnostic and therapeutic purposes by those licensed under this chapter and who meet the requirements of subsections (2) and (3) of this section, and the use of any diagnostic instruments or devices for the examination or analysis of the human vision system, the measurement of the powers or range of human vision, or the determination of the refractive powers of the human eye or its functions in general; and

(b) The prescription and fitting of lenses, prisms, therapeutic or refractive contact lenses and the adaption or adjustment of frames and lenses used in connection therewith; and

(c) The prescription and provision of visual therapy, therapeutic aids, and other optical devices; and

(d) The ascertainment of the perceptive, neural, muscular, or pathological condition of the visual system; and

(e) The adaptation of prosthetic eyes.

(2)(a) Those persons using topical drugs for diagnostic purposes in the practice of optometry shall have a minimum of sixty hours of didactic and clinical instruction in general and ocular pharmacology as applied to optometry, as established by the board, and certification from an institution of higher learning, accredited by those agencies recognized by the United States office of education or the council on postsecondary accreditation to qualify for certification by the optometry board of Washington to use drugs for diagnostic purposes.

(b) Those persons using or prescribing topical drugs for therapeutic purposes in the practice of optometry must be certified under (a) of this subsection, and must have an additional minimum of seventy-five hours of didactic and clinical instruction as established by the board, and certification from an institution of higher learning, accredited by those agencies recognized by the United States office of education or the council on postsecondary accreditation to qualify for certification by the optometry board of Washington to use drugs for therapeutic purposes.

(c) Those persons using or prescribing drugs administered orally for diagnostic or therapeutic purposes in the practice of optometry shall be certified under (b) of this subsection, and shall have an additional minimum of sixteen hours of didactic and eight hours of supervised clinical instruction as established by the board, and certification from an institution of higher learning, accredited

by those agencies recognized by the United States office of education or the council on postsecondary accreditation to qualify for certification by the optometry board of Washington to administer, dispense, or prescribe oral drugs for diagnostic or therapeutic purposes.

(d) Those persons administering epinephrine by injection for treatment of anaphylactic shock in the practice of optometry must be certified under (b) of this subsection and must have an additional minimum of four hours of didactic and supervised clinical instruction, as established by the board, and certification from an institution of higher learning, accredited by those agencies recognized by the United States office of education or the council on postsecondary accreditation to qualify for certification by the optometry board to administer epinephrine by injection.

(e) Such course or courses shall be the fiscal responsibility of the participating and attending optometrist.

(f)(i) All persons receiving their initial license under this chapter on or after January 1, 2007, must be certified under (a), (b), (c), and (d) of this subsection.

(ii) All persons licensed under this chapter on or after January 1, 2009, must be certified under (a) and (b) of this subsection.

(iii) All persons licensed under this chapter on or after January 1, 2011, must be certified under (a), (b), (c), and (d) of this subsection.

(3) The board shall establish a list of topical drugs for diagnostic and treatment purposes limited to the practice of optometry, and no person licensed pursuant to this chapter shall prescribe, dispense, purchase, possess, or administer drugs except as authorized and to the extent permitted by the board.

(4) The board must establish a list of oral Schedule III through V controlled substances and any oral legend drugs, with the approval of and after consultation with the board of pharmacy. No person licensed under this chapter may use, prescribe, dispense, purchase, possess, or administer these drugs except as authorized and to the extent permitted by the board. No optometrist may use, prescribe, dispense, or administer oral corticosteroids.

(a) The board, with the approval of and in consultation with the board of pharmacy, must establish, by rule, specific guidelines for the prescription and administration of drugs by optometrists, so that licensed optometrists and persons filling their prescriptions have a clear understanding of which drugs and which dosages or forms are included in the authority granted by this section.

(b) An optometrist may not:

(i) Prescribe, dispense, or administer a controlled substance for more than seven days in treating a particular patient for a single trauma, episode, or condition or for pain associated with or related to the trauma, episode, or condition; or

(ii) Prescribe an oral drug within ninety days following ophthalmic surgery unless the optometrist consults with the treating ophthalmologist.

(c) If treatment exceeding the limitation in (b)(i) of this subsection is indicated, the patient must be referred to a physician licensed under chapter 18.71 RCW.

(d) The prescription or administration of drugs as authorized in this section is specifically limited to those drugs appropriate to treatment of diseases or conditions of the human eye and the adnexa that are within the scope of practice

of optometry. The prescription or administration of drugs for any other purpose is not authorized by this section.

(5) The board shall develop a means of identification and verification of optometrists certified to use therapeutic drugs for the purpose of issuing prescriptions as authorized by this section.

(6) Nothing in this chapter may be construed to authorize the use, prescription, dispensing, purchase, possession, or administration of any Schedule I or II controlled substance. The provisions of this subsection must be strictly construed.

(7) With the exception of the administration of epinephrine by injection for the treatment of anaphylactic shock, no injections or infusions may be administered by an optometrist.

(8) Nothing in this chapter may be construed to authorize optometrists to perform ophthalmic surgery. Ophthalmic surgery is defined as any invasive procedure in which human tissue is cut, ablated, or otherwise penetrated by incision, injection, laser, ultrasound, or other means, in order to: Treat human eye diseases; alter or correct refractive error; or alter or enhance cosmetic appearance. Nothing in this chapter limits an optometrist's ability to use diagnostic instruments utilizing laser or ultrasound technology. Ophthalmic surgery, as defined in this subsection, does not include removal of superficial ocular foreign bodies, epilation of misaligned eyelashes, placement of punctal or lacrimal plugs, diagnostic dilation and irrigation of the lacrimal system, orthokeratology, prescription and fitting of contact lenses with the purpose of altering refractive error, or other similar procedures within the scope of practice of optometry.

NEW SECTION. Sec. 2. A new section is added to chapter 18.53 RCW to read as follows:

The optometry board may adopt rules under this section authorizing an inactive license status.

(1) An individual licensed under this chapter may place his or her license on inactive status. The holder of an inactive license must not practice optometry in this state without first activating the license.

(2) The inactive renewal fee must be established by the secretary under RCW 43.70.250. Failure to renew an inactive license shall result in cancellation of the inactive license in the same manner as an active license.

(3) An inactive license may be placed in an active status upon compliance with rules established by the optometry board.

(4) Provisions relating to disciplinary action against a person with a license are applicable to a person with an inactive license, except that when disciplinary proceedings against a person with an inactive license have been initiated, the license will remain inactive until the proceedings have been completed.

Passed by the Senate March 6, 2006.

Passed by the House March 2, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 233

[Substitute Senate Bill 5838]

HEPATITIS C VIRUS TREATMENT—NONPREFERRED DRUGS

AN ACT Relating to the substitution of a preferred drug for a nonpreferred drug in hepatitis C virus treatments; and amending RCW 69.41.190.

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

Sec. 1. RCW 69.41.190 and 2003 1st sp.s. c 29 s 5 are each amended to read as follows:

(1) Any pharmacist filling a prescription under a state purchased health care program as defined in RCW 41.05.011(2) shall substitute, where identified, a preferred drug for any nonpreferred drug in a given therapeutic class, unless the endorsing practitioner has indicated on the prescription that the nonpreferred drug must be dispensed as written, or the prescription is for a refill of an antipsychotic, antidepressant, chemotherapy, antiretroviral, or immunosuppressive drug, or for the refill of an immunomodulator/antiviral treatment for hepatitis C for which an established, fixed duration of therapy is prescribed for at least twenty-four weeks but no more than forty-eight weeks, in which case the pharmacist shall dispense the prescribed nonpreferred drug.

(2) When a substitution is made under subsection (1) of this section, the dispensing pharmacist shall notify the prescribing practitioner of the specific drug and dose dispensed.

Passed by the Senate February 10, 2006.

Passed by the House February 28, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 234

[Engrossed Substitute House Bill 2507]

HIGHER EDUCATION—FALSE ACADEMIC CREDENTIALS

AN ACT Relating to degree-granting institutions of higher education; amending RCW 28B.85.020 and 28B.85.040; adding a new section to chapter 28B.85 RCW; adding a new section to chapter 9A.60 RCW; adding a new section to chapter 28A.405 RCW; adding a new section to chapter 28B.50 RCW; adding a new section to chapter 41.06 RCW; and prescribing penalties.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 28B.85 RCW to read as follows:

(1) It is unlawful for a person to:

(a) Grant or award a false academic credential or offer to grant or award a false academic credential in violation of this section;

(b) Represent that a credit earned or granted by the person, in violation of this section, can be applied toward a credential offered by another person; or

(c) Solicit another person to seek a credential or to earn a credit that is offered in violation of this section.

(2) The definitions in section 2 of this act apply to this section.

(3) A violation of this section constitutes an unfair or deceptive act or practice in the conduct of trade or commerce under chapter 19.86 RCW.

(4) In addition to any other venue authorized by law, venue for the prosecution of an offense under this section is in the county in which an element of the offense occurs.

NEW SECTION. Sec. 2. A new section is added to chapter 9A.60 RCW to read as follows:

(1) A person is guilty of issuing a false academic credential if the person knowingly:

(a) Grants or awards a false academic credential or offers to grant or award a false academic credential in violation of this section;

(b) Represents that a credit earned or granted by the person in violation of this section can be applied toward a credential offered by another person;

(c) Grants or offers to grant a credit for which a representation as described in (b) of this subsection is made; or

(d) Solicits another person to seek a credential or to earn a credit the person knows is offered in violation of this section.

(2) A person is guilty of knowingly using a false academic credential if the person knowingly uses a false academic credential or falsely claims to have a credential issued by an institution of higher education that is accredited by an accrediting association recognized as such by rule of the higher education coordinating board:

(a) In a written or oral advertisement or other promotion of a business; or

(b) With the intent to:

(i) Obtain employment;

(ii) Obtain a license or certificate to practice a trade, profession, or occupation;

(iii) Obtain a promotion, compensation or other benefit, or an increase in compensation or other benefit, in employment or in the practice of a trade, profession, or occupation;

(iv) Obtain admission to an educational program in this state; or

(v) Gain a position in government with authority over another person, regardless of whether the person receives compensation for the position.

(3) The definitions in this subsection apply throughout this section and section 1 of this act.

(a) "False academic credential" means a document that provides evidence or demonstrates completion of an academic or professional course of instruction beyond the secondary level that results in the attainment of an academic certificate, degree, or rank, and that is not issued by a person or entity that: (i) Is an entity accredited by an agency recognized as such by rule of the higher education coordinating board or has the international equivalents of such accreditation; or (ii) is an entity authorized as a degree-granting institution by the higher education coordinating board; or (iii) is an entity exempt from the requirements of authorization as a degree-granting institution by the higher education coordinating board; or (iv) is an entity that has been granted a waiver by the higher education coordinating board from the requirements of authorization by the board. Such documents include, but are not limited to, academic certificates, degrees, coursework, degree credits, transcripts, or certification of completion of a degree.

(b) "Grant" means award, bestow, confer, convey, sell, or give.

(c) "Offer," in addition to its usual meanings, means advertise, publicize, or solicit.

(d) "Operate" includes but is not limited to the following:

(i) Offering courses in person, by correspondence, or by electronic media at or to any Washington location for degree credit;

(ii) Granting or offering to grant degrees in Washington;

(iii) Maintaining or advertising a Washington location, mailing address, computer server, or telephone number, for any purpose, other than for contact with the institution's former students for any legitimate purpose related to the students having attended the institution.

(4) Issuing a false academic credential is a class C felony.

(5) Knowingly using a false academic credential is a gross misdemeanor.

Sec. 3. RCW 28B.85.020 and 2005 c 274 s 246 are each amended to read as follows:

(1) The board:

(a) Shall adopt by rule, in accordance with chapter 34.05 RCW, minimum standards for degree-granting institutions concerning granting of degrees, quality of education, unfair business practices, financial stability, and other necessary measures to protect citizens of this state against substandard, fraudulent, or deceptive practices. The rules ~~((may))~~ shall require that an institution operating in Washington:

(i) Be accredited ((or be making progress toward accreditation by an accrediting agency recognized by the United States department of education. The board shall adopt the rules in accordance with chapter 34.05 RCW));

(ii) Have applied for accreditation and such application is pending before the accrediting agency;

(iii) Have been granted a waiver by the board waiving the requirement of accreditation; or

(iv) Have been granted an exemption by the board from the requirements of this subsection (1)(a);

(b) May investigate any entity the board reasonably believes to be subject to the jurisdiction of this chapter. In connection with the investigation, the board may administer oaths and affirmations, issue subpoenas and compel attendance, take evidence, and require the production of any books, papers, correspondence, memorandums, or other records which the board deems relevant or material to the investigation. The board, including its staff and any other authorized persons, may conduct site inspections, the cost of which shall be borne by the institution, and examine records of all institutions subject to this chapter;

(c) Shall develop an interagency agreement with the work force training and education coordinating board to regulate degree-granting private vocational schools with respect to degree and nondegree programs; and

(d) Shall develop and disseminate information to the public about entities that sell or award degrees without requiring appropriate academic achievement at the postsecondary level, including but not limited to, a description of the substandard and potentially fraudulent practices of these entities, and advice about how the public can recognize and avoid the entities. To the extent feasible, the information shall include links to additional resources that may assist the public in identifying specific institutions offering substandard or fraudulent degree programs.

(2) Financial disclosures provided to the board by degree-granting private vocational schools are not subject to public disclosure under chapter 42.56 RCW.

Sec. 4. RCW 28B.85.040 and 2004 c 96 s 2 are each amended to read as follows:

(1) An institution or person shall not advertise, offer, sell, or award a degree or any other type of educational credential unless the student has enrolled in and successfully completed a prescribed program of study, as outlined in the institution's publications. This prohibition shall not apply to honorary credentials clearly designated as such on the front side of the diploma or certificate and awarded by institutions offering other educational credentials in compliance with state law.

(2) No exemption or waiver granted under this chapter is permanent. The board shall periodically review exempted degree-granting institutions and degree-granting institutions granted a waiver, and continue exemptions or waivers only if an institution meets the statutory or board requirements for exemption or waiver in effect on the date of the review.

(3) Except as provided in subsection (1) of this section, this chapter shall not apply to:

(a) Any public college, university, community college, technical college, or institute operating as part of the public higher educational system of this state;

(b) Institutions that have been accredited by an accrediting association recognized by the agency for the purposes of this chapter: PROVIDED, That those institutions meet minimum exemption standards adopted by the agency; and PROVIDED FURTHER, That an institution, branch, extension, or facility operating within the state of Washington which is affiliated with an institution operating in another state must be a separately accredited member institution of any such accrediting association to qualify for this exemption;

(c) Institutions of a religious character, but only as to those education programs devoted exclusively to religious or theological objectives if the programs are represented in an accurate manner in institutional catalogs and other official publications;

(d) Honorary credentials clearly designated as such on the front side of the diploma or certificate awarded by institutions offering other educational credentials in compliance with state law; or

(e) Institutions not otherwise exempt which offer only workshops or seminars and institutions offering only credit-bearing workshops or seminars lasting no longer than three calendar days.

NEW SECTION. Sec. 5. A new section is added to chapter 28A.405 RCW to read as follows:

A person who issues or uses a false academic credential is subject to sections 1 and 2 of this act.

NEW SECTION. Sec. 6. A new section is added to chapter 28B.50 RCW to read as follows:

A person who issues or uses a false academic credential is subject to sections 1 and 2 of this act.

NEW SECTION. Sec. 7. A new section is added to chapter 41.06 RCW to read as follows:

A person who issues or uses a false academic credential is subject to sections 1 and 2 of this act.

Passed by the House March 8, 2006.

Passed by the Senate March 7, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 235

[Engrossed Substitute Senate Bill 6106]

HEALTH CARE INFORMATION DISCLOSURE—LAW ENFORCEMENT PERSONNEL

AN ACT Relating to disclosure of health care information for law enforcement purposes; amending RCW 70.02.010, 70.02.050, and 68.50.320; creating a new section; and declaring an emergency.

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

NEW SECTION. Sec. 1. The purpose of this act is to aid law enforcement in combating crime through the rapid identification of all persons who require medical treatment as a result of a criminal act and to assist in the rapid identification of human remains.

Sec. 2. RCW 70.02.010 and 2005 c 468 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) "Audit" means an assessment, evaluation, determination, or investigation of a health care provider by a person not employed by or affiliated with the provider to determine compliance with:

- (a) Statutory, regulatory, fiscal, medical, or scientific standards;
- (b) A private or public program of payments to a health care provider; or
- (c) Requirements for licensing, accreditation, or certification.

(2) "Directory information" means information disclosing the presence, and for the purpose of identification, the name, location within a health care facility, and the general health condition of a particular patient who is a patient in a health care facility or who is currently receiving emergency health care in a health care facility.

(3) "Federal, state, or local law enforcement authorities" means an officer of any agency or authority in the United States, a state, a tribe, a territory, or a political subdivision of a state, a tribe, or a territory who is empowered by law to: (a) Investigate or conduct an official inquiry into a potential criminal violation of law; or (b) prosecute or otherwise conduct a criminal proceeding arising from an alleged violation of law.

(4) "General health condition" means the patient's health status described in terms of "critical," "poor," "fair," "good," "excellent," or terms denoting similar conditions.

~~((4))~~ (5) "Health care" means any care, service, or procedure provided by a health care provider:

- (a) To diagnose, treat, or maintain a patient's physical or mental condition;
- or
- (b) That affects the structure or any function of the human body.

~~((5))~~ (6) "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients.

~~((6))~~ (7) "Health care information" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and directly relates to the patient's health care, including a patient's deoxyribonucleic acid and identified sequence of chemical base pairs. The term includes any required accounting of disclosures of health care information.

~~((7))~~ (8) "Health care operations" means any of the following activities of a health care provider, health care facility, or third-party payor to the extent that the activities are related to functions that make an entity a health care provider, a health care facility, or a third-party payor:

(a) Conducting: Quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines, if the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from such activities; population-based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment;

(b) Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance and third-party payor performance, conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers, training of nonhealth care professionals, accreditation, certification, licensing, or credentialing activities;

(c) Underwriting, premium rating, and other activities relating to the creation, renewal, or replacement of a contract of health insurance or health benefits, and ceding, securing, or placing a contract for reinsurance of risk relating to claims for health care, including stop-loss insurance and excess of loss insurance, if any applicable legal requirements are met;

(d) Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs;

(e) Business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating the health care facility or third-party payor, including formulary development and administration, development, or improvement of methods of payment or coverage policies; and

(f) Business management and general administrative activities of the health care facility, health care provider, or third-party payor including, but not limited to:

(i) Management activities relating to implementation of and compliance with the requirements of this chapter;

(ii) Customer service, including the provision of data analyses for policy holders, plan sponsors, or other customers, provided that health care information is not disclosed to such policy holder, plan sponsor, or customer;

(iii) Resolution of internal grievances;

(iv) The sale, transfer, merger, or consolidation of all or part of a health care provider, health care facility, or third-party payor with another health care

provider, health care facility, or third-party payor or an entity that following such activity will become a health care provider, health care facility, or third-party payor, and due diligence related to such activity; and

(v) Consistent with applicable legal requirements, creating deidentified health care information or a limited dataset and fund-raising for the benefit of the health care provider, health care facility, or third-party payor.

~~((8))~~ (9) "Health care provider" means a person who is licensed, certified, registered, or otherwise authorized by the law of this state to provide health care in the ordinary course of business or practice of a profession.

~~((9))~~ (10) "Institutional review board" means any board, committee, or other group formally designated by an institution, or authorized under federal or state law, to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects.

~~((10))~~ (11) "Maintain," as related to health care information, means to hold, possess, preserve, retain, store, or control that information.

~~((11))~~ (12) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

~~((12))~~ (13) "Payment" means:

(a) The activities undertaken by:

(i) A third-party payor to obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits by the third-party payor; or

(ii) A health care provider, health care facility, or third-party payor, to obtain or provide reimbursement for the provision of health care; and

(b) The activities in (a) of this subsection that relate to the patient to whom health care is provided and that include, but are not limited to:

(i) Determinations of eligibility or coverage, including coordination of benefits or the determination of cost-sharing amounts, and adjudication or subrogation of health benefit claims;

(ii) Risk adjusting amounts due based on enrollee health status and demographic characteristics;

(iii) Billing, claims management, collection activities, obtaining payment under a contract for reinsurance, including stop-loss insurance and excess of loss insurance, and related health care data processing;

(iv) Review of health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges;

(v) Utilization review activities, including precertification and preauthorization of services, and concurrent and retrospective review of services; and

(vi) Disclosure to consumer reporting agencies of any of the following health care information relating to collection of premiums or reimbursement:

(A) Name and address;

(B) Date of birth;

(C) Social security number;

(D) Payment history;

(E) Account number; and

(F) Name and address of the health care provider, health care facility, and/or third-party payor.

~~((13))~~ (14) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

~~((14))~~ (15) "Reasonable fee" means the charges for duplicating or searching the record, but shall not exceed sixty-five cents per page for the first thirty pages and fifty cents per page for all other pages. In addition, a clerical fee for searching and handling may be charged not to exceed fifteen dollars. These amounts shall be adjusted biennially in accordance with changes in the consumer price index, all consumers, for Seattle-Tacoma metropolitan statistical area as determined by the secretary of health. However, where editing of records by a health care provider is required by statute and is done by the provider personally, the fee may be the usual and customary charge for a basic office visit.

~~((15))~~ (16) "Third-party payor" means an insurer regulated under Title 48 RCW authorized to transact business in this state or other jurisdiction, including a health care service contractor, and health maintenance organization; or an employee welfare benefit plan; or a state or federal health benefit program.

~~((16))~~ (17) "Treatment" means the provision, coordination, or management of health care and related services by one or more health care providers or health care facilities, including the coordination or management of health care by a health care provider or health care facility with a third party; consultation between health care providers or health care facilities relating to a patient; or the referral of a patient for health care from one health care provider or health care facility to another.

Sec. 3. RCW 70.02.050 and 2005 c 468 s 4 are each amended to read as follows:

(1) A health care provider or health care facility may disclose health care information about a patient without the patient's authorization to the extent a recipient needs to know the information, if the disclosure is:

(a) To a person who the provider or facility reasonably believes is providing health care to the patient;

(b) To any other person who requires health care information for health care education, or to provide planning, quality assurance, peer review, or administrative, legal, financial, actuarial services to, or other health care operations for or on behalf of the health care provider or health care facility; or for assisting the health care provider or health care facility in the delivery of health care and the health care provider or health care facility reasonably believes that the person:

(i) Will not use or disclose the health care information for any other purpose; and

(ii) Will take appropriate steps to protect the health care information;

(c) To any other health care provider or health care facility reasonably believed to have previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider or health care facility in writing not to make the disclosure;

(d) To any person if the health care provider or health care facility reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the patient or any other individual, however there is no obligation under this chapter on the part of the provider or facility to so disclose;

(e) To immediate family members of the patient, or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with good medical or other professional practice, unless the patient has instructed the health care provider or health care facility in writing not to make the disclosure;

(f) To a health care provider or health care facility who is the successor in interest to the health care provider or health care facility maintaining the health care information;

(g) For use in a research project that an institutional review board has determined:

(i) Is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

(ii) Is impracticable without the use or disclosure of the health care information in individually identifiable form;

(iii) Contains reasonable safeguards to protect the information from redisclosure;

(iv) Contains reasonable safeguards to protect against identifying, directly or indirectly, any patient in any report of the research project; and

(v) Contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project;

(h) To a person who obtains information for purposes of an audit, if that person agrees in writing to:

(i) Remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(ii) Not to disclose the information further, except to accomplish the audit or report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient, or other unlawful conduct by the health care provider;

(i) To an official of a penal or other custodial institution in which the patient is detained;

(j) To provide directory information, unless the patient has instructed the health care provider or health care facility not to make the disclosure;

(k) To fire, police, sheriff, or another public authority, that brought, or caused to be brought, the patient to the health care facility or health care provider if the disclosure is limited to the patient's name, residence, sex, age, occupation, condition, diagnosis, estimated or actual discharge date, or extent and location of injuries as determined by a physician, and whether the patient was conscious when admitted;

(l) To federal, state, or local law enforcement authorities and the health care provider, health care facility, or third-party payor believes in good faith that the health care information disclosed constitutes evidence of criminal conduct that occurred on the premises of the health care provider, health care facility, or third-party payor;

(m) To another health care provider, health care facility, or third-party payor for the health care operations of the health care provider, health care facility, or third-party payor that receives the information, if each entity has or had a relationship with the patient who is the subject of the health care information

being requested, the health care information pertains to such relationship, and the disclosure is for the purposes described in RCW 70.02.010(~~((7))~~) (8) (a) and (b); or

(n) For payment.

(2) A health care provider shall disclose health care information about a patient without the patient's authorization if the disclosure is:

(a) To federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information; when needed to determine compliance with state or federal licensure, certification or registration rules or laws; or when needed to protect the public health;

(b) To federal, state, or local law enforcement authorities to the extent the health care provider is required by law;

(c) To federal, state, or local law enforcement authorities, upon receipt of a written or oral request made to a nursing supervisor, administrator, or designated privacy official, in a case in which the patient is being treated or has been treated for a bullet wound, gunshot wound, powder burn, or other injury arising from or caused by the discharge of a firearm, or an injury caused by a knife, an ice pick, or any other sharp or pointed instrument which federal, state, or local law enforcement authorities reasonably believe to have been intentionally inflicted upon a person, or a blunt force injury that federal, state, or local law enforcement authorities reasonably believe resulted from a criminal act, the following information, if known:

(i) The name of the patient;

(ii) The patient's residence;

(iii) The patient's sex;

(iv) The patient's age;

(v) The patient's condition;

(vi) The patient's diagnosis, or extent and location of injuries as determined by a health care provider;

(vii) Whether the patient was conscious when admitted;

(viii) The name of the health care provider making the determination in (c)(v), (vi), and (vii) of this subsection;

(ix) Whether the patient has been transferred to another facility; and

(x) The patient's discharge time and date;

(d) To county coroners and medical examiners for the investigations of deaths;

~~((4))~~ (e) Pursuant to compulsory process in accordance with RCW 70.02.060.

(3) All state or local agencies obtaining patient health care information pursuant to this section shall adopt rules establishing their record acquisition, retention, and security policies that are consistent with this chapter.

Sec. 4. RCW 68.50.320 and 2001 c 223 s 1 are each amended to read as follows:

When a person reported missing has not been found within thirty days of the report, the sheriff, chief of police, county coroner or county medical examiner, or other law enforcement authority initiating and conducting the investigation for the missing person shall ask the missing person's family or next of kin to give written consent to contact the dentist or dentists of the missing person and request the person's dental records.

The missing person's dentist or dentists shall provide diagnostic quality copies of the missing person's dental records or original dental records to the sheriff, chief of police, county coroner or county medical examiner, or other law enforcement authority, when presented with the written consent from the missing person's family or next of kin or with a statement from the sheriff, chief of police, county coroner or county medical examiner, or other law enforcement authority that the missing person's family or next of kin could not be located in the exercise of due diligence or that the missing person's family or next of kin refuse to consent to the release of the missing person's dental records and there is reason to believe that the missing person's family or next of kin may have been involved in the missing person's disappearance.

When a person reported missing has not been found within thirty days, the sheriff, chief of police, or other law enforcement authority initiating and conducting the investigation for the missing person shall confer with the county coroner or medical examiner prior to the preparation of a missing person's report. After conferring with the coroner or medical examiner, the sheriff, chief of police, or other law enforcement authority shall submit a missing person's report and the dental records received under this section to the dental identification system of the state patrol identification, child abuse, vulnerable adult abuse, and criminal history section on forms supplied by the state patrol for such purpose.

When a person reported missing has been found, the sheriff, chief of police, coroner or medical examiner, or other law enforcement authority shall report such information to the state patrol.

The dental identification system shall maintain a file of information regarding persons reported to it as missing. The file shall contain the information referred to in this section and such other information as the state patrol finds relevant to assist in the location of a missing person.

The files of the dental identification system shall, upon request, be made available to law enforcement agencies attempting to locate missing persons.

NEW SECTION. Sec. 5. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate March 4, 2006.

Passed by the House February 28, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 236

[Second Substitute Senate Bill 6193]

HEALTH CARE WORK FORCE—DEMOGRAPHICS SURVEY

AN ACT Relating to health professions work force supply and demographics information; adding a new section to chapter 43.70 RCW; creating a new section; providing an effective date; and providing an expiration date.

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

NEW SECTION. Sec. 1. The legislature finds that people of color experience significant disparities from the general population in education,

employment, healthy living conditions, access to health care, and other social determinants of health. The legislature intends to address barriers to gender-appropriate and culturally and linguistically appropriate health care and health education materials, including increasing the number of female and minority health care providers, through expanded recruiting, education, and retention programs. The legislature finds that before developing a work force that is representative of the diversity of the state's population, relevant and accurate data on health care professionals, students in health care professions, and recipients of health services must first be collected.

NEW SECTION. Sec. 2. A new section is added to chapter 43.70 RCW to read as follows:

(1) The department, in collaboration with the work force training and education coordinating board, shall distribute survey questions for the purpose of gathering data related to work force supply and demographics to all health care providers who hold a license to practice a health profession. The department shall adopt a schedule for distributing surveys by profession so that each profession is surveyed every two years. In developing the survey, the department shall seek advice from researchers that are likely to use the survey data.

(2)(a) At a minimum, the survey shall include questions related to understanding the following characteristics of individuals in the health care work force:

- (i) Specialty;
- (ii) Birthdate and gender;
- (iii) Race and ethnicity;
- (iv) Hours in practice per week;
- (v) Practice statistics, including hours spent in direct patient care;
- (vi) Zip codes of the location where the provider practices;
- (vii) Years in practice, years in practice in Washington, location and years in practice in other jurisdictions;
- (viii) Education and training background, including the location and types of education and training received; and
- (ix) Type of facilities where the provider practices.

(b) The department may approve proposals for the distribution of surveys containing additional data elements to selected health care professions if it determines that there is a legitimate research interest in obtaining the information, the additional burden on members of the health care profession is not unreasonable, the effect on survey response rates is not unreasonable, and there are funds available. The department may accept funds through contracts, grants, donations, or other forms of contributions to support more detailed surveys.

(3) The department must make a public data set available that meets the confidentiality requirements of subsection (5) of this section. The department may respond to requests for data and other information from the registry for special studies and analysis pursuant to a data-sharing agreement. Any use of the data by the requestor must comply with the confidentiality requirements of subsection (5) of this section. The department may require requestors to pay any or all of the reasonable costs associated with such requests that may be approved.

(4) The failure to complete or return the survey may not be grounds to withhold, fail to renew, or revoke a license or to impose any other disciplinary sanctions against a credentialed health care provider.

(5) The department must process the surveys that it receives in such a way that the identity of individual providers remains confidential. Data elements related to the identification of individual providers are confidential and are exempt from RCW 42.56.040 through 42.56.570 and 42.17.350 through 42.17.450, except as provided in a data-sharing agreement approved by the department pursuant to subsection (3) of this section.

(6) By July 1, 2009, the department shall provide a report to the appropriate committees of the legislature on the effectiveness of using a survey to obtain information on the supply of health care professionals, the distribution and use of the information obtained by the surveys by employers and health professions education and training programs and the extent to which the surveys have alleviated identified shortages of trained health care providers.

NEW SECTION. Sec. 3. Section 1 of this act takes effect July 1, 2006.

NEW SECTION. Sec. 4. This act expires January 1, 2012.

Passed by the Senate March 7, 2006.

Passed by the House March 2, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 237

[Engrossed Senate Bill 6194]

HEALTH CARE PROFESSIONALS—MULTICULTURAL EDUCATION

AN ACT Relating to multicultural education for health professionals; adding a new section to chapter 43.70 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that women and people of color experience significant disparities from the general population in education, employment, healthy living conditions, access to health care, and other social determinants of health. The legislature finds that it shall be a priority for the state to develop the knowledge, attitudes, and practice skills of health professionals and those working with diverse populations to achieve a greater understanding of the relationship between culture and health and gender and health.

NEW SECTION. Sec. 2. A new section is added to chapter 43.70 RCW to read as follows:

(1) For the purposes of this section, "multicultural health" means the provision of health care services with the knowledge and awareness of the causes and effects of the determinants of health that lead to disparities in health status between different genders and racial and ethnic populations and the practice skills necessary to respond appropriately.

(2) The department, in consultation with the disciplining authorities as defined in RCW 18.130.040, shall establish, within available department general funds, an ongoing multicultural health awareness and education program as an

integral part of its health professions regulation. The purpose of the education program is to raise awareness and educate health care professionals regarding the knowledge, attitudes, and practice skills necessary to care for diverse populations to achieve a greater understanding of the relationship between culture and health. The disciplining authorities having the authority to offer continuing education may provide training in the dynamics of providing culturally competent, multicultural health care to diverse populations. Any such education shall be developed in collaboration with education programs that train students in that health profession. A disciplining authority may require that instructors of continuing education or continuing competency programs integrate multicultural health into their curricula when it is appropriate to the subject matter of the instruction. No funds from the health professions account may be utilized to fund activities under this section unless the disciplining authority authorizes expenditures from its proportions of the account. A disciplining authority may defray costs by authorizing a fee to be charged for participants or materials relating to any sponsored program.

(3) By July 1, 2008, each education program with a curriculum to train health professionals for employment in a profession credentialed by a disciplining authority under chapter 18.130 RCW shall integrate into the curriculum instruction in multicultural health as part of its basic education preparation curriculum. The department may not deny the application of any applicant for a credential to practice a health profession on the basis that the education or training program that the applicant successfully completed did not include integrated multicultural health curriculum as part of its basic instruction.

Passed by the Senate March 7, 2006.

Passed by the House March 1, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 238

[Substitute Senate Bill 6196]

BOARD OF HEALTH—MEMBERSHIP

AN ACT Relating to including a health official from a federally recognized tribe on the state board of health; reenacting and amending RCW 43.20.030; and creating a new section.

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

Sec. 1. RCW 43.20.030 and 1984 c 287 s 75 and 1984 c 243 s 2 are each reenacted and amended to read as follows:

The state board of health shall be composed of ten members. These shall be the secretary or the secretary's designee and nine other persons to be appointed by the governor, including four persons experienced in matters of health and sanitation, one of whom is a health official from a federally recognized tribe; an elected city official who is a member of a local health board((?)); an elected county official who is a member of a local health board((?)); a local health officer((?)); and two persons representing the consumers of health care. Before appointing the city official, the governor shall consider any recommendations submitted by the association of Washington cities. Before appointing the county official, the governor shall consider any recommendations submitted by the

Washington state association of counties. Before appointing the local health officer, the governor shall consider any recommendations submitted by the Washington state association of local public health officials. Before appointing one of the two consumer representatives, the governor shall consider any recommendations submitted by the state council on aging. The chairman shall be selected by the governor from among the nine appointed members. The department of ~~((social and health services))~~ health shall provide necessary technical staff support to the board. The board may employ an executive director and a confidential secretary, each of whom shall be exempt from the provisions of the state civil service law, chapter 41.06 RCW.

Members of the board shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for their travel expenses in accordance with RCW 43.03.050 and 43.03.060.

NEW SECTION. Sec. 2. This act shall be known as the Sue Crystal memorial act.

Passed by the Senate March 7, 2006.

Passed by the House March 2, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 239

[Second Substitute Senate Bill 6197]

GOVERNOR'S INTERAGENCY COORDINATING COUNCIL ON HEALTH DISPARITIES

AN ACT Relating to the creation of the governor's interagency coordinating council on health disparities; amending RCW 43.20.025; adding new sections to chapter 43.20 RCW; and adding a new section to chapter 44.28 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 43.20 RCW to read as follows:

The legislature finds that women and people of color experience significant disparities from men and the general population in education, employment, healthful living conditions, access to health care, and other social determinants of health. The legislature finds that these circumstances coupled with lower, slower, and less culturally appropriate and gender appropriate access to needed medical care result in higher rates of morbidity and mortality for women and persons of color than observed in the general population. Health disparities are defined by the national institute of health as the differences in incidence, prevalence, mortality, and burden of disease and other adverse health conditions that exist among specific population groups in the United States.

It is the intent of the Washington state legislature to create the healthiest state in the nation by striving to eliminate health disparities in people of color and between men and women. In meeting the intent of this act, the legislature creates the governor's interagency coordinating council on health disparities. This council shall create an action plan and statewide policy to include health impact reviews that measure and address other social determinants of health that lead to disparities as well as the contributing factors of health that can have

broad impacts on improving status, health literacy, physical activity, and nutrition.

Sec. 2. RCW 43.20.025 and 1989 1st ex.s. c 9 s 208 are each amended to read as follows:

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

(1) "Commissions" means the Washington state commission on African-American affairs established in chapter 43.113 RCW, the Washington state commission on Asian Pacific American affairs established in chapter 43.117 RCW, the Washington state commission on Hispanic affairs established in chapter 43.115 RCW, and the governor's office of Indian affairs.

(2) "Consumer representative" means any person who is not an elected official, who has no fiduciary obligation to a health facility or other health agency, and who has no material financial interest in the rendering of health services.

~~((2))~~ (3) "Council" means the (health care access and cost control) governor's interagency coordinating council on health disparities, convened according to this chapter.

~~((3))~~ (4) "Department" means the department of health.

~~((4))~~ (5) "Health disparities" means the difference in incidence, prevalence, mortality, or burden of disease and other adverse health conditions, including lack of access to proven health care services that exists between specific population groups in Washington state.

(6) "Health impact review" means a review of a legislative or budgetary proposal completed according to the terms of this chapter that determines the extent to which the proposal improves or exacerbates health disparities.

(7) "Secretary" means the secretary of health, or the secretary's designee.

~~((5))~~ (8) "Local health board" means a health board created pursuant to chapter 70.05, 70.08, or 70.46 RCW.

~~((6))~~ (9) "Local health officer" means the legally qualified physician appointed as a health officer pursuant to chapter 70.05, 70.08, or 70.46 RCW.

~~((7))~~ (10) "Social determinants of health" means those elements of social structure most closely shown to affect health and illness, including at a minimum, early learning, education, socioeconomic standing, safe housing, gender, incidence of violence, convenient and affordable access to safe opportunities for physical activity, healthy diet, and appropriate health care services.

(11) "State board" means the state board of health created under chapter 43.20 RCW.

NEW SECTION. Sec. 3. A new section is added to chapter 43.20 RCW to read as follows:

(1) In collaboration with staff whom the office of financial management may assign, and within funds made expressly available to the state board for these purposes, the state board shall assist the governor by convening and providing assistance to the council. The council shall include one representative from each of the following groups: Each of the commissions, the state board, the department, the department of social and health services, the department of community, trade, and economic development, the health care authority, the

department of agriculture, the department of ecology, the office of the superintendent of public instruction, the department of early learning, the work force training and education coordinating board, and two members of the public who will represent the interests of health care consumers. The council is a class one group under RCW 43.03.220. The two public members shall be paid per diem and travel expenses in accordance with RCW 43.03.050 and 43.03.060. The council shall reflect diversity in race, ethnicity, and gender. The governor or the governor's designee shall chair the council.

(2) The council shall promote and facilitate communication, coordination, and collaboration among relevant state agencies and communities of color, and the private sector and public sector, to address health disparities. The council shall conduct public hearings, inquiries, studies, or other forms of information gathering to understand how the actions of state government ameliorate or contribute to health disparities. All state agencies must cooperate with the council's efforts.

(3) The council with assistance from the state board, shall assess through public hearings, review of existing data, and other means, and recommend initiatives for improving the availability of culturally appropriate health literature and interpretive services within public and private health-related agencies.

(4) In order to assist with its work, the council shall establish advisory committees to assist in plan development for specific issues and shall include members of other state agencies and local communities.

(5) The advisory committee shall reflect diversity in race, ethnicity, and gender.

NEW SECTION. **Sec. 4.** A new section is added to chapter 43.20 RCW to read as follows:

The council shall consider in its deliberations and by 2012, create an action plan for eliminating health disparities. The action plan must address, but is not limited to, the following diseases, conditions, and health indicators: Diabetes, asthma, infant mortality, HIV/AIDS, heart disease, strokes, breast cancer, cervical cancer, prostate cancer, chronic kidney disease, sudden infant death syndrome (SIDS), mental health, women's health issues, smoking cessation, oral disease, and immunization rates of children and senior citizens. The council shall prioritize the diseases, conditions, and health indicators according to prevalence and severity of the health disparity. The council shall address these priorities on an incremental basis by adding no more than five of the diseases, conditions, and health indicators to each update or revised version of the action plan. The action plan shall be updated biannually. The council shall meet as often as necessary but not less than two times per calendar year. The council shall report its progress with the action plan to the governor and the legislature no later than January 15, 2008. A second report shall be presented no later than January 15, 2010, and a third report from the council shall be presented to the governor and the legislature no later than January 15, 2012. Thereafter, the governor and legislature shall require progress updates from the council every four years in odd-numbered years. The action plan shall recognize the need for flexibility.

NEW SECTION. Sec. 5. A new section is added to chapter 43.20 RCW to read as follows:

The state board shall, to the extent that funds are available expressly for this purpose, complete health impact reviews, in collaboration with the council, and with assistance that shall be provided by any state agency of which the board makes a request.

(1) A health impact review may be initiated by a written request submitted according to forms and procedures proposed by the council and approved by the state board before December 1, 2006.

(2) Any state legislator or the governor may request a review of any proposal for a state legislative or budgetary change. Upon receiving a request for a health impact review from the governor or a member of the legislature during a legislative session, the state board shall deliver the health impact review to the requesting party in no more than ten days.

(3) The state board may limit the number of health impact reviews it produces to retain quality while operating within its available resources.

(4) A state agency may decline a request to provide assistance if complying with the request would not be feasible while operating within its available resources.

(5) Upon delivery of the review to the requesting party, it shall be a public document, and shall be available on the state board's web site.

(6) The review shall be based on the best available empirical information and professional assumptions available to the state board within the time required for completing the review. The review should consider direct impacts on health disparities as well as changes in the social determinants of health.

(7) The state board and the department shall collaborate to obtain any federal or private funding that may become available to implement the state board's duties under this chapter. If the department receives such funding, the department shall allocate it to the state board and affected agencies to implement its duties under this chapter, and any state general funds that may have been appropriated but are no longer needed by the state board shall lapse to the state general fund.

NEW SECTION. Sec. 6. A new section is added to chapter 43.20 RCW to read as follows:

The state board and the department shall collaborate to obtain any federal or private funding that may become available to implement the state board's duties under this chapter. If the department receives such funding, the department shall allocate it to the state board to implement its duties under this chapter, and any state general funds that may have been appropriated but are no longer needed by the state board shall lapse to the state general fund.

NEW SECTION. Sec. 7. A new section is added to chapter 44.28 RCW to read as follows:

The joint committee shall conduct a review of the governor's interagency coordinating council on health disparities and its functions. The review shall be substantially the same as a sunset review under chapter 43.131 RCW. The joint committee shall present its findings to appropriate committees of the legislature by December 1, 2016.

Passed by the Senate March 7, 2006.
Passed by the House March 2, 2006.
Approved by the Governor March 27, 2006.
Filed in Office of Secretary of State March 27, 2006.

CHAPTER 240

[Substitute Senate Bill 6323]

CAMPAIGN FINANCE DISCLOSURE

AN ACT Relating to campaign finance disclosure; and amending RCW 42.17.030 and 42.17.405.

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

Sec. 1. RCW 42.17.030 and 1987 c 295 s 18 are each amended to read as follows:

The provisions of this chapter relating to the financing of election campaigns shall apply in all election campaigns other than (1) for precinct committee officer; (2) for a federal elective office; and (3) for an office of a political subdivision of the state that does not encompass a whole county and that contains fewer than five thousand registered voters as of the date of the most recent general election in the subdivision, unless required by RCW 42.17.405 (2) through (5) and (7).

Sec. 2. RCW 42.17.405 and 1986 c 12 s 3 are each amended to read as follows:

(1) Except as provided in subsections (2) (~~and~~), (3), and (7) of this section, the reporting provisions of this chapter do not apply to candidates, elected officials, and agencies in political subdivisions with less than one thousand registered voters as of the date of the most recent general election in the jurisdiction, to political committees formed to support or oppose candidates or ballot propositions in such political subdivisions, or to persons making independent expenditures in support of or opposition to such ballot propositions.

(2) The reporting provisions of this chapter apply in any exempt political subdivision from which a "petition for disclosure" containing the valid signatures of fifteen percent of the number of registered voters, as of the date of the most recent general election in the political subdivision, is filed with the commission. The commission shall by rule prescribe the form of the petition. After the signatures are gathered, the petition shall be presented to the auditor or elections officer of the county, or counties, in which the political subdivision is located. The auditor or elections officer shall verify the signatures and certify to the commission that the petition contains no less than the required number of valid signatures. The commission, upon receipt of a valid petition, shall order every known affected person in the political subdivision to file the initially required statement and reports within fourteen days of the date of the order.

(3) The reporting provisions of this chapter apply in any exempt political subdivision that by ordinance, resolution, or other official action has petitioned the commission to make the provisions applicable to elected officials and candidates of the exempt political subdivision. A copy of the action shall be sent to the commission. If the commission finds the petition to be a valid action of the appropriate governing body or authority, the commission shall order every

known affected person in the political subdivision to file the initially required statement and reports within fourteen days of the date of the order.

(4) The commission shall void any order issued by it pursuant to subsection (2) or (3) of this section when, at least four years after issuing the order, the commission is presented a petition or official action so requesting from the affected political subdivision. Such petition or official action shall meet the respective requirements of subsection (2) or (3) of this section.

(5) Any petition for disclosure, ordinance, resolution, or official action of an agency petitioning the commission to void the exemption in RCW 42.17.030(3) shall not be considered unless it has been filed with the commission:

(a) In the case of a ballot measure, at least sixty days before the date of any election in which campaign finance reporting is to be required;

(b) In the case of a candidate, at least sixty days before the first day on which a person may file a declaration of candidacy for any election in which campaign finance reporting is to be required.

(6) Any person exempted from reporting under this chapter may at his or her option file the statement and reports.

(7) The reporting provisions of this chapter apply to a candidate in any political subdivision if the candidate receives or expects to receive five thousand dollars or more in contributions.

Passed by the Senate March 7, 2006.

Passed by the House March 2, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 241

[Senate Bill 6368]

NURSING FACILITY BED TAX

AN ACT Relating to the discontinuation of the nursing facility bed tax; creating a new section; repealing RCW 74.46.091, 74.46.535, 82.71.010, 82.71.020, and 82.71.030; and providing an effective date.

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

NEW SECTION. Sec. 1. The following acts or parts of acts are each repealed:

(1) RCW 74.46.091 (Additional reporting requirements for quality maintenance fee) and 2003 1st sp.s. c 16 s 4;

(2) RCW 74.46.535 (Quality maintenance fee) and 2003 1st sp.s. c 16 s 5;

(3) RCW 82.71.010 (Definitions) and 2003 1st sp.s. c 16 s 1;

(4) RCW 82.71.020 (Fee imposed) and 2005 c 514 s 801 & 2003 1st sp.s. c 16 s 2; and

(5) RCW 82.71.030 (Administration of chapter) and 2003 1st sp.s. c 16 s 3.

NEW SECTION. Sec. 2. This act takes effect July 1, 2007.

NEW SECTION. Sec. 3. This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections.

Passed by the Senate February 17, 2006.

Passed by the House March 8, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 242

[Engrossed Substitute Senate Bill 6391]

BOARDING HOMES—NONRESIDENT SERVICES

AN ACT Relating to the provision of services for nonresident individuals residing in long-term care settings; amending RCW 18.20.020 and 18.135.040; and adding a new section to chapter 18.135 RCW.

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

Sec. 1. RCW 18.20.020 and 2004 c 142 s 1 are each amended to read as follows:

As used in this chapter:

(1) "Boarding home" means any home or other institution, however named, which is advertised, announced, or maintained for the express or implied purpose of providing housing, basic services, and assuming general responsibility for the safety and well-being of the residents, and may also provide domiciliary care, consistent with chapter 142, Laws of 2004, to seven or more residents after July 1, 2000. However, a boarding home that is licensed for three to six residents prior to or on July 1, 2000, may maintain its boarding home license as long as it is continually licensed as a boarding home. "Boarding home" shall not include facilities certified as group training homes pursuant to RCW 71A.22.040, nor any home, institution or section thereof which is otherwise licensed and regulated under the provisions of state law providing specifically for the licensing and regulation of such home, institution or section thereof. Nor shall it include any independent senior housing, independent living units in continuing care retirement communities, or other similar living situations including those subsidized by the department of housing and urban development.

(2) "Basic services" means housekeeping services, meals, nutritious snacks, laundry, and activities.

(3) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

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

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

(6) "Resident's representative" means a person designated voluntarily by a competent resident, in writing, to act in the resident's behalf concerning the care and services provided by the boarding home and to receive information from the boarding home, if there is no legal representative. The resident's competence shall be determined using the criteria in RCW 11.88.010(1)(e). The resident's representative may not be affiliated with the licensee, boarding home, or management company, unless the affiliated person is a family member of the resident. The resident's representative shall not have authority to act on behalf of the resident once the resident is no longer competent.

(7) "Domiciliary care" means: Assistance with activities of daily living provided by the boarding home either directly or indirectly; or health support

services, if provided directly or indirectly by the boarding home; or intermittent nursing services, if provided directly or indirectly by the boarding home.

(8) "General responsibility for the safety and well-being of the resident" means the provision of the following: Prescribed general low sodium diets; prescribed general diabetic diets; prescribed mechanical soft foods; emergency assistance; monitoring of the resident; arranging health care appointments with outside health care providers and reminding residents of such appointments as necessary; coordinating health care services with outside health care providers consistent with RCW 18.20.380; assisting the resident to obtain and maintain glasses, hearing aids, dentures, canes, crutches, walkers, wheelchairs, and assistive communication devices; observation of the resident for changes in overall functioning; blood pressure checks as scheduled; responding appropriately when there are observable or reported changes in the resident's physical, mental, or emotional functioning; or medication assistance as permitted under RCW 69.41.085 and as defined in RCW 69.41.010.

(9) "Legal representative" means a person or persons identified in RCW 7.70.065 who may act on behalf of the resident pursuant to the scope of their legal authority. The legal representative shall not be affiliated with the licensee, boarding home, or management company, unless the affiliated person is a family member of the resident.

(10) "Nonresident individual" means a person who resides in independent senior housing, independent living units in continuing care retirement communities, or in other similar living environments or in a boarding home and may receive one or more of the services listed in RCW 18.20.030(5)~~((-but))~~. A nonresident individual may not receive domiciliary care, as defined in this chapter, directly or indirectly by the ((facility)) boarding home and may not receive the items and services listed in subsection (8) of this section, except during the time the person is receiving adult day services as defined in this section.

(11) "Resident" means an individual who is not related by blood or marriage to the operator of the boarding home, and by reason of age or disability, chooses to reside in the boarding home and receives basic services and one or more of the services listed under general responsibility for the safety and well-being of the resident and may receive domiciliary care or respite care provided directly or indirectly by the boarding home and shall be permitted to receive hospice care through an outside service provider when arranged by the resident or the resident's legal representative under RCW 18.20.380.

(12) "Resident applicant" means an individual who is seeking admission to a licensed boarding home and who has completed and signed an application for admission, or such application for admission has been completed and signed in their behalf by their legal representative if any, and if not, then the designated representative if any.

(13) "Adult day services" means care and services provided to a nonresident individual by the boarding home on the boarding home premises, for a period of time not to exceed ten continuous hours, and does not involve an overnight stay.

NEW SECTION. Sec. 2. A new section is added to chapter 18.135 RCW to read as follows:

This chapter does not prohibit or restrict the performance of blood-drawing procedures by health care assistants in the residences of research study

participants when such procedures have been authorized by the institutional review board of a comprehensive cancer center or nonprofit degree-granting institution of higher education and are conducted under the general supervision of a physician.

Sec. 3. RCW 18.135.040 and 1984 c 281 s 3 are each amended to read as follows:

A certification issued to a health care assistant pursuant to this chapter shall be authority to perform only the functions authorized in RCW 18.135.010 subject to proper delegation and supervision in the health care facility making the certification or under the supervision of the certifying health care practitioner in other health care facilities or in his or her office or in the residences of research study participants in accordance with section 2 of this act. No certification made by one health care facility or health care practitioner is transferrable to another health care facility or health care practitioner.

NEW SECTION. Sec. 4. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed by the Senate March 4, 2006.

Passed by the House February 28, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 243

[Engrossed Substitute Senate Bill 6396]

COMMUNITY AND TECHNICAL COLLEGES—PART-TIME FACULTY—SICK LEAVE

AN ACT Relating to the accumulation and use of sick leave accrued by part-time faculty; amending RCW 28B.50.551; and creating a new section.

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

Sec. 1. RCW 28B.50.551 and 2000 c 128 s 3 are each amended to read as follows:

The board of trustees of each college district shall adopt for each community and technical college under its jurisdiction written policies on granting leaves to employees of the district and those colleges, including but not limited to leaves for attendance at official or private institutions and conferences; professional leaves for personnel consistent with the provisions of RCW 28B.10.650; leaves for illness, injury, bereavement, and emergencies, consistent with RCW 28B.50.4893, and except as otherwise in this section provided, all with such compensation as the board of trustees may prescribe, except that the board shall grant to all such persons leave with full compensation for illness, injury, bereavement and emergencies as follows:

(1) For persons under contract to be employed, or otherwise employed, for at least three quarters, not more than twelve days per year, commencing with the first day on which work is to be performed; provisions of any contract in force on June 12, 1980, which conflict with requirements of this subsection shall continue in effect until contract expiration; after expiration, any new contract executed between the parties shall be consistent with this subsection;

(2)(a) Such leave entitlement may be accumulated after the first three-quarter period of employment for full-time employees, and may be taken at any time;

(b) For part-time academic employees, such leave entitlement (~~may~~) shall be accumulated after the first quarter of employment by a college district or the first quarter after June 8, 2000, whichever is later, and may be taken at any time;

(3) Leave for illness, injury, bereavement and emergencies heretofore accumulated pursuant to law, rule, regulation or policy by persons presently employed by college districts and community and technical colleges shall be added to such leave accumulated under this section;

(4) Except as otherwise provided in this section or other law, accumulated leave under this section not taken at the time such person retires or ceases to be employed by college districts or community and technical colleges shall not be compensable;

(5) Accumulated leave for illness, injury, bereavement and emergencies shall be transferred from one college district to another or between a college district and the following: Any state agency, any educational service district, any school district, or any other institution of higher education as defined in RCW 28B.10.016;

(6) Leave accumulated by a person in a college district or community and technical college prior to leaving that district or college may, under the policy of the board of trustees, be granted to such person when he or she returns to the employment of that district or college; and

(7) Employees of the Seattle Vocational Institute are exempt from this section until July 1, 1993.

NEW SECTION. Sec. 2. This act applies only to leave accumulated on or after the effective date of this act.

Passed by the Senate March 6, 2006.

Passed by the House March 3, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 244

[Senate Bill 6453]

PUBLIC EMPLOYEE RETIREMENT—MINIMUM BENEFIT

AN ACT Relating to a one thousand dollar minimum monthly benefit for plan 1 members of the public employees' retirement system and plan 1 members of the teachers' retirement system; amending RCW 41.32.4851 and 41.40.1984; and providing an effective date.

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

Sec. 1. RCW 41.32.4851 and 2004 c 85 s 1 are each amended to read as follows:

(1) No one who becomes a beneficiary after June 30, 1995, shall receive a monthly retirement allowance of less than twenty-four dollars and twenty-two cents times the number of years of service creditable to the person whose service is the basis of such retirement allowance.

(2) If the retirement allowance payable was adjusted at the time benefit payments to the beneficiary commenced, the minimum allowance provided in this section shall be adjusted in a manner consistent with that adjustment.

(3) Beginning July 1, 1996, the minimum benefit set forth in subsection (1) of this section shall be adjusted annually by the annual increase.

(4) Those receiving a temporary disability benefit under RCW 41.32.540 shall not be eligible for the benefit provided by this section.

(5) Beginning July 1, 2004, the minimum benefit set forth in subsection (1) of this section, prior to adjustments set forth in subsection (2) of this section, for a beneficiary with at least twenty-five years of service and who has been retired at least twenty years shall be one thousand dollars per month. ~~((The minimum benefit in this subsection shall not be adjusted by the annual increase provided in subsection (3) of this section.))~~ On July 1, 2006, and each year thereafter, the minimum benefit in this subsection shall be increased by three percent, rounded to the nearest cent.

(6) Beginning July 1, 2006, the minimum benefit set forth in subsection (1) of this section, prior to adjustments set forth in subsection (2) of this section, for a beneficiary with at least twenty years of service and who has been retired at least twenty-five years shall be one thousand dollars per month. On July 1, 2006, and each year thereafter, the minimum benefit in this subsection shall be increased by three percent, rounded to the nearest cent.

Sec. 2. RCW 41.40.1984 and 2004 c 85 s 2 are each amended to read as follows:

(1) Except as provided in subsections (4) and (5) of this section, no one who becomes a beneficiary after June 30, 1995, shall receive a monthly retirement allowance of less than twenty-four dollars and twenty-two cents times the number of years of service creditable to the person whose service is the basis of such retirement allowance.

(2) Where the retirement allowance payable was adjusted at the time benefit payments to the beneficiary commenced, the minimum allowance provided in this section shall be adjusted in a manner consistent with that adjustment.

(3) Beginning July 1, 1996, the minimum benefit set forth in subsection (1) of this section shall be adjusted annually by the annual increase.

(4) Those receiving a benefit under RCW 41.40.220(1) or under RCW 41.44.170 (3) and (5) shall not be eligible for the benefit provided by this section.

(5) For persons who served as elected officials and whose accumulated employee contributions and credited interest was less than seven hundred fifty dollars at the time of retirement, the minimum benefit under subsection (1) of this section shall be ten dollars per month per each year of creditable service.

(6) Beginning July 1, 2004, the minimum benefit set forth in subsection (1) of this section, prior to adjustments set forth in subsection (2) of this section, for a beneficiary with at least twenty-five years of service and who has been retired at least twenty years shall be one thousand dollars per month. ~~((The minimum benefit in this subsection shall not be adjusted by the annual increase provided in subsection (3) of this section.))~~ On July 1, 2006, and each year thereafter, the minimum benefit in this subsection shall be increased by three percent, rounded to the nearest cent.

(7) Beginning July 1, 2006, the minimum benefit set forth in subsection (1) of this section, prior to adjustments set forth in subsection (2) of this section, for a beneficiary with at least twenty years of service and who has been retired at least twenty-five years shall be one thousand dollars per month. On July 1, 2006, and each year thereafter, the minimum benefit in this subsection shall be increased by three percent, rounded to the nearest cent.

NEW SECTION. Sec. 3. This act takes effect July 1, 2006.

Passed by the Senate February 10, 2006.

Passed by the House March 3, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 245

[Substitute Senate Bill 6533]

SYRUP TAXES

AN ACT Relating to syrup taxes; adding a new section to chapter 82.04 RCW; and providing an effective date.

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

NEW SECTION. Sec. 1. A new section is added to chapter 82.04 RCW to read as follows:

(1) In computing the tax imposed under this chapter, a credit is allowed to a buyer of syrup to be used by the buyer in making carbonated beverages that are sold by the buyer if the tax imposed by RCW 82.64.020 has been paid in respect to the syrup. The amount of the credit shall be equal to twenty-five percent from July 1, 2006, through June 30, 2007, fifty percent from July 1, 2007, through June 30, 2008, seventy-five percent from July 1, 2008, through June 30, 2009, and one hundred percent after June 30, 2009, of the taxes imposed under RCW 82.64.020 in respect to the syrup purchased by the buyer.

(2) Credit under this section shall be earned, and claimed against taxes due under this chapter, for the tax reporting period in which the syrup was purchased by the person claiming credit under this section. The credit shall not exceed the tax otherwise due under this chapter for the tax reporting period. Unused credit may be carried over and used in subsequent tax reporting periods, except that no credit may be claimed more than twelve months from the end of the tax reporting period in which the credit was earned. No refunds shall be granted for credits under this section.

(3) No credit is available under this section for taxes paid under RCW 82.64.020 before the effective date of this act.

(4) For the purposes of this section, "carbonated beverage," "previously taxed syrup," and "syrup" have the same meanings as provided in RCW 82.64.010.

NEW SECTION. Sec. 2. This act takes effect July 1, 2006.

Passed by the Senate March 8, 2006.

Passed by the House March 8, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 246

[Senate Bill 6541]

TOBACCO MASTER SETTLEMENT AGREEMENT—APPEAL BOND

AN ACT Relating to appeal bond requirements involving judgments against signatories of the tobacco master settlement agreement; adding a new section to chapter 43.340 RCW; and creating new sections.

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

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

(a) Over the past five years, Washington has received more than seven hundred million dollars from the tobacco master settlement agreement;

(b) While the state has securitized a portion of the moneys it was promised under the master settlement agreement, the remainder of the master settlement agreement payments is used to fund important health programs such as the state's basic health plan, children's health insurance, childhood vaccines, and public health;

(c) Litigation now pending in the state or filed in the future could result in damage awards against master settlement agreement signatories or their successors or affiliates that are so large that the defendants could obtain a stay of the execution of the judgment while they appeal only by declaring bankruptcy, rather than posting an appeal bond under state law;

(d) Should a master settlement agreement signatory declare bankruptcy, issues might be raised about whether that disrupts or jeopardizes the payments that fund important state programs;

(e) The legislature has the substantive obligation to raise revenue and to protect the financial well-being of the state and its citizens. Pursuant to that obligation, it is the legislature's responsibility to ensure the continued receipt of master settlement agreement funds to the maximum extent possible.

(2) Therefore, the legislature intends to place a maximum limit on the appeal bond a master settlement agreement signatory or a successor or affiliate of a master settlement agreement signatory can be required to post in litigation in order to stay execution of the judgment without being forced into bankruptcy while it exercises its right to appeal an adverse judgment.

NEW SECTION. Sec. 2. A new section is added to chapter 43.340 RCW to read as follows:

(1) Except as provided in subsection (2) of this section, in order to secure and protect the moneys to be received as a result of the master settlement agreement in civil litigation under any legal theory involving a signatory, a successor of a signatory, or any affiliate of a signatory to the master settlement agreement, the supersedeas bond to be furnished in order to stay the execution of the judgment during the entire course of appellate review shall be set in accordance with applicable laws or court rules, except that the total bond that is required of all appellants collectively shall not exceed one hundred million dollars, regardless of the value of the judgment.

(2) If an appellee proves by a preponderance of the evidence that an appellant is dissipating assets outside the ordinary course of business to avoid the payment of a judgment, a court may require the appellant to post a bond in an amount up to the amount of the judgment.

NEW SECTION. Sec. 3. This act applies to all actions pending on or filed on or after the effective date of this section.

Passed by the Senate March 7, 2006.

Passed by the House March 3, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 247

[Second Substitute Senate Bill 6558]

MOTION PICTURE COMPETITIVENESS PROGRAM

AN ACT Relating to the state of Washington's economic, cultural, and educational standing in the motion picture industry; adding a new section to chapter 82.04 RCW; and adding a new chapter to Title 43 RCW.

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

NEW SECTION. Sec. 1. The legislature recognizes the motion picture industry in Washington as a valuable commodity contributing greatly to the economic vitality of the state and the cultural integrity of our communities. The legislature further recognizes the production of in-state motion pictures, television programs, and television commercials creates a marked increase in tourism, family wage jobs, and the sale of local goods and services generating revenue for the state. Furthermore, with captive national and international audiences, the world is introduced to the state's pristine scenic venues and reminded that the Pacific Northwest is a great place to live and raise a family. The legislature also recognizes the inherent educational value of promoting arts and culture as well as the benefits of training young motion picture professionals who will build a fruitful industry for years to come.

The legislature finds in recent years that the state has realized a drastic decline in motion picture production that precludes economic expansion and threatens the state's reputation as a production destination. With the emergence of tax incentives in thirty states nationwide, in-state producers are taking their projects to more competitive economic climates, such as Oregon and Vancouver, British Columbia, where compelling tax incentive packages and subsidies are already in effect.

The legislature also finds that in recent years increasingly workers in Washington state are without health insurance coverage and retirement income protections, causing hardships on workers and their families and higher costs to the state.

Therefore, it is the intent of the legislature to recognize both national and international competition in the motion picture production marketplace. The legislature is committed to leveling the competitive playing field and interested in a partnership with the private sector to regain Washington's place as a premier destination to make motion pictures, television, and television commercials. While at the same time the legislature is committed to ensuring that workers in the motion picture and television industry are covered under health insurance and retirement income plans.

NEW SECTION. Sec. 2. The following definitions apply to this chapter, unless the context clearly requires otherwise.

(1) "Approved motion picture competitiveness program" means a nonprofit organization under the internal revenue code, section 501(c)(6), with the sole purpose of revitalizing the state's economic, cultural, and educational standing in the national and international market of motion picture production by recommending and awarding financial assistance for costs associated with motion pictures in the state of Washington.

(2) "Contribution" means cash contributions.

(3) "Costs" means actual expenses of production and postproduction expended in Washington state for the production of motion pictures, including but not limited to payments made for salaries, wages, and health insurance and retirement benefits, the rental costs of machinery and equipment and the purchase of services, food, property, lodging, and permits for work conducted in Washington state.

(4) "Department" means the department of community, trade, and economic development.

(5) "Motion picture" means a recorded audio-visual production intended for distribution to theaters, DVD, video, or the internet, or television, or one or more episodes of a single television series, television pilots or presentations, or a commercial. "Motion picture" does not mean production of a television commercial of an amount less than two hundred fifty thousand dollars in actual total investment or one or more segments of a newscast or sporting event.

(6) "Funding assistance" means cash expenditures from an approved motion picture competitiveness program.

(7) "Person" has the same meaning as provided in RCW 82.04.030.

NEW SECTION. Sec. 3. (1) The department shall adopt criteria for an approved motion picture competitiveness program with the sole purpose of revitalizing the state's economic, cultural, and educational standing in the national and international market of motion picture production. Rules adopted by the department shall allow the program, within the established criteria, to provide funding assistance only when it captures economic opportunities for Washington's communities and businesses and shall only be provided under a contractual arrangement with a private entity. In establishing the criteria, the department shall consider:

(a) The additional income and tax revenue to be retained in the state for general purposes;

(b) The creation and retention of family wage jobs which provide health insurance and payments into a retirement plan;

(c) The impact of motion picture projects to maximize in-state labor and the use of in-state film production and film postproduction companies;

(d) The impact upon the local economies and the state economy as a whole, including multiplier effects;

(e) The intangible impact on the state and local communities that comes with motion picture projects;

(f) The regional, national, and international competitiveness of the motion picture filming industry;

(g) The revitalization of the state as a premier venue for motion picture production and national television commercial campaigns;

(h) Partnerships with the private sector to bolster film production in the state and serve as an educational and cultural purpose for its citizens;

(i) The vitality of the state's motion picture industry as a necessary and critical factor in promoting the state as a premier tourist and cultural destination;

(j) Giving preference to additional seasons of television series that have previously qualified;

(k) Other factors the department may deem appropriate for the implementation of this chapter.

(2) The board of directors created under section 4 of this act shall create and administer an account for carrying out the purposes of subsection (3) of this section.

(3) Money received by an approved motion picture competitiveness program shall be used only for: (a) Health insurance and payments into a retirement plan, and other costs associated with film production; (b) a tax credit marketer to market the tax credits authorized under section 5 of this act; and (c) staff and related expenses to maintain the program's proper administration and operation.

(4) Maximum funding assistance from an approved motion picture competitiveness program is limited to:

(a) Twenty percent of a total actual investment in the state of at least five hundred thousand dollars, for a single feature film produced in Washington state;

(b) Twenty percent of a total actual investment in the state of at least three hundred thousand dollars per television episode produced in Washington state; or

(c) Twenty percent of a total actual investment in the state of at least two hundred fifty thousand dollars for an infomercial or television commercial associated with a national or regional advertisement campaign produced in Washington state.

(5) No single motion picture production or episodic television project may be awarded an amount greater than one million dollars from an approved motion picture competitiveness program.

(6) Funding assistance approval must be determined by the approved motion picture competitiveness program within a maximum of thirty calendar days from when the application is received, if the application is submitted after August 15, 2006.

NEW SECTION. Sec. 4. (1) A Washington motion picture competitiveness program under this chapter shall be administered by a board of directors appointed by the governor, and the appointments shall be made within sixty days following enactment. The department, after consulting with the board, shall adopt rules for the standards that shall be used to evaluate the applications for funding assistance prior to June 30, 2006.

(2) The board shall evaluate and award financial assistance to motion picture projects under rules set forth under section 3 of this act.

(3) The board shall consist of the following members:

(a) One member representing the Washington motion picture production industry;

(b) One member representing the Washington motion picture postproduction industry;

(c) Two members representing labor unions affiliated with Washington motion picture production;

(d) One member representing the Washington visitors and convention bureaus;

(e) One member representing the Washington tourism industry;

(f) One member representing the Washington restaurant, hotel, and airline industry; and

(g) A chairperson, chosen at large, shall serve at the pleasure of the governor.

(4) The term of the board members, other than the chair, is four years. A board member appointed by the governor may be removed by the governor for cause under RCW 43.06.070 and 43.06.080.

(5) Five members of the board constitute a quorum.

(6) The board shall elect a treasurer and secretary annually, and other officers as the board members determine necessary, and may adopt bylaws or rules for its own government.

(7) The board shall make any information available at the request of the department to administer this chapter.

(8) Contributions received by a board shall be deposited into the account described in section 3(2) of this act.

NEW SECTION. Sec. 5. A new section is added to chapter 82.04 RCW to read as follows:

(1) Subject to the limitations in this section, a credit is allowed against the tax imposed under this chapter for contributions made by a person to a Washington motion picture competitiveness program.

(2) The person must make the contribution before claiming a credit authorized under this section. Credits earned under this section may be claimed against taxes due for the calendar year in which the contribution is made. The amount of credit claimed for a reporting period shall not exceed the tax otherwise due under this chapter for that reporting period. No person may claim more than one million dollars of credit in any calendar year, including credit carried over from a previous calendar year. No refunds may be granted for any unused credits.

(3) The maximum credit that may be earned for each calendar year under this section for a person is limited to the lesser of:

(a) One million dollars; or

(b)(i) Through calendar year 2008, an amount equal to one hundred percent of the contributions made by the person to a program during the calendar year; and

(ii) For calendar years after 2008, an amount equal to ninety percent of the contributions made by the person to a program during the calendar year.

(4) Except as provided under subsection (5) of this section, a tax credit claimed under this section may not be carried over to another year.

(5) Any amount of tax credit otherwise allowable under this section not claimed by the person in any calendar year may be carried over and claimed against the person's tax liability for the next succeeding calendar year. Any credit remaining unused in the next succeeding calendar year may be carried forward and claimed against the person's tax liability for the second succeeding calendar year; and any credit not used in that second succeeding calendar year may be carried over and claimed against the person's tax liability for the third

succeeding calendar year, but may not be carried over for any calendar year thereafter.

(6) Credits are available on a first in-time basis. The department shall disallow any credits, or portion thereof, that would cause the total amount of credits claimed under this section during any calendar year to exceed three million five hundred thousand dollars. If this limitation is reached, the department shall notify all Washington motion picture competitiveness programs that the annual statewide limit has been met. In addition, the department shall provide written notice to any person who has claimed tax credits in excess of the three million five hundred thousand dollar limitation in this subsection. The notice shall indicate the amount of tax due and shall provide that the tax be paid within thirty days from the date of such notice. The department shall not assess penalties and interest as provided in chapter 82.32 RCW on the amount due in the initial notice if the amount due is paid by the due date specified in the notice, or any extension thereof.

(7) To claim a credit under this section, a person must electronically file with the department all returns, forms, and any other information required by the department, in an electronic format as provided or approved by the department. Any return, form, or information required to be filed in an electronic format under this section is not filed until received by the department in an electronic format. As used in this subsection, "returns" has the same meaning as "return" in RCW 82.32.050.

(8) No application is necessary for the tax credit. The person must keep records necessary for the department to verify eligibility under this section.

(9) A Washington motion picture competitiveness program shall provide to the department, upon request, such information needed to verify eligibility for credit under this section, including information regarding contributions received by the program.

(10) The department shall not allow any credit under this section before July 1, 2006.

(11) For the purposes of this section, "Washington motion picture competitiveness program" or "program" means an organization established pursuant to chapter 43.— RCW (sections 1 through 4 of this act).

(12) No credit may be earned for contributions made on or after July 1, 2011.

NEW SECTION. Sec. 6. (1) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how incentives are used.

(2) Each motion picture production receiving funding assistance under section 3 of this act shall report information to the department by filing a complete annual survey. The survey is due by March 31st of the year following any calendar year in which funding assistance under section 4 of this act is taken. The department may extend the due date for timely filing of annual surveys under this section if failure to file was the result of circumstances beyond the control of the motion picture production receiving the funding assistance.

(3) The survey shall include the amount of funding assistance received. The survey shall also include the following information for employment positions in

Washington by the motion picture production receiving funding assistance, including indirect employment by contractors or other affiliates:

- (a) The number of total employment positions;
 - (b) Full-time, part-time, and temporary employment positions as a percent of total employment;
 - (c) The number of employment positions according to the following wage bands: Less than thirty thousand dollars; thirty thousand dollars or greater, but less than sixty thousand dollars; and sixty thousand dollars or greater. A wage band containing fewer than three individuals may be combined with another wage band; and
 - (d) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands.
- (4) The department may request additional information necessary to measure the results of the funding assistance program, to be submitted at the same time as the survey.
- (5) If a person fails to submit an annual survey under subsection (2) of this section by the due date of the report or any extension the department shall declare the amount of funding assistance for the previous calendar year to be immediately due and payable. The department shall assess interest, but not penalties, on the amounts due under this section. The interest shall be assessed at the rate provided for delinquent taxes under chapter 82.32 RCW, retroactively to the date the funding assistance was received, and shall accrue until the funding assistance is repaid.
- (6) The department shall use the information from this section to prepare summary descriptive statistics. The department shall report these statistics to the legislature each year by September 1st. The department shall provide the complete annual surveys to the joint legislative audit and review committee.

NEW SECTION. Sec. 7. The provisions of section 5 of this act are subject to review by the joint legislative audit and review committee. The joint legislative audit and review committee will make a recommendation to the house finance committee and the senate ways and means committee by December 1, 2010, regarding the effectiveness of the motion picture competitiveness program including, but not limited to, the amount of state revenue generated, the amount of family wages jobs with benefits created, adherence to the criteria in section 3 of this act, and any other factors deemed appropriate by the joint legislative audit and review committee.

NEW SECTION. Sec. 8. Sections 1 through 4, 6, and 7 of this act constitute a new chapter in Title 43 RCW.

Passed by the Senate March 7, 2006.

Passed by the House March 6, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 248

[Engrossed Substitute Senate Bill 6635]

ADOPTION

AN ACT Relating to adoption; amending RCW 26.33.045 and 26.33.400; creating new sections; and repealing RCW 26.33.410.

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

Sec. 1. RCW 26.33.045 and 1995 c 270 s 8 are each amended to read as follows:

(1) An adoption shall not be delayed or denied on the basis of the race, color, or national origin of the adoptive parent or the child involved. However, when the department or an agency considers whether a placement option is in a child's best interests, the department or agency may consider the cultural, ethnic, or racial background of the child and the capacity of prospective adoptive parents to meet the needs of a child of this background. This provision shall not apply to or affect the application of the Indian Child Welfare Act of 1978, 25 U.S.C. Sec. 1901 et seq.

(2) The department shall create standardized training to be provided to all department employees involved in the placement of a child to assure compliance with Title IV of the civil rights act of 1964 and the multiethnic placement act of 1994, as amended by the interethnic adoption provisions of the small business job protection act of 1996. Such training shall be open to agency employees.

NEW SECTION. Sec. 2. The department of health, in cooperation with the department of social and health services, shall recommend a process for the efficient collection, compilation, and annual publication of adoption statistical data, including data regarding fees, costs, and expenses paid by adoptive families. In developing recommendations, the department of health and the department of social and health services shall consider current processes and requirements for adoption data collection and reporting. The department of health shall report to the legislature not later than October 1, 2006, regarding its recommendations.

NEW SECTION. Sec. 3. The department of social and health services shall, in consultation with adoption advocates, representatives of adoption agencies, adoption attorneys, child-placing agencies, birth and adoptive parents and adapters, federally recognized tribes, and representatives of the superior court judges:

(1) Review the fees associated with children adopted out of the foster care system who are dependents of the state of Washington. The review shall include a determination of whether fees or any other factors are barriers to adoptions of children out of the foster care system; and

(2) Study accreditation standards developed for adoption agencies, including the standards developed by the council on accreditation for children and family services. The department shall brief the legislature by January 1, 2007, on recommendations related to accreditation standards and reducing any barriers that may exist pertaining to the adoption of children who are dependents of the state of Washington.

Sec. 4. RCW 26.33.400 and 1991 c 136 s 6 are each amended to read as follows:

(1) Unless the context clearly requires otherwise, "advertisement" means communication by newspaper, radio, television, handbills, placards or other print, broadcast, or the electronic medium. This definition applies throughout this section.

(2) No person or entity shall cause to be published for circulation, or broadcast on a radio or television station, within the geographic borders of this

state, an advertisement of a child or children offered or wanted for adoption, or shall hold himself or herself out through such advertisement as having the ability to place, locate, dispose, or receive a child or children for adoption unless such person or entity is:

(a) A duly authorized agent, contractee, or employee of the department or a children's agency or institution licensed by the department to care for and place children;

(b) A person who has a completed preplacement report as set forth in RCW 26.33.190 (1) and (2) or chapter 26.34 RCW with a favorable recommendation as to the fitness of the person to be an adoptive parent, or such person's duly authorized uncompensated agent, or such person's attorney who is licensed to practice in the state. Verification of compliance with the requirements of this section shall consist of a written declaration by the person or entity who prepared the preplacement report.

Nothing in this section prohibits an attorney licensed to practice in Washington state from advertising his or her availability to practice or provide services related to the adoption of children.

~~(3)(a) A violation of subsection (2) of this section is a matter affecting the public interest ((for the purpose of applying chapter 19.86 RCW. A violation of subsection (2) of this section is not reasonable in relation to the development and preservation of business. A violation of subsection (2) of this section)) and constitutes an unfair or deceptive act or practice in trade or commerce for the purpose of applying chapter 19.86 RCW.~~

~~(b) The attorney general may bring an action in the name of the state against any person violating the provisions of this section in accordance with the provisions of RCW 19.86.080.~~

~~(c) Nothing in this section applies to any radio or television station or any publisher, printer, or distributor of any newspaper, magazine, billboard, or other advertising medium which accepts advertising in good faith without knowledge of its violation of any provision of this section after an attempt to verify the advertising is in compliance with this section.~~

NEW SECTION. Sec. 5. RCW 26.33.410 (Advertisements—Exemption) and 1989 c 255 s 2 are each repealed.

Passed by the Senate March 7, 2006.

Passed by the House March 1, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 249

[Senate Bill 6637]

ADULT FAMILY HOME PROVIDERS—QUALIFICATIONS

AN ACT Relating to qualifications for adult family home providers; and amending RCW 70.128.120.

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

Sec. 1. RCW 70.128.120 and 2002 c 223 s 1 are each amended to read as follows:

Each adult family home provider and each resident manager shall have the following minimum qualifications, except that only providers are required to meet the provisions of subsection (10) of this section:

- (1) Twenty-one years of age or older;
- (2) For those applying after September 1, 2001, to be licensed as providers, and for resident managers whose employment begins after September 1, 2001, a United States high school diploma or general educational development (GED) certificate or any English or translated government documentation of the following:
 - (a) Successful completion of government-approved public or private school education in a foreign country that includes an annual average of one thousand hours of instruction over twelve years or no less than twelve thousand hours of instruction;
 - (b) A foreign college, foreign university, or United States community college two-year diploma;
 - (c) Admission to, or completion of coursework at, a foreign university or college for which credit was granted;
 - (d) Admission to, or completion of coursework at, a United States college or university for which credits were awarded;
 - (e) Admission to, or completion of postgraduate coursework at, a United States college or university for which credits were awarded; or
 - (f) Successful passage of the United States board examination for registered nursing, or any professional medical occupation for which college or university education preparation was required;
- (3) Good moral and responsible character and reputation;
- (4) Literacy in the English language, however, a person not literate in the English language may meet the requirements of this subsection by assuring that there is a person on staff and available who is able to communicate or make provisions for communicating with the resident in his or her primary language and capable of understanding and speaking English well enough to be able to respond appropriately to emergency situations and be able to read and understand resident care plans;
- (5) Management and administrative ability to carry out the requirements of this chapter;
- (6) Satisfactory completion of department-approved basic training and continuing education training as specified by the department in rule, based on recommendations of the community long-term care training and education steering committee and working in collaboration with providers, consumers, caregivers, advocates, family members, educators, and other interested parties in the rule-making process;
- (7) Satisfactory completion of department-approved, or equivalent, special care training before a provider may provide special care services to a resident;
- (8) Not been convicted of any crime listed in RCW 43.43.830 and 43.43.842; ~~((and))~~
- (9) For those applying after September 1, 2001, to be licensed as providers, and for resident managers whose employment begins after September 1, 2001, at least three hundred twenty hours of successful, direct caregiving experience obtained after age eighteen to vulnerable adults in a licensed or contracted setting prior to operating or managing an adult family home; and

(10) Prior to being granted a license, providers applying after January 1, 2007, must complete a department-approved forty-eight hour adult family home administration and business planning class. The department shall promote and prioritize bilingual capabilities within available resources and when materials are available for this purpose.

Passed by the Senate March 4, 2006.

Passed by the House March 1, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 250

[Senate Bill 6731]

SEX TOURISM

AN ACT Relating to prohibiting sellers of travel from promoting travel for sex tourism; adding a new section to chapter 9A.88 RCW; adding a new section to chapter 19.138 RCW; creating a new section; and prescribing penalties.

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

NEW SECTION. Sec. 1. The legislature finds that the sex industry has rapidly expanded over the past several decades. It involves sexual exploitation of persons, predominantly women and girls, including activities relating to prostitution, pornography, sex tourism, and other commercial sexual services. Prostitution and related activities contribute to the trafficking in persons, as does sex tourism. Therefore, discouraging sex tourism is key to reducing the demand for sex trafficking.

While prostitution is illegal in developing nations that are the primary destination of sex tourism, sex tourism is a major component of the local economy. The laws target female workers rather than the male customers, and economic opportunities for females are limited. Developed nations create the demand for sex tourism, yet often fail to criminalize the practice, or the existing laws fail to specifically target the sellers of travel who organize, facilitate, and promote sex tourism.

NEW SECTION. Sec. 2. A new section is added to chapter 9A.88 RCW to read as follows:

(1) A person commits the offense of promoting travel for prostitution if the person knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in what would be patronizing a prostitute or promoting prostitution, if occurring in the state.

(2) For purposes of this section, "travel services" has the same meaning as defined in RCW 19.138.021.

(3) Promoting travel for prostitution is a class C felony.

NEW SECTION. Sec. 3. A new section is added to chapter 19.138 RCW to read as follows:

(1) No seller of travel shall engage in any of the following:

(a) Promoting travel for prostitution;

(b) Selling, advertising, or otherwise offering to sell travel services or facilitate travel:

(i) For the purposes of engaging in a commercial sex act;

(ii) That consists of tourism packages or activities using and offering sexual acts as an enticement for tourism; or

(iii) That provides, purports to provide access to, or facilitates the availability of sex escorts or sexual services.

(2) For the purposes of this section:

(a) "Commercial sex act" means any sexual contact, as defined in chapter 9A.44 RCW, for which anything of value is given to or received by any person.

(b) "Sexual act" means any sexual contact as defined in chapter 9A.44 RCW.

Passed by the Senate March 7, 2006.

Passed by the House March 1, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 251

[Engrossed Senate Bill 6741]

JOINT TASK FORCE ON THE ADMINISTRATION AND DELIVERY OF SERVICES TO CHILDREN AND FAMILIES

AN ACT Relating to the joint task force on the administration and delivery of services to children and families; amending 2005 c 474 s 1 (uncodified); amending 2005 c 474 s 2 (uncodified); amending 2005 c 474 s 3 (uncodified); and providing expiration dates.

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

Sec. 1. 2005 c 474 s 1 (uncodified) is amended to read as follows:

(1) A joint task force is created to determine the most appropriate and effective administrative structure for delivery of social and health services to the children and families of the state. The joint task force shall study how best to ensure that an administrative structure has defined lines of responsibility for delivering services to children and families in need and the best means for the public to hold government accountable for delivery of those services. The joint task force shall compare the effectiveness of: Including social and health services to children and families within an umbrella agency, such as the current department of social and health services; establishing a separate agency for social and health services to children and families whose administrator reports directly to the governor; or creating a children and family services cabinet reporting directly to the governor. The joint task force shall, as part of the comparison, examine the administrative structures used in other states to deliver social and health services to children and families.

(2) This section expires July 1, 2007.

Sec. 2. 2005 c 474 s 2 (uncodified) is amended to read as follows:

(1) Membership of the joint task force shall consist of the following:

(a) The dean of the school of social work at the University of Washington or an academic professor from a list recommended by the dean, jointly appointed by the chairs of the house of representatives children and family services committee and the senate human services and corrections committee;

(b) Two members of the house of representatives appointed by the speaker of the house of representatives, one of whom shall be a member of the majority caucus and one of whom shall be a member of the minority caucus, and two

members of the senate appointed by the president of the senate, one of whom shall be a member of the majority caucus and one of whom shall be a member of the minority caucus;

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

(d) An individual with previous experience as an administrator of a public agency providing services to children and families, jointly appointed by the chairs of the house of representatives children and family services committee and the senate human services and corrections committee;

(e) A juvenile court administrator, jointly appointed by the chairs of the house of representatives children and family services committee and the senate human services and corrections committee;

(f) A family superior court judge, jointly appointed by the chairs of the house of representatives children and family services committee and the senate human services and corrections committee;

(g) The director of the office of the family and children's ombudsman;

(h) A social worker with experience in the public sector serving children and families, jointly appointed by the chairs of the house of representatives children and family services committee and the senate human services and corrections committee; ~~(and)~~

(i) Two representatives of community-based providers serving children and families, jointly appointed by the chairs of the house of representatives children and family services committee and the senate human services and corrections committee;

(j) A representative from the office of the superintendent of public instruction;

(k) A representative from the office of public defender.

(2) The dean of the school of social work at the University of Washington or the academic professor appointed from a list recommended by the dean shall be the chair of the joint task force.

(3) Staff support for the joint task force shall be provided by the house of representatives office of program research and senate committee services and may include consultant services.

(4) Legislative members of the joint task force shall be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members, except those representing an employer or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(5) This section expires July 1, 2007.

Sec. 3. 2005 c 474 s 3 (uncodified) is amended to read as follows:

(1) The joint task force shall make recommendations concerning which administrative structure or structures would best realize efficiencies in administration and best achieve positive outcomes for children and families, including, but not limited to, the following:

(a) Reducing the number of children at risk for abuse or neglect and increasing the safety and well-being of children;

(b) Increasing the ability of families to care for their own children and reducing the number of children in foster care;

(c) Increasing placement stability and permanency for children in out-of-home care and reducing unsafe and inappropriate placements;

- (d) Delivering appropriate and timely mental health services;
 - (e) Providing adequate and appropriate staff training and education;
 - (f) Promoting foster parent recruitment, training, and retention;
 - (g) Reducing the frequency and duration of sibling separation;
 - (h) Delivering adequate and timely services to adolescents; and
 - (i) Increasing responsibility and accountability for achieving goals.
- (2) The joint task force shall also make recommendations concerning the costs, benefits, savings, or reductions in services associated with the various administrative structures considered by the joint task force.

(3) The joint task force shall report its recommendations to the governor and appropriate committees of the legislature by December 1, 2006.

(4) This section expires July 1, 2007.

Passed by the Senate March 7, 2006.

Passed by the House March 2, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 252

[Substitute House Bill 2471]

VETERAN HOMEOWNERSHIP DOWNPAYMENT ASSISTANCE PROGRAM

AN ACT Relating to creating a veteran homeownership program; reenacting and amending RCW 41.04.007; and adding a new section to chapter 43.180 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 43.180 RCW to read as follows:

(1) By January 1, 2007, the Washington state housing finance commission shall create and implement a veteran homeownership downpayment assistance program to work in conjunction with the commission's housing finance programs. The program will assist the following individuals purchase a home:

(a) Washington state residents who are veterans, as defined by RCW 41.04.007;

(b) Members and former members of the Washington national guard and reserve; and

(c) Never remarried spouses and dependent children of deceased veterans, as defined by RCW 41.04.007.

(2) The commission shall adopt rules providing procedures to assure that the downpayment assistance program is available for qualified veterans in a fair and equitable manner.

Sec. 2. RCW 41.04.007 and 2005 c 251 s 1 and 2005 c 216 s 7 are each reenacted and amended to read as follows:

"Veteran" includes every person, who at the time he or she seeks the benefits of RCW 46.16.30920, 72.36.030, 41.04.010, 73.04.090, 73.04.110, 73.08.010, 73.08.060, 73.08.070, ~~((#))~~ 73.08.080, or section 1 of this act has received an honorable discharge or received a discharge for medical reasons with an honorable record, where applicable, and who has served in at least one of the following capacities:

(1) As a member in any branch of the armed forces of the United States, including the national guard and armed forces reserves, and has fulfilled his or her initial military service obligation;

(2) As a member of the women's air forces service pilots;

(3) As a member of the armed forces reserves, national guard, or coast guard, and has been called into federal service by a presidential select reserve call up for at least one hundred eighty cumulative days;

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

(5) As a member of the Philippine armed forces/scouts during the period of armed conflict from December 7, 1941, through August 15, 1945; or

(6) A United States documented merchant mariner with service aboard an oceangoing vessel operated by the department of defense, or its agents, from both June 25, 1950, through July 27, 1953, in Korean territorial waters and from August 5, 1964, through May 7, 1975, in Vietnam territorial waters, and who received a military commendation.

Passed by the House March 4, 2006.

Passed by the Senate February 28, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 253

[Substitute House Bill 2497]

NATIONAL GUARD MEMBERS—BUSINESS LOANS

AN ACT Relating to assistance for business owners who are active duty national guard members; amending RCW 38.42.010; and adding a new section to chapter 38.42 RCW.

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

Sec. 1. RCW 38.42.010 and 2005 c 254 s 1 are each amended to read as follows:

The definitions in this section apply throughout this chapter.

(1) "Business loan" means a loan or extension of credit granted to a business entity that: (a) Is owned and operated by a service member, in which the service member is either (i) a sole proprietor, or (ii) the owner of at least fifty percent of the entity; and (b) experiences a material reduction in revenue due to the service member's military service.

(2) "Dependent" means:

(a) The service member's spouse;

(b) The service member's minor child; or

(c) An individual for whom the service member provided more than one-half of the individual's support for one hundred eighty days immediately preceding an application for relief under this chapter.

~~((2))~~ (3) "Financial institution" means an institution as defined in RCW 30.22.041.

(4) "Judgment" does not include temporary orders as issued by a judicial court or administrative tribunal in domestic relations cases under Title 26 RCW, including but not limited to establishment of a temporary child support

obligation, creation of a temporary parenting plan, or entry of a temporary protective or restraining order.

~~((3))~~ (5) "Military service" means a service member under a call to active service authorized by the president of the United States or the secretary of defense for a period of more than thirty consecutive days.

~~((4))~~ (6) "National guard" has the meaning in RCW 38.04.010.

~~((5))~~ (7) "Service member" means any resident of Washington state that is a member of the national guard or member of a military reserve component.

NEW SECTION. Sec. 2. A new section is added to chapter 38.42 RCW to read as follows:

(1) Upon the request of a service member with a qualifying business loan, the financial institution must restructure the interest rate of the loan to the equivalent provisions in the federal servicemembers civil relief act (50 U.S.C. App. 501 et seq.). The service member must notify the institution at least five days prior to the beginning of military service and submit official documentation that substantiates their eligibility for the protections of this chapter.

(2) This section applies only to loans with an outstanding balance of less than one hundred thousand dollars at the time the service member is called to military service.

(3) This section applies only to business loans executed on or after January 1, 2007.

Passed by the House February 7, 2006.

Passed by the Senate February 27, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 254

[Substitute House Bill 2537]

INDUSTRIAL INSURANCE—EMPLOYER-ASSISTED INJURY REPORTING—PILOT PROGRAM

AN ACT Relating to establishing a pilot program to allow employers to assist employees in completing applications for industrial insurance benefits; and amending RCW 51.28.015.

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

Sec. 1. RCW 51.28.015 and 2005 c 108 s 1 are each amended to read as follows:

(1) The legislature finds that:

(a) In 1998, the joint legislative audit and review committee, in its performance audit of the Washington industrial insurance system, reported that one of the most significant causes for delayed benefit payments to workers and lack of employer involvement in claims was the manner in which claims were reported. Under this system of reporting, the worker generally reports the injury to a physician who, in turn, reports the injury to the department.

(b) The performance audit further reported that adopting a system in which the employee reports to the employer and the employer reports to the department would speed the first payment of benefits to the worker and involve the employer, from the beginning of the claim, in assisting in the management of the claim, including returning the worker to work.

(c) The performance audit also recognized that there would be instances in which workers would be reluctant to report injuries to employers and that, therefore, the system of physician reporting should be retained as an alternative, and employer reporting should be tested on a widespread basis.

~~(2)((a))~~ The department of labor and industries shall develop and implement an initiative to:

~~(a)~~ Encourage the reporting of industrial injuries and occupational diseases by the worker to his or her employer and by the employer to the department ~~(- Under this initiative, the department must take steps to):~~

~~(b)~~ Encourage the employer to provide assistance to the worker in completing the application for compensation; and

~~(c)~~ Educate workers and employers about the benefits and importance of prompt reporting of injuries and diseases.

~~((b) By))~~ (3)(a) By January 1, 2007, the department shall develop and begin a pilot program to allow employers to assist workers in completing an application for benefits. This pilot program does not replace the current method for reporting as provided in RCW 51.28.020.

(b) The department shall develop requirements or rules for employers who participate in the pilot program, including provisions to ensure prompt reporting of the claim and communicating a worker's rights and responsibilities under the pilot program. The pilot program shall include the voluntary participation of employers that represent a cross-section of industries, geographic areas, union and nonunion workers, large and small businesses, and other criteria established by the department with input of business and labor leaders.

(c) During the pilot period, the department shall consider steps to address the unique needs and issues of small employers.

(d) The number of participating employers must not be more than five hundred during the first year of the pilot program. This number may be increased to seven hundred fifty during the second year of the pilot program.

(e) The pilot program expires July 1, 2009.

~~(4) On December 1, ((2006)) 2007, and December 1, 2008, the department of labor and industries shall ((develop and make statutory recommendations for an alternative system of reporting injuries under which the worker would report to the employer and the employer would report to the department. Upon passage of such legislation, the department shall immediately begin an educational effort to promote this method of reporting.~~

~~(3)(a) The department must conduct))~~ report to the appropriate committees of the legislature the findings of a study of:

~~((i))~~ (a) Claims that are not reported promptly, including but not limited to a review of the circumstances of such claims, the type of injuries involved in such claims, and the reasons for the failure to report such claims promptly;

~~((ii))~~ (b) The effect of the educational initiative required under subsection (2)((a)) of this section on whether the number of claims reported to employers increased, whether there was a reduction in delays in benefit payments, and whether there was an improvement in employer involvement in assisting with claims management and an increase in appropriate return-to-work and better outcomes for injured workers and employers; ((and

~~((iii))~~ (c) The results of the efforts of the centers of occupational health education in early reporting and early notification of employers, and the general

lessons that can be drawn from these results for the larger workers' compensation program(

(b) ~~By December 1, 2006, the department must report on the results of the study to the appropriate committees of the legislature); and~~

(d) The results of the pilot program for workers to begin the process of applying for compensation through the employer and whether additional statutory changes are required or recommended to implement this process for all employers and workers.

Passed by the House February 10, 2006.

Passed by the Senate March 3, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 255

[Engrossed Second Substitute House Bill 2572]

SMALL EMPLOYER HEALTH INSURANCE PARTNERSHIP PROGRAM

AN ACT Relating to establishment of the small employer health insurance partnership program; adding a new chapter to Title 70 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. FINDINGS AND INTENT. (1) The legislature finds that many small employers struggle with the cost of providing employer-sponsored health insurance coverage to their employees, while others are unable to offer employer-sponsored health insurance due to its high cost. Low-wage workers also struggle with the burden of paying their share of the costs of employer-sponsored health insurance, while others turn down their employer's offer of coverage due to its costs.

(2) The legislature intends, through establishment of a small employer health insurance partnership program, to remove economic barriers to health insurance coverage for low-wage employees of small employers by building on the private sector health benefit plan system and encouraging employer and employee participation in employer-sponsored health benefit plan coverage.

NEW SECTION. Sec. 2. DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Administrator" means the administrator of the Washington state health care authority, established under chapter 41.05 RCW.

(2) "Eligible employee" means an individual who:

(a) Is a resident of the state of Washington;

(b) Has family income less than two hundred percent of the federal poverty level, as determined annually by the federal department of health and human services; and

(c) Is employed by a small employer.

(3) "Health benefit plan" has the same meaning as defined in RCW 48.43.005 or any plan provided by a self-funded multiple employer welfare arrangement as defined in RCW 48.125.010 or by another benefit arrangement defined in the federal employee retirement income security act of 1974, as amended.

(4) "Program" means the small employer health insurance partnership program established in section 3 of this act.

(5) "Small employer" has the same meaning as defined in RCW 48.43.005.

(6) "Subsidy" means payment or reimbursement to an eligible employee toward the purchase of a health benefit plan, and may include a net billing arrangement with insurance carriers or a prospective or retrospective payment for health benefit plan premiums.

NEW SECTION. Sec. 3. SMALL EMPLOYER HEALTH INSURANCE PARTNERSHIP PROGRAM ESTABLISHED. To the extent funding is appropriated in the operating budget for this purpose, the small employer health insurance partnership program is established. The administrator shall be responsible for the implementation and operation of the small employer health insurance partnership program, directly or by contract. The administrator shall offer premium subsidies to eligible employees under section 4 of this act.

NEW SECTION. Sec. 4. PREMIUM SUBSIDIES TO ELIGIBLE EMPLOYEES. (1) Beginning July 1, 2007, the administrator shall accept applications from eligible employees, on behalf of themselves, their spouses, and their dependent children, to receive premium subsidies through the small employer health insurance partnership program.

(2) Premium subsidy payments may be provided to eligible employees if:

(a) The eligible employee is employed by a small employer;

(b) The actuarial value of the health benefit plan offered by the small employer is at least equivalent to that of the basic health plan benefit offered under chapter 70.47 RCW. The office of the insurance commissioner under Title 48 RCW shall certify those small employer health benefit plans that are at least actuarially equivalent to the basic health plan benefit; and

(c) The small employer will pay at least forty percent of the monthly premium cost for health benefit plan coverage of the eligible employee.

(3) The amount of an eligible employee's premium subsidy shall be determined by applying the sliding scale subsidy schedule developed for subsidized basic health plan enrollees under RCW 70.47.060 to the employee's premium obligation for his or her employer's health benefit plan.

(4) After an eligible individual has enrolled in the program, the program shall issue subsidies in an amount determined pursuant to subsection (3) of this section to either the eligible employee or to the carrier designated by the eligible employee.

(5) An eligible employee must agree to provide verification of continued enrollment in his or her small employer's health benefit plan on a semiannual basis or to notify the administrator whenever his or her enrollment status changes, whichever is earlier. Verification or notification may be made directly by the employee, or through his or her employer or the carrier providing the small employer health benefit plan. When necessary, the administrator has the authority to perform retrospective audits on premium subsidy accounts. The administrator may suspend or terminate an employee's participation in the program and seek repayment of any subsidy amounts paid due to the omission or misrepresentation of an applicant or enrolled employee. The administrator shall adopt rules to define the appropriate application of these sanctions and the

processes to implement the sanctions provided in this subsection, within available resources.

NEW SECTION. Sec. 5. ENROLLMENT LIMITS TO REMAIN WITHIN APPROPRIATION. Enrollment in the small employer health insurance partnership program is not an entitlement and shall not result in expenditures that exceed the amount that has been appropriated for the program in the operating budget. If it appears that continued enrollment will result in expenditures exceeding the appropriated level for a particular fiscal year, the administrator may freeze new enrollment in the program and establish a waiting list of eligible employees who shall receive subsidies only when sufficient funds are available.

NEW SECTION. Sec. 6. RULES. The administrator shall adopt all rules necessary for the implementation and operation of the small employer health insurance partnership program. As part of the rule development process, the administrator shall consult with small employers, carriers, employee organizations, and the office of the insurance commissioner under Title 48 RCW to determine an effective and efficient method for the payment of subsidies under this chapter. All rules shall be adopted in accordance with chapter 34.05 RCW.

NEW SECTION. Sec. 7. REPORTS TO THE LEGISLATURE. The administrator shall report biennially to the relevant policy and fiscal committees of the legislature on the effectiveness and efficiency of the small employer health insurance partnership program, including the services and benefits covered under the purchased health benefit plans, consumer satisfaction, and other program operational issues.

NEW SECTION. Sec. 8. SMALL EMPLOYER HEALTH INSURANCE PARTNERSHIP PROGRAM ACCOUNT. The small employer health insurance partnership program account is hereby established in the custody of the state treasurer. Any nongeneral fund—state funds collected for the small employer health insurance partnership program shall be deposited in the small employer health insurance partnership program account. Moneys in the account shall be used exclusively for the purposes of administering the small employer health insurance partnership program, including payments to participating managed health care systems on behalf of small employer health insurance partnership enrollees. Only the administrator of the health care authority or his or her designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. Sec. 9. STATE CHILDREN'S HEALTH INSURANCE PROGRAM—FEDERAL WAIVER REQUEST. The department of social and health services shall submit a request to the federal department of health and human services by October 1, 2006, for a state children's health insurance program section 1115 demonstration waiver. The waiver request shall seek authorization from the federal government to draw down Washington state's unspent state children's health insurance program allotment to finance basic health plan coverage, as provided in chapter 70.47 RCW, for parents of children enrolled in medical assistance or the state children's health insurance program. The waiver also shall seek authorization from the federal government to utilize

the resulting state savings to finance expanded basic health plan enrollment, or subsidies provided to low-wage workers through the small employer health insurance partnership program established in this chapter.

NEW SECTION. Sec. 10. The joint legislative audit and review committee shall conduct a program and fiscal review of the small employer health insurance partnership program and report their findings and recommendation to the appropriate committees of the legislature no later than December 1, 2009.

NEW SECTION. Sec. 11. Captions used in this act are not part of the law.

NEW SECTION. Sec. 12. Sections 1 through 9 and 11 of this act constitute a new chapter in Title 70 RCW.

Passed by the House February 8, 2006.

Passed by the Senate March 8, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 256

[House Bill 2671]

EXCISE TAX RELIEF—DUE DATES—PENALTY

AN ACT Relating to providing excise tax relief by modifying due dates and eliminating an assessment penalty; amending RCW 82.32.045, 82.23B.020, 82.27.060, 82.32.085, and 82.32.090; creating new sections; and providing effective dates.

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

Sec. 1. RCW 82.32.045 and 2003 1st sp.s. c 13 s 8 are each amended to read as follows:

(1) Except as otherwise provided in this chapter, payments of the taxes imposed under chapters 82.04, 82.08, 82.12, 82.14, and 82.16 RCW, along with reports and returns on forms prescribed by the department, are due monthly within ~~((twenty))~~ twenty-five days after the end of the month in which the taxable activities occur.

(2) The department of revenue may relieve any taxpayer or class of taxpayers from the obligation of remitting monthly and may require the return to cover other longer reporting periods, but in no event may returns be filed for a period greater than one year. For these taxpayers, tax payments are due on or before the last day of the month next succeeding the end of the period covered by the return.

(3) The department of revenue may also require verified annual returns from any taxpayer, setting forth such additional information as it may deem necessary to correctly determine tax liability.

(4) Notwithstanding subsections (1) and (2) of this section, the department may relieve any person of the requirement to file returns if the following conditions are met:

(a) The person's value of products, gross proceeds of sales, or gross income of the business, from all business activities taxable under chapter 82.04 RCW, is less than twenty-eight thousand dollars per year;

(b) The person's gross income of the business from all activities taxable under chapter 82.16 RCW is less than twenty-four thousand dollars per year; and

(c) The person is not required to collect or pay to the department of revenue any other tax or fee which the department is authorized to collect.

Sec. 2. RCW 82.23B.020 and 2003 1st sp.s. c 13 s 9 are each amended to read as follows:

(1) An oil spill response tax is imposed on the privilege of receiving crude oil or petroleum products at a marine terminal within this state from a waterborne vessel or barge operating on the navigable waters of this state. The tax imposed in this section is levied upon the owner of the crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine terminal from a waterborne vessel or barge at the rate of one cent per barrel of crude oil or petroleum product received.

(2) In addition to the tax imposed in subsection (1) of this section, an oil spill administration tax is imposed on the privilege of receiving crude oil or petroleum products at a marine terminal within this state from a waterborne vessel or barge operating on the navigable waters of this state. The tax imposed in this section is levied upon the owner of the crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine terminal from a waterborne vessel or barge at the rate of four cents per barrel of crude oil or petroleum product.

(3) The taxes imposed by this chapter shall be collected by the marine terminal operator from the taxpayer. If any person charged with collecting the taxes fails to bill the taxpayer for the taxes, or in the alternative has not notified the taxpayer in writing of the imposition of the taxes, or having collected the taxes, fails to pay them to the department in the manner prescribed by this chapter, whether such failure is the result of the person's own acts or the result of acts or conditions beyond the person's control, he or she shall, nevertheless, be personally liable to the state for the amount of the taxes. Payment of the taxes by the owner to a marine terminal operator shall relieve the owner from further liability for the taxes.

(4) Taxes collected under this chapter shall be held in trust until paid to the department. Any person collecting the taxes who appropriates or converts the taxes collected shall be guilty of a gross misdemeanor if the money required to be collected is not available for payment on the date payment is due. The taxes required by this chapter to be collected shall be stated separately from other charges made by the marine terminal operator in any invoice or other statement of account provided to the taxpayer.

(5) If a taxpayer fails to pay the taxes imposed by this chapter to the person charged with collection of the taxes and the person charged with collection fails to pay the taxes to the department, the department may, in its discretion, proceed directly against the taxpayer for collection of the taxes.

(6) The taxes shall be due from the marine terminal operator, along with reports and returns on forms prescribed by the department, within ~~((twenty))~~ twenty-five days after the end of the month in which the taxable activity occurs.

(7) The amount of taxes, until paid by the taxpayer to the marine terminal operator or to the department, shall constitute a debt from the taxpayer to the marine terminal operator. Any person required to collect the taxes under this chapter who, with intent to violate the provisions of this chapter, fails or refuses to do so as required and any taxpayer who refuses to pay any taxes due under

this chapter, shall be guilty of a misdemeanor as provided in chapter 9A.20 RCW.

(8) Upon prior approval of the department, the taxpayer may pay the taxes imposed by this chapter directly to the department. The department shall give its approval for direct payment under this section whenever it appears, in the department's judgment, that direct payment will enhance the administration of the taxes imposed under this chapter. The department shall provide by rule for the issuance of a direct payment certificate to any taxpayer qualifying for direct payment of the taxes. Good faith acceptance of a direct payment certificate by a terminal operator shall relieve the marine terminal operator from any liability for the collection or payment of the taxes imposed under this chapter.

(9) All receipts from the tax imposed in subsection (1) of this section shall be deposited into the state oil spill response account. All receipts from the tax imposed in subsection (2) of this section shall be deposited into the oil spill prevention account.

(10) Within forty-five days after the end of each calendar quarter, the office of financial management shall determine the balance of the oil spill response account as of the last day of that calendar quarter. Balance determinations by the office of financial management under this section are final and shall not be used to challenge the validity of any tax imposed under this chapter. The office of financial management shall promptly notify the departments of revenue and ecology of the account balance once a determination is made. For each subsequent calendar quarter, the tax imposed by subsection (1) of this section shall be imposed during the entire calendar quarter unless:

(a) Tax was imposed under subsection (1) of this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than nine million dollars; or

(b) Tax was not imposed under subsection (1) of this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than eight million dollars.

Sec. 3. RCW 82.27.060 and 2003 1st sp.s. c 13 s 10 are each amended to read as follows:

The taxes levied by this chapter shall be due for payment monthly and remittance therefor shall be made within ~~((twenty))~~ twenty-five days after the end of the month in which the taxable activity occurs. The taxpayer on or before the due date shall make out a signed return, setting out such information as the department of revenue may require, including the gross measure of the tax, any deductions, credits, or exemptions claimed, and the amount of tax due for the preceding monthly period, which amount shall be transmitted to the department along with the return.

The department may relieve any taxpayer from the obligation of filing a monthly return and may require the return to cover other periods, but in no event may periodic returns be filed for a period greater than one year. In such cases tax payments are due on or before the last day of the month next succeeding the end of the period covered by the return.

Sec. 4. RCW 82.32.085 and 1990 c 69 s 3 are each amended to read as follows:

(1) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, drafts, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account.

~~((The electronic funds transfer is to be completed so that the state receives collectible funds on or before the next banking day following the due date.))~~

(2)(a) Except as provided in (b) of this subsection, the electronic funds transfer is to be completed so that the state receives collectible funds on or before the next banking day following the due date.

(b) A remittance made using the automated clearinghouse debit method will be deemed to be received on the due date if the electronic funds transfer is initiated on or before 11:59 p.m. pacific time on the due date with an effective payment date on or before the next banking day following the due date.

(3)(a) The department shall adopt rules necessary to implement the provisions of RCW 82.32.080 and this section. The rules shall include but are not limited to: ~~((1))~~ (i) Coordinating the filing of tax returns with payment by electronic funds transfer; ~~((2))~~ (ii) form and content of electronic funds transfer; ~~((3))~~ (iii) voluntary use of electronic funds transfer with permission of the department; ~~((4))~~ (iv) use of commonly accepted means of electronic funds transfer; ~~((5))~~ (v) means of crediting and recording proof of payment; and ~~((6))~~ (vi) means of correcting errors in transmission.

(b) Any changes in the threshold of tax shall be implemented with a separate rule-making procedure.

NEW SECTION. Sec. 5. (1) The legislature recognizes the following with respect to the payment of excise taxes to the department of revenue by electronic funds transfer:

(a) Taxpayers required to pay their taxes by electronic funds transfer must do so through the use of either the automated clearinghouse debit method or automated clearinghouse credit method;

(b) For a remittance by electronic funds transfer to be considered timely, the transfer must be completed so that the state receives collectible funds on or before the next banking day following the due date;

(c) For the state to receive collectible funds on or before the next banking day following the due date, taxpayers using the automated clearinghouse debit method must initiate the transfer before 5:00 p.m. pacific time on the due date;

(d) The department of revenue receives information identifying the precise date and time the electronic funds transfer is initiated when a taxpayer uses the debit method; and

(e) The department receives information identifying only the date that the state receives collectible funds when a taxpayer uses the automated clearinghouse credit method.

(2) The legislature therefore finds that a remittance made using the automated clearinghouse debit method should be deemed to be received on the due date if the transfer is initiated on or before 11:59 p.m. pacific time on the due date with an effective payment date on or before the next banking day following the due date. The legislature further finds that because the department does not receive information about when an electronic funds transfer is initiated when a taxpayer uses the automated clearinghouse credit method, such transfers must be

completed so that the state receives collectible funds on or before the next banking day following the due date.

Sec. 6. RCW 82.32.090 and 2003 1st sp.s. c 13 s 13 are each amended to read as follows:

(1) If payment of any tax due on a return to be filed by a taxpayer is not received by the department of revenue by the due date, there shall be assessed a penalty of five percent of the amount of the tax; and if the tax is not received on or before the last day of the month following the due date, there shall be assessed a total penalty of fifteen percent of the amount of the tax under this subsection; and if the tax is not received on or before the last day of the second month following the due date, there shall be assessed a total penalty of twenty-five percent of the amount of the tax under this subsection. No penalty so added shall be less than five dollars.

(2) If the department of revenue determines that any tax (~~is due~~) has been substantially underpaid, there shall be assessed a penalty of five percent of the amount of the tax determined by the department to be due (~~and~~). If payment of any tax determined by the department to be due is not received by the department by the due date specified in the notice, or any extension thereof, there shall be assessed a total penalty of fifteen percent of the amount of the tax under this subsection; and if (~~the~~) payment of any tax determined by the department to be due is not received on or before the thirtieth day following the due date specified in the notice of tax due, or any extension thereof, there shall be assessed a total penalty of twenty-five percent of the amount of the tax under this subsection. No penalty so added shall be less than five dollars. As used in this section, "substantially underpaid" means that the taxpayer has paid less than eighty percent of the amount of tax determined by the department to be due for all of the types of taxes included in, and for the entire period of time covered by, the department's examination, and the amount of underpayment is at least one thousand dollars.

(3) If a warrant be issued by the department of revenue for the collection of taxes, increases, and penalties, there shall be added thereto a penalty of ten percent of the amount of the tax, but not less than ten dollars.

(4) If the department finds that a person has engaged in any business or performed any act upon which a tax is imposed under this title and that person has not obtained from the department a registration certificate as required by RCW 82.32.030, the department shall impose a penalty of five percent of the amount of tax due from that person for the period that the person was not registered as required by RCW 82.32.030. The department shall not impose the penalty under this subsection (4) if a person who has engaged in business taxable under this title without first having registered as required by RCW 82.32.030, prior to any notification by the department of the need to register, obtains a registration certificate from the department.

(5) If the department finds that all or any part of a deficiency resulted from the disregard of specific written instructions as to reporting or tax liabilities, the department shall add a penalty of ten percent of the amount of the additional tax found due because of the failure to follow the instructions. A taxpayer disregards specific written instructions when the department of revenue has informed the taxpayer in writing of the taxpayer's tax obligations and the taxpayer fails to act in accordance with those instructions unless the department

has not issued final instructions because the matter is under appeal pursuant to this chapter or departmental regulations. The department shall not assess the penalty under this section upon any taxpayer who has made a good faith effort to comply with the specific written instructions provided by the department to that taxpayer. Specific written instructions may be given as a part of a tax assessment, audit, determination, or closing agreement, provided that such specific written instructions shall apply only to the taxpayer addressed or referenced on such documents. Any specific written instructions by the department of revenue shall be clearly identified as such and shall inform the taxpayer that failure to follow the instructions may subject the taxpayer to the penalties imposed by this subsection.

(6) If the department finds that all or any part of the deficiency resulted from an intent to evade the tax payable hereunder, a further penalty of fifty percent of the additional tax found to be due shall be added.

(7) The penalties imposed under subsections (1) through (4) of this section can each be imposed on the same tax found to be due. This subsection does not prohibit or restrict the application of other penalties authorized by law.

(8) The department of revenue may not impose both the evasion penalty and the penalty for disregarding specific written instructions on the same tax found to be due.

(9) For the purposes of this section, "return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department of revenue, and that has a statutorily defined due date.

NEW SECTION. Sec. 7. (1) Sections 1 through 3 of this act apply to returns due after July 31, 2006.

(2) Section 4 of this act applies to payments due after July 31, 2006.

(3) Section 6 of this act only applies to assessments originally issued after June 30, 2006.

NEW SECTION. Sec. 8. This act does not affect any existing right acquired or liability or obligation incurred under the sections amended in this act or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections.

NEW SECTION. Sec. 9. (1) Sections 1 through 4 of this act take effect August 1, 2006.

(2) Sections 6 and 7 of this act take effect July 1, 2006.

Passed by the House March 8, 2006.

Passed by the Senate March 7, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 257

[Engrossed Substitute House Bill 2680]

TEACHERS RETIREMENT SYSTEM—PURCHASING SERVICE CREDIT

AN ACT Relating to purchasing service credit in plan 2 and plan 3 of the teachers' retirement system for public education experience performed as a teacher in a public school in another state or with the federal government; amending RCW 41.32.065; adding new sections to chapter 41.32 RCW; and providing an effective date.

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

NEW SECTION. Sec. 1. A new section is added to chapter 41.32 RCW under the subchapter heading "plan 2" to read as follows:

(1) An active member who has completed a minimum of five years of creditable service in the teachers' retirement system may, upon written application to the department, make a one-time purchase of up to seven years of service credit for public education experience outside the Washington state retirement system, subject to the following limitations:

(a) The public education experience being claimed must have been performed as a teacher in a public school in another state or with the federal government; and

(b) The public education experience being claimed must have been covered by a retirement or pension plan provided by a state or political subdivision of a state, or by the federal government; and

(c) The member is not currently receiving a benefit or currently eligible to receive an unreduced retirement benefit from a retirement or pension plan of a state or political subdivision of a state or the federal government that includes the service credit to be purchased.

(2) The service credit purchased shall be membership service, and may be used to qualify the member for retirement.

(3) The member shall pay the actuarial value of the resulting increase in the member's benefit calculated in a manner consistent with the department's method for calculating payments for reestablishing service credit under RCW 41.50.165.

(4) The member may pay all or part of the cost of the service credit to be purchased with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(5) The employer also may pay all or a portion of the member's cost of the service credit purchased under this section.

NEW SECTION. Sec. 2. A new section is added to chapter 41.32 RCW under the subchapter heading "plan 3" to read as follows:

(1) An active member who has completed a minimum of five years of creditable service in the teachers' retirement system may, upon written application to the department, make a one-time purchase of up to seven years of service credit for public education experience outside the Washington state retirement system, subject to the following limitations:

(a) The public education experience being claimed must have been performed as a teacher in a public school in another state or with the federal government;

(b) The public education experience being claimed must have been covered by a retirement or pension plan provided by a state or political subdivision of a state, or by the federal government; and

(c) The member is not currently receiving a benefit or currently eligible to receive an unreduced retirement benefit from a retirement or pension plan of a state or political subdivision of a state or the federal government that includes the service credit to be purchased.

(2) The service credit purchased shall be membership service, and may be used to qualify the member for retirement.

(3) The member shall pay the actuarial value of the resulting increase in the member's benefit calculated in a manner consistent with the department's method for calculating payments for reestablishing service credit under RCW 41.50.165.

(4) The member may pay all or part of the cost of the service credit to be purchased with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(5) The employer also may pay all or a portion of the member's cost of the service credit purchased under this section.

Sec. 3. RCW 41.32.065 and 1991 c 278 s 1 are each amended to read as follows:

A member who has not purchased service credit under the provisions of section 1 or 2 of this act may elect under this section to apply service credit earned in an out-of-state retirement system that covers teachers in public schools solely for the purpose of determining the time at which the member may retire. The benefit shall be actuarially reduced to recognize the difference between the age a member would have first been able to retire based on service in the state of Washington and the member's retirement age.

NEW SECTION. Sec. 4. This act takes effect January 1, 2007.

Passed by the House March 6, 2006.

Passed by the Senate March 3, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 258

[Engrossed House Bill 2716]

NURSING FACILITY MEDICAID PAYMENT SYSTEMS

AN ACT Relating to nursing facility medicaid payment systems; amending RCW 74.46.020, 74.46.431, 74.46.433, 74.46.496, 74.46.501, 74.46.506, and 74.46.521; and providing an effective date.

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

Sec. 1. RCW 74.46.020 and 2001 1st sp.s. c 8 s 1 are each amended to read as follows:

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

(1) "Accrual method of accounting" means a method of accounting in which revenues are reported in the period when they are earned, regardless of when they are collected, and expenses are reported in the period in which they are incurred, regardless of when they are paid.

(2) "Appraisal" means the process of estimating the fair market value or reconstructing the historical cost of an asset acquired in a past period as performed by a professionally designated real estate appraiser with no pecuniary interest in the property to be appraised. It includes a systematic, analytic determination and the recording and analyzing of property facts, rights, investments, and values based on a personal inspection and inventory of the property.

(3) "Arm's-length transaction" means a transaction resulting from good-faith bargaining between a buyer and seller who are not related organizations and have adverse positions in the market place. Sales or exchanges of nursing home facilities among two or more parties in which all parties subsequently continue to own one or more of the facilities involved in the transactions shall not be considered as arm's-length transactions for purposes of this chapter. Sale of a nursing home facility which is subsequently leased back to the seller within five years of the date of sale shall not be considered as an arm's-length transaction for purposes of this chapter.

(4) "Assets" means economic resources of the contractor, recognized and measured in conformity with generally accepted accounting principles.

(5) "Audit" or "department audit" means an examination of the records of a nursing facility participating in the medicaid payment system, including but not limited to: The contractor's financial and statistical records, cost reports and all supporting documentation and schedules, receivables, and resident trust funds, to be performed as deemed necessary by the department and according to department rule.

(6) "Bad debts" means amounts considered to be uncollectible from accounts and notes receivable.

(7) "Beneficial owner" means:

(a) Any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares:

(i) Voting power which includes the power to vote, or to direct the voting of such ownership interest; and/or

(ii) Investment power which includes the power to dispose, or to direct the disposition of such ownership interest;

(b) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement, or any other contract, arrangement, or device with the purpose or effect of divesting himself or herself of beneficial ownership of an ownership interest or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of this chapter;

(c) Any person who, subject to (b) of this subsection, has the right to acquire beneficial ownership of such ownership interest within sixty days, including but not limited to any right to acquire:

- (i) Through the exercise of any option, warrant, or right;
- (ii) Through the conversion of an ownership interest;
- (iii) Pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or
- (iv) Pursuant to the automatic termination of a trust, discretionary account, or similar arrangement;

except that, any person who acquires an ownership interest or power specified in (c)(i), (ii), or (iii) of this subsection with the purpose or effect of changing or influencing the control of the contractor, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition shall be deemed to be the beneficial owner of the ownership interest which may be acquired through the exercise or conversion of such ownership interest or power;

(d) Any person who in the ordinary course of business is a pledgee of ownership interest under a written pledge agreement shall not be deemed to be the beneficial owner of such pledged ownership interest until the pledgee has taken all formal steps necessary which are required to declare a default and determines that the power to vote or to direct the vote or to dispose or to direct the disposition of such pledged ownership interest will be exercised; except that:

(i) The pledgee agreement is bona fide and was not entered into with the purpose nor with the effect of changing or influencing the control of the contractor, nor in connection with any transaction having such purpose or effect, including persons meeting the conditions set forth in (b) of this subsection; and

(ii) The pledgee agreement, prior to default, does not grant to the pledgee:

(A) The power to vote or to direct the vote of the pledged ownership interest; or

(B) The power to dispose or direct the disposition of the pledged ownership interest, other than the grant of such power(s) pursuant to a pledge agreement under which credit is extended and in which the pledgee is a broker or dealer.

(8) "Capitalization" means the recording of an expenditure as an asset.

(9) "Case mix" means a measure of the intensity of care and services needed by the residents of a nursing facility or a group of residents in the facility.

(10) "Case mix index" means a number representing the average case mix of a nursing facility.

(11) "Case mix weight" means a numeric score that identifies the relative resources used by a particular group of a nursing facility's residents.

(12) "Certificate of capital authorization" means a certification from the department for an allocation from the biennial capital financing authorization for all new or replacement building construction, or for major renovation projects, receiving a certificate of need or a certificate of need exemption under chapter 70.38 RCW after July 1, 2001.

(13) "Contractor" means a person or entity licensed under chapter 18.51 RCW to operate a medicare and medicaid certified nursing facility, responsible for operational decisions, and contracting with the department to provide services to medicaid recipients residing in the facility.

(14) "Default case" means no initial assessment has been completed for a resident and transmitted to the department by the cut-off date, or an assessment is otherwise past due for the resident, under state and federal requirements.

(15) "Department" means the department of social and health services (DSHS) and its employees.

(16) "Depreciation" means the systematic distribution of the cost or other basis of tangible assets, less salvage, over the estimated useful life of the assets.

(17) "Direct care" means nursing care and related care provided to nursing facility residents. Therapy care shall not be considered part of direct care.

(18) "Direct care supplies" means medical, pharmaceutical, and other supplies required for the direct care of a nursing facility's residents.

(19) "Entity" means an individual, partnership, corporation, limited liability company, or any other association of individuals capable of entering enforceable contracts.

(20) "Equity" means the net book value of all tangible and intangible assets less the recorded value of all liabilities, as recognized and measured in conformity with generally accepted accounting principles.

(21) "Essential community provider" means a facility which is the only nursing facility within a commuting distance radius of at least forty minutes duration, traveling by automobile.

(22) "Facility" or "nursing facility" means a nursing home licensed in accordance with chapter 18.51 RCW, excepting nursing homes certified as institutions for mental diseases, or that portion of a multiservice facility licensed as a nursing home, or that portion of a hospital licensed in accordance with chapter 70.41 RCW which operates as a nursing home.

(23) "Fair market value" means the replacement cost of an asset less observed physical depreciation on the date for which the market value is being determined.

(24) "Financial statements" means statements prepared and presented in conformity with generally accepted accounting principles including, but not limited to, balance sheet, statement of operations, statement of changes in financial position, and related notes.

(25) "Generally accepted accounting principles" means accounting principles approved by the financial accounting standards board (FASB).

(26) "Goodwill" means the excess of the price paid for a nursing facility business over the fair market value of all net identifiable tangible and intangible assets acquired, as measured in accordance with generally accepted accounting principles.

(27) "Grouper" means a computer software product that groups individual nursing facility residents into case mix classification groups based on specific resident assessment data and computer logic.

(28) "High labor-cost county" means an urban county in which the median allowable facility cost per case mix unit is more than ten percent higher than the median allowable facility cost per case mix unit among all other urban counties, excluding that county.

(29) "Historical cost" means the actual cost incurred in acquiring and preparing an asset for use, including feasibility studies, architect's fees, and engineering studies.

(30) "Home and central office costs" means costs that are incurred in the support and operation of a home and central office. Home and central office costs include centralized services that are performed in support of a nursing facility. The department may exclude from this definition costs that are nonduplicative, documented, ordinary, necessary, and related to the provision of care services to authorized patients.

(31) "Imprest fund" means a fund which is regularly replenished in exactly the amount expended from it.

(32) "Joint facility costs" means any costs which represent resources which benefit more than one facility, or one facility and any other entity.

(33) "Lease agreement" means a contract between two parties for the possession and use of real or personal property or assets for a specified period of time in exchange for specified periodic payments. Elimination (due to any cause other than death or divorce) or addition of any party to the contract, expiration, or modification of any lease term in effect on January 1, 1980, or termination of the lease by either party by any means shall constitute a termination of the lease agreement. An extension or renewal of a lease agreement, whether or not pursuant to a renewal provision in the lease agreement, shall be considered a new lease agreement. A strictly formal change in the lease agreement which modifies the method, frequency, or manner in which the lease payments are made, but does not increase the total lease payment obligation of the lessee, shall not be considered modification of a lease term.

(34) "Medical care program" or "medicaid program" means medical assistance, including nursing care, provided under RCW 74.09.500 or authorized state medical care services.

(35) "Medical care recipient," "medicaid recipient," or "recipient" means an individual determined eligible by the department for the services provided under chapter 74.09 RCW.

(36) "Minimum data set" means the overall data component of the resident assessment instrument, indicating the strengths, needs, and preferences of an individual nursing facility resident.

(37) "Net book value" means the historical cost of an asset less accumulated depreciation.

(38) "Net invested funds" means the net book value of tangible fixed assets employed by a contractor to provide services under the medical care program, including land, buildings, and equipment as recognized and measured in conformity with generally accepted accounting principles.

(39) "Nonurban county" means a county which is not located in a metropolitan statistical area as determined and defined by the United States office of management and budget or other appropriate agency or office of the federal government.

(40) "Operating lease" means a lease under which rental or lease expenses are included in current expenses in accordance with generally accepted accounting principles.

(41) "Owner" means a sole proprietor, general or limited partners, members of a limited liability company, and beneficial interest holders of five percent or more of a corporation's outstanding stock.

(42) "Ownership interest" means all interests beneficially owned by a person, calculated in the aggregate, regardless of the form which such beneficial ownership takes.

(43) "Patient day" or "resident day" means a calendar day of care provided to a nursing facility resident, regardless of payment source, which will include the day of admission and exclude the day of discharge; except that, when admission and discharge occur on the same day, one day of care shall be deemed to exist. A "medicaid day" or "recipient day" means a calendar day of care provided to a medicaid recipient determined eligible by the department for services provided under chapter 74.09 RCW, subject to the same conditions regarding admission and discharge applicable to a patient day or resident day of care.

(44) "Professionally designated real estate appraiser" means an individual who is regularly engaged in the business of providing real estate valuation services for a fee, and who is deemed qualified by a nationally recognized real estate appraisal educational organization on the basis of extensive practical appraisal experience, including the writing of real estate valuation reports as well as the passing of written examinations on valuation practice and theory, and who by virtue of membership in such organization is required to subscribe and adhere to certain standards of professional practice as such organization prescribes.

(45) "Qualified therapist" means:

(a) A mental health professional as defined by chapter 71.05 RCW;

(b) A mental retardation professional who is a therapist approved by the department who has had specialized training or one year's experience in treating or working with the mentally retarded or developmentally disabled;

(c) A speech pathologist who is eligible for a certificate of clinical competence in speech pathology or who has the equivalent education and clinical experience;

(d) A physical therapist as defined by chapter 18.74 RCW;

(e) An occupational therapist who is a graduate of a program in occupational therapy, or who has the equivalent of such education or training; and

(f) A respiratory care practitioner certified under chapter 18.89 RCW.

(46) "Rate" or "rate allocation" means the medicaid per-patient-day payment amount for medicaid patients calculated in accordance with the allocation methodology set forth in part E of this chapter.

(47) "Real property," whether leased or owned by the contractor, means the building, allowable land, land improvements, and building improvements associated with a nursing facility.

(48) "Rebased rate" or "cost-rebased rate" means a facility-specific component rate assigned to a nursing facility for a particular rate period established on desk-reviewed, adjusted costs reported for that facility covering at least six months of a prior calendar year designated as a year to be used for cost-rebasing payment rate allocations under the provisions of this chapter.

(49) "Records" means those data supporting all financial statements and cost reports including, but not limited to, all general and subsidiary ledgers, books of original entry, and transaction documentation, however such data are maintained.

(50) "Related organization" means an entity which is under common ownership and/or control with, or has control of, or is controlled by, the contractor.

(a) "Common ownership" exists when an entity is the beneficial owner of five percent or more ownership interest in the contractor and any other entity.

(b) "Control" exists where an entity has the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization or institution, whether or not it is legally enforceable and however it is exercisable or exercised.

(51) "Related care" means only those services that are directly related to providing direct care to nursing facility residents. These services include, but are not limited to, nursing direction and supervision, medical direction, medical records, pharmacy services, activities, and social services.

(52) "Resident assessment instrument," including federally approved modifications for use in this state, means a federally mandated, comprehensive nursing facility resident care planning and assessment tool, consisting of the minimum data set and resident assessment protocols.

(53) "Resident assessment protocols" means those components of the resident assessment instrument that use the minimum data set to trigger or flag a resident's potential problems and risk areas.

(54) "Resource utilization groups" means a case mix classification system that identifies relative resources needed to care for an individual nursing facility resident.

(55) "Restricted fund" means those funds the principal and/or income of which is limited by agreement with or direction of the donor to a specific purpose.

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

(57) "Support services" means food, food preparation, dietary, housekeeping, and laundry services provided to nursing facility residents.

(58) "Therapy care" means those services required by a nursing facility resident's comprehensive assessment and plan of care, that are provided by qualified therapists, or support personnel under their supervision, including related costs as designated by the department.

(59) "Title XIX" or "medicaid" means the 1965 amendments to the social security act, P.L. 89-07, as amended and the medicaid program administered by the department.

(60) "Urban county" means a county which is located in a metropolitan statistical area as determined and defined by the United States office of management and budget or other appropriate agency or office of the federal government.

(61) "Vital local provider" means a facility reporting a home office that meets the following qualifications:

(a) The home office address is located in Washington state; and

(b) The sum of medicaid days for all Washington facilities reporting the home office as their home office was greater than two hundred fifteen thousand in 2003.

Sec. 2. RCW 74.46.431 and 2005 c 518 s 944 are each amended to read as follows:

(1) Effective July 1, 1999, nursing facility medicaid payment rate allocations shall be facility-specific and shall have seven components: Direct care, therapy care, support services, operations, property, financing allowance, and variable return. The department shall establish and adjust each of these components, as provided in this section and elsewhere in this chapter, for each medicaid nursing facility in this state.

(2) ~~((AH))~~ Component rate allocations in therapy care, support services, variable return, operations, property, and financing allowance for essential community providers as defined in this chapter shall be based upon a minimum facility occupancy of eighty-five percent of licensed beds, regardless of how many beds are set up or in use. For all facilities other than essential community providers, effective July 1, 2001, component rate allocations in direct care, therapy care, support services, variable return, operations, property, and financing allowance shall continue to be based upon a minimum facility occupancy of eighty-five percent of licensed beds. For all facilities other than essential community providers, effective July 1, 2002, the component rate allocations in operations, property, and financing allowance shall be based upon a minimum facility occupancy of ninety percent of licensed beds, regardless of how many beds are set up or in use. For all facilities, effective July 1, 2006, the component rate allocation in direct care shall be based upon actual facility occupancy.

(3) Information and data sources used in determining medicaid payment rate allocations, including formulas, procedures, cost report periods, resident assessment instrument formats, resident assessment methodologies, and resident classification and case mix weighting methodologies, may be substituted or altered from time to time as determined by the department.

(4)(a) Direct care component rate allocations shall be established using adjusted cost report data covering at least six months. Adjusted cost report data from 1996 will be used for October 1, 1998, through June 30, 2001, direct care component rate allocations; adjusted cost report data from 1999 will be used for July 1, 2001, through June 30, ~~((2005))~~ 2006, direct care component rate allocations. Adjusted cost report data from ~~((1999))~~ 2003 will ~~((continue to))~~ be used for July 1, ~~((2005))~~ 2006, and later direct care component rate allocations.

(b) Direct care component rate allocations based on 1996 cost report data shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. A different economic trends and conditions adjustment factor or factors may be defined in the biennial appropriations act for facilities whose direct care component rate is set equal to their adjusted June 30, 1998, rate, as provided in RCW 74.46.506(5)(i).

(c) Direct care component rate allocations based on 1999 cost report data shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. A different economic trends and conditions adjustment factor or factors may be defined in the biennial appropriations act for facilities whose direct care component rate is set equal to their adjusted June 30, 1998, rate, as provided in RCW 74.46.506(5)(i).

(d) Direct care component rate allocations based on 2003 cost report data shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. A different economic trends and conditions adjustment factor or factors may be defined in the biennial

appropriations act for facilities whose direct care component rate is set equal to their adjusted June 30, 2006, rate, as provided in RCW 74.46.506(5)(i).

(5)(a) Therapy care component rate allocations shall be established using adjusted cost report data covering at least six months. Adjusted cost report data from 1996 will be used for October 1, 1998, through June 30, 2001, therapy care component rate allocations; adjusted cost report data from 1999 will be used for July 1, 2001, through June 30, 2005, therapy care component rate allocations. Adjusted cost report data from 1999 will continue to be used for July 1, 2005, and later therapy care component rate allocations.

(b) Therapy care component rate allocations shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act.

(6)(a) Support services component rate allocations shall be established using adjusted cost report data covering at least six months. Adjusted cost report data from 1996 shall be used for October 1, 1998, through June 30, 2001, support services component rate allocations; adjusted cost report data from 1999 shall be used for July 1, 2001, through June 30, 2005, support services component rate allocations. Adjusted cost report data from 1999 will continue to be used for July 1, 2005, and later support services component rate allocations.

(b) Support services component rate allocations shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act.

(7)(a) Operations component rate allocations shall be established using adjusted cost report data covering at least six months. Adjusted cost report data from 1996 shall be used for October 1, 1998, through June 30, 2001, operations component rate allocations; adjusted cost report data from 1999 shall be used for July 1, 2001, through June 30, ~~((2005))~~ 2006, operations component rate allocations. Adjusted cost report data from ~~((1999))~~ 2003 will ~~((continue to))~~ be used for July 1, ~~((2005))~~ 2006, and later operations component rate allocations.

(b) Operations component rate allocations shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. A different economic trends and conditions adjustment factor or factors may be defined in the biennial appropriations act for facilities whose operations component rate is set equal to their adjusted June 30, 2006, rate, as provided in RCW 74.46.521(4).

(8) For July 1, 1998, through September 30, 1998, a facility's property and return on investment component rates shall be the facility's June 30, 1998, property and return on investment component rates, without increase. For October 1, 1998, through June 30, 1999, a facility's property and return on investment component rates shall be rebased utilizing 1997 adjusted cost report data covering at least six months of data.

(9) Total payment rates under the nursing facility medicaid payment system shall not exceed facility rates charged to the general public for comparable services.

(10) Medicaid contractors shall pay to all facility staff a minimum wage of the greater of the state minimum wage or the federal minimum wage.

(11) The department shall establish in rule procedures, principles, and conditions for determining component rate allocations for facilities in

circumstances not directly addressed by this chapter, including but not limited to: The need to prorate inflation for partial-period cost report data, newly constructed facilities, existing facilities entering the medicaid program for the first time or after a period of absence from the program, existing facilities with expanded new bed capacity, existing medicaid facilities following a change of ownership of the nursing facility business, facilities banking beds or converting beds back into service, facilities temporarily reducing the number of set-up beds during a remodel, facilities having less than six months of either resident assessment, cost report data, or both, under the current contractor prior to rate setting, and other circumstances.

(12) The department shall establish in rule procedures, principles, and conditions, including necessary threshold costs, for adjusting rates to reflect capital improvements or new requirements imposed by the department or the federal government. Any such rate adjustments are subject to the provisions of RCW 74.46.421.

(13) Effective July 1, 2001, medicaid rates shall continue to be revised downward in all components, in accordance with department rules, for facilities converting banked beds to active service under chapter 70.38 RCW, by using the facility's increased licensed bed capacity to recalculate minimum occupancy for rate setting. However, for facilities other than essential community providers which bank beds under chapter 70.38 RCW, after May 25, 2001, medicaid rates shall be revised upward, in accordance with department rules, in direct care, therapy care, support services, and variable return components only, by using the facility's decreased licensed bed capacity to recalculate minimum occupancy for rate setting, but no upward revision shall be made to operations, property, or financing allowance component rates. The direct care component rate allocation shall be adjusted, without using the minimum occupancy assumption, for facilities that convert banked beds to active service, under chapter 70.38 RCW, beginning on July 1, 2006.

(14) Facilities obtaining a certificate of need or a certificate of need exemption under chapter 70.38 RCW after June 30, 2001, must have a certificate of capital authorization in order for (a) the depreciation resulting from the capitalized addition to be included in calculation of the facility's property component rate allocation; and (b) the net invested funds associated with the capitalized addition to be included in calculation of the facility's financing allowance rate allocation.

Sec. 3. RCW 74.46.433 and 2001 1st sp.s. c 8 s 6 are each amended to read as follows:

(1) The department shall establish for each medicaid nursing facility a variable return component rate allocation. In determining the variable return allowance:

(a) Except as provided in (e) of this subsection, the variable return array and percentage shall be assigned whenever rebasing of noncapital rate allocations is scheduled under RCW ((46.46.431 [74.46.431]) 74.46.431 (4), (5), (6), and (7).

(b) To calculate the array of facilities for the July 1, 2001, rate setting, the department, without using peer groups, shall first rank all facilities in numerical order from highest to lowest according to each facility's examined and documented, but unlidged, combined direct care, therapy care, support services, and operations per resident day cost from the 1999 cost report period. However,

before being combined with other per resident day costs and ranked, a facility's direct care cost per resident day shall be adjusted to reflect its facility average case mix index, to be averaged from the four calendar quarters of 1999, weighted by the facility's resident days from each quarter, under RCW 74.46.501(7)(b)(ii). The array shall then be divided into four quartiles, each containing, as nearly as possible, an equal number of facilities, and four percent shall be assigned to facilities in the lowest quartile, three percent to facilities in the next lowest quartile, two percent to facilities in the next highest quartile, and one percent to facilities in the highest quartile.

(c) The department shall, subject to (d) of this subsection, compute the variable return allowance by multiplying a facility's assigned percentage by the sum of the facility's direct care, therapy care, support services, and operations component rates determined in accordance with this chapter and rules adopted by the department.

(d) Effective July 1, 2001, if a facility's examined and documented direct care cost per resident day for the preceding report year is lower than its average direct care component rate weighted by medicaid resident days for the same year, the facility's direct care cost shall be substituted for its July 1, 2001, direct care component rate, and its variable return component rate shall be determined or adjusted each July 1st by multiplying the facility's assigned percentage by the sum of the facility's July 1, 2001, therapy care, support services, and operations component rates, and its direct care cost per resident day for the preceding year.

(e) Effective July 1, 2006, the variable return component rate allocation for each facility shall be the facility's June 30, 2006, variable return component rate allocation.

(2) The variable return rate allocation calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421.

Sec. 4. RCW 74.46.496 and 1998 c 322 s 23 are each amended to read as follows:

(1) Each case mix classification group shall be assigned a case mix weight. The case mix weight for each resident of a nursing facility for each calendar quarter shall be based on data from resident assessment instruments completed for the resident and weighted by the number of days the resident was in each case mix classification group. Days shall be counted as provided in this section.

(2) The case mix weights shall be based on the average minutes per registered nurse, licensed practical nurse, and certified nurse aide, for each case mix group, and using the health care financing administration of the United States department of health and human services 1995 nursing facility staff time measurement study stemming from its multistate nursing home case mix and quality demonstration project. Those minutes shall be weighted by statewide ratios of registered nurse to certified nurse aide, and licensed practical nurse to certified nurse aide, wages, including salaries and benefits, which shall be based on 1995 cost report data for this state.

(3) The case mix weights shall be determined as follows:

(a) Set the certified nurse aide wage weight at 1.000 and calculate wage weights for registered nurse and licensed practical nurse average wages by dividing the certified nurse aide average wage into the registered nurse average wage and licensed practical nurse average wage;

(b) Calculate the total weighted minutes for each case mix group in the resource utilization group III classification system by multiplying the wage weight for each worker classification by the average number of minutes that classification of worker spends caring for a resident in that resource utilization group III classification group, and summing the products;

(c) Assign a case mix weight of 1.000 to the resource utilization group III classification group with the lowest total weighted minutes and calculate case mix weights by dividing the lowest group's total weighted minutes into each group's total weighted minutes and rounding weight calculations to the third decimal place.

(4) The case mix weights in this state may be revised if the health care financing administration updates its nursing facility staff time measurement studies. The case mix weights shall be revised, but only when direct care component rates are cost-rebased as provided in subsection (5) of this section, to be effective on the July 1st effective date of each cost-rebased direct care component rate. However, the department may revise case mix weights more frequently if, and only if, significant variances in wage ratios occur among direct care staff in the different caregiver classifications identified in this section.

(5) Case mix weights shall be revised when direct care component rates are cost-rebased (~~(every three years)~~) as provided in RCW 74.46.431(4)(~~(a)~~).

Sec. 5. RCW 74.46.501 and 2001 1st sp.s. c 8 s 9 are each amended to read as follows:

(1) From individual case mix weights for the applicable quarter, the department shall determine two average case mix indexes for each medicaid nursing facility, one for all residents in the facility, known as the facility average case mix index, and one for medicaid residents, known as the medicaid average case mix index.

(2)(a) In calculating a facility's two average case mix indexes for each quarter, the department shall include all residents or medicaid residents, as applicable, who were physically in the facility during the quarter in question based on the resident assessment instrument completed by the facility and the requirements and limitations for the instrument's completion and transmission (January 1st through March 31st, April 1st through June 30th, July 1st through September 30th, or October 1st through December 31st).

(b) The facility average case mix index shall exclude all default cases as defined in this chapter. However, the medicaid average case mix index shall include all default cases.

(3) Both the facility average and the medicaid average case mix indexes shall be determined by multiplying the case mix weight of each resident, or each medicaid resident, as applicable, by the number of days, as defined in this section and as applicable, the resident was at each particular case mix classification or group, and then averaging.

(4)(a) In determining the number of days a resident is classified into a particular case mix group, the department shall determine a start date for calculating case mix grouping periods as follows:

(i) If a resident's initial assessment for a first stay or a return stay in the nursing facility is timely completed and transmitted to the department by the cutoff date under state and federal requirements and as described in subsection

(5) of this section, the start date shall be the later of either the first day of the quarter or the resident's facility admission or readmission date;

(ii) If a resident's significant change, quarterly, or annual assessment is timely completed and transmitted to the department by the cutoff date under state and federal requirements and as described in subsection (5) of this section, the start date shall be the date the assessment is completed;

(iii) If a resident's significant change, quarterly, or annual assessment is not timely completed and transmitted to the department by the cutoff date under state and federal requirements and as described in subsection (5) of this section, the start date shall be the due date for the assessment.

(b) If state or federal rules require more frequent assessment, the same principles for determining the start date of a resident's classification in a particular case mix group set forth in subsection (4)(a) of this section shall apply.

(c) In calculating the number of days a resident is classified into a particular case mix group, the department shall determine an end date for calculating case mix grouping periods as follows:

(i) If a resident is discharged before the end of the applicable quarter, the end date shall be the day before discharge;

(ii) If a resident is not discharged before the end of the applicable quarter, the end date shall be the last day of the quarter;

(iii) If a new assessment is due for a resident or a new assessment is completed and transmitted to the department, the end date of the previous assessment shall be the earlier of either the day before the assessment is due or the day before the assessment is completed by the nursing facility.

(5) The cutoff date for the department to use resident assessment data, for the purposes of calculating both the facility average and the medicaid average case mix indexes, and for establishing and updating a facility's direct care component rate, shall be one month and one day after the end of the quarter for which the resident assessment data applies.

(6) A threshold of ninety percent, as described and calculated in this subsection, shall be used to determine the case mix index each quarter. The threshold shall also be used to determine which facilities' costs per case mix unit are included in determining the ceiling, floor, and price. For direct care component rate allocations established on and after July 1, 2006, the threshold of ninety percent shall be used to determine the case mix index each quarter and to determine which facilities' costs per case mix unit are included in determining the ceiling and price. If the facility does not meet the ninety percent threshold, the department may use an alternate case mix index to determine the facility average and medicaid average case mix indexes for the quarter. The threshold is a count of unique minimum data set assessments, and it shall include resident assessment instrument tracking forms for residents discharged prior to completing an initial assessment. The threshold is calculated by dividing a facility's count of residents being assessed by the average census for the facility. A daily census shall be reported by each nursing facility as it transmits assessment data to the department. The department shall compute a quarterly average census based on the daily census. If no census has been reported by a facility during a specified quarter, then the department shall use the facility's licensed beds as the denominator in computing the threshold.

(7)(a) Although the facility average and the medicaid average case mix indexes shall both be calculated quarterly, the facility average case mix index will be used ~~((only every three years))~~ throughout the applicable cost-rebasing period in combination with cost report data as specified by RCW 74.46.431 and 74.46.506, to establish a facility's allowable cost per case mix unit. A facility's medicaid average case mix index shall be used to update a nursing facility's direct care component rate quarterly.

(b) The facility average case mix index used to establish each nursing facility's direct care component rate shall be based on an average of calendar quarters of the facility's average case mix indexes.

(i) For October 1, 1998, direct care component rates, the department shall use an average of facility average case mix indexes from the four calendar quarters of 1997.

(ii) For July 1, 2001, direct care component rates, the department shall use an average of facility average case mix indexes from the four calendar quarters of 1999.

(iii) Beginning on July 1, 2006, when establishing the direct care component rates, the department shall use an average of facility case mix indexes from the four calendar quarters occurring during the cost report period used to rebase the direct care component rate allocations as specified in RCW 74.46.431.

(c) The medicaid average case mix index used to update or recalibrate a nursing facility's direct care component rate quarterly shall be from the calendar quarter commencing six months prior to the effective date of the quarterly rate. For example, October 1, 1998, through December 31, 1998, direct care component rates shall utilize case mix averages from the April 1, 1998, through June 30, 1998, calendar quarter, and so forth.

Sec. 6. RCW 74.46.506 and 2001 1st sp.s. c 8 s 10 are each amended to read as follows:

(1) The direct care component rate allocation corresponds to the provision of nursing care for one resident of a nursing facility for one day, including direct care supplies. Therapy services and supplies, which correspond to the therapy care component rate, shall be excluded. The direct care component rate includes elements of case mix determined consistent with the principles of this section and other applicable provisions of this chapter.

(2) Beginning October 1, 1998, the department shall determine and update quarterly for each nursing facility serving medicaid residents a facility-specific per-resident day direct care component rate allocation, to be effective on the first day of each calendar quarter. In determining direct care component rates the department shall utilize, as specified in this section, minimum data set resident assessment data for each resident of the facility, as transmitted to, and if necessary corrected by, the department in the resident assessment instrument format approved by federal authorities for use in this state.

(3) The department may question the accuracy of assessment data for any resident and utilize corrected or substitute information, however derived, in determining direct care component rates. The department is authorized to impose civil fines and to take adverse rate actions against a contractor, as specified by the department in rule, in order to obtain compliance with resident assessment and data transmission requirements and to ensure accuracy.

(4) Cost report data used in setting direct care component rate allocations shall be 1996 (~~and~~), 1999, and 2003 for rate periods as specified in RCW 74.46.431(4)(a).

(5) Beginning October 1, 1998, the department shall rebase each nursing facility's direct care component rate allocation as described in RCW 74.46.431, adjust its direct care component rate allocation for economic trends and conditions as described in RCW 74.46.431, and update its medicaid average case mix index, consistent with the following:

(a) Reduce total direct care costs reported by each nursing facility for the applicable cost report period specified in RCW 74.46.431(4)(a) to reflect any department adjustments, and to eliminate reported resident therapy costs and adjustments, in order to derive the facility's total allowable direct care cost;

(b) Divide each facility's total allowable direct care cost by its adjusted resident days for the same report period, increased if necessary to a minimum occupancy of eighty-five percent; that is, the greater of actual or imputed occupancy at eighty-five percent of licensed beds, to derive the facility's allowable direct care cost per resident day. However, effective July 1, 2006, each facility's allowable direct care costs shall be divided by its adjusted resident days without application of a minimum occupancy assumption;

(c) Adjust the facility's per resident day direct care cost by the applicable factor specified in RCW 74.46.431(4) (b) (~~and~~), (c), and (d) to derive its adjusted allowable direct care cost per resident day;

(d) Divide each facility's adjusted allowable direct care cost per resident day by the facility average case mix index for the applicable quarters specified by RCW 74.46.501(7)(b) to derive the facility's allowable direct care cost per case mix unit;

(e) Effective for July 1, 2001, rate setting, divide nursing facilities into at least two and, if applicable, three peer groups: Those located in nonurban counties; those located in high labor-cost counties, if any; and those located in other urban counties;

(f) Array separately the allowable direct care cost per case mix unit for all facilities in nonurban counties; for all facilities in high labor-cost counties, if applicable; and for all facilities in other urban counties, and determine the median allowable direct care cost per case mix unit for each peer group;

(g) Except as provided in (i) of this subsection, from October 1, 1998, through June 30, 2000, determine each facility's quarterly direct care component rate as follows:

(i) Any facility whose allowable cost per case mix unit is less than eighty-five percent of the facility's peer group median established under (f) of this subsection shall be assigned a cost per case mix unit equal to eighty-five percent of the facility's peer group median, and shall have a direct care component rate allocation equal to the facility's assigned cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

(ii) Any facility whose allowable cost per case mix unit is greater than one hundred fifteen percent of the peer group median established under (f) of this subsection shall be assigned a cost per case mix unit equal to one hundred fifteen percent of the peer group median, and shall have a direct care component rate allocation equal to the facility's assigned cost per case mix unit multiplied by

that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

(iii) Any facility whose allowable cost per case mix unit is between eighty-five and one hundred fifteen percent of the peer group median established under (f) of this subsection shall have a direct care component rate allocation equal to the facility's allowable cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

(h) Except as provided in (i) of this subsection, from July 1, 2000, ~~((forward, and for all future rate setting))~~ through June 30, 2006, determine each facility's quarterly direct care component rate as follows:

(i) Any facility whose allowable cost per case mix unit is less than ninety percent of the facility's peer group median established under (f) of this subsection shall be assigned a cost per case mix unit equal to ninety percent of the facility's peer group median, and shall have a direct care component rate allocation equal to the facility's assigned cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

(ii) Any facility whose allowable cost per case mix unit is greater than one hundred ten percent of the peer group median established under (f) of this subsection shall be assigned a cost per case mix unit equal to one hundred ten percent of the peer group median, and shall have a direct care component rate allocation equal to the facility's assigned cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

(iii) Any facility whose allowable cost per case mix unit is between ninety and one hundred ten percent of the peer group median established under (f) of this subsection shall have a direct care component rate allocation equal to the facility's allowable cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

(i)(i) Between October 1, 1998, and June 30, 2000, the department shall compare each facility's direct care component rate allocation calculated under (g) of this subsection with the facility's nursing services component rate in effect on September 30, 1998, less therapy costs, plus any exceptional care offsets as reported on the cost report, adjusted for economic trends and conditions as provided in RCW 74.46.431. A facility shall receive the higher of the two rates.

(ii) Between July 1, 2000, and June 30, 2002, the department shall compare each facility's direct care component rate allocation calculated under (h) of this subsection with the facility's direct care component rate in effect on June 30, 2000. A facility shall receive the higher of the two rates. Between July 1, 2001, and June 30, 2002, if during any quarter a facility whose rate paid under (h) of this subsection is greater than either the direct care rate in effect on June 30, 2000, or than that facility's allowable direct care cost per case mix unit calculated in (d) of this subsection multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c), the facility shall be paid in that and each subsequent quarter pursuant to (h) of this subsection and shall not be entitled to the greater of the two rates.

(iii) ~~(Effective)~~ Between July 1, 2002, and June 30, 2006, all direct care component rate allocations shall be as determined under (h) of this subsection.

(iv) Effective July 1, 2006, for all providers, except vital local providers as defined in this chapter, all direct care component rate allocations shall be as determined under (j) of this subsection.

(v) Effective July 1, 2006, for vital local providers, as defined in this chapter, direct care component rate allocations shall be determined as follows:

(A) The department shall calculate:

(I) The sum of each facility's July 1, 2006, direct care component rate allocation calculated under (j) of this subsection and July 1, 2006, operations component rate calculated under RCW 74.46.521; and

(II) The sum of each facility's June 30, 2006, direct care and operations component rates.

(B) If the sum calculated under (i)(v)(A)(I) of this subsection is less than the sum calculated under (i)(v)(A)(II) of this subsection, the facility shall have a direct care component rate allocation equal to the facility's June 30, 2006, direct care component rate allocation.

(C) If the sum calculated under (i)(v)(A)(I) of this subsection is greater than or equal to the sum calculated under (i)(v)(A)(II) of this subsection, the facility's direct care component rate shall be calculated under (j) of this subsection.

(j) Except as provided in (i) of this subsection, from July 1, 2006, forward, and for all future rate setting, determine each facility's quarterly direct care component rate as follows:

(i) Any facility whose allowable cost per case mix unit is greater than one hundred twelve percent of the peer group median established under (f) of this subsection shall be assigned a cost per case mix unit equal to one hundred twelve percent of the peer group median, and shall have a direct care component rate allocation equal to the facility's assigned cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c):

(ii) Any facility whose allowable cost per case mix unit is less than or equal to one hundred twelve percent of the peer group median established under (f) of this subsection shall have a direct care component rate allocation equal to the facility's allowable cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c).

(6) The direct care component rate allocations calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421.

(7) Costs related to payments resulting from increases in direct care component rates, granted under authority of RCW 74.46.508(1) for a facility's exceptional care residents, shall be offset against the facility's examined, allowable direct care costs, for each report year or partial period such increases are paid. Such reductions in allowable direct care costs shall be for rate setting, settlement, and other purposes deemed appropriate by the department.

Sec. 7. RCW 74.46.521 and 2001 1st sp.s. c 8 s 13 are each amended to read as follows:

(1) The operations component rate allocation corresponds to the general operation of a nursing facility for one resident for one day, including but not

limited to management, administration, utilities, office supplies, accounting and bookkeeping, minor building maintenance, minor equipment repairs and replacements, and other supplies and services, exclusive of direct care, therapy care, support services, property, financing allowance, and variable return.

(2) Except as provided in subsection (4) of this section, beginning October 1, 1998, the department shall determine each medicaid nursing facility's operations component rate allocation using cost report data specified by RCW 74.46.431(7)(a). Effective July 1, 2002, operations component rates for all facilities except essential community providers shall be based upon a minimum occupancy of ninety percent of licensed beds, and no operations component rate shall be revised in response to beds banked on or after May 25, 2001, under chapter 70.38 RCW.

(3) Except as provided in subsection (4) of this section, to determine each facility's operations component rate the department shall:

(a) Array facilities' adjusted general operations costs per adjusted resident day, as determined by dividing each facility's total allowable operations cost by its adjusted resident days for the same report period, increased if necessary to a minimum occupancy of ninety percent; that is, the greater of actual or imputed occupancy at ninety percent of licensed beds, for each facility from facilities' cost reports from the applicable report year, for facilities located within urban counties and for those located within nonurban counties and determine the median adjusted cost for each peer group;

(b) Set each facility's operations component rate at the lower of:

(i) The facility's per resident day adjusted operations costs from the applicable cost report period adjusted if necessary to a minimum occupancy of eighty-five percent of licensed beds before July 1, 2002, and ninety percent effective July 1, 2002; or

(ii) The adjusted median per resident day general operations cost for that facility's peer group, urban counties or nonurban counties; and

(c) Adjust each facility's operations component rate for economic trends and conditions as provided in RCW 74.46.431(7)(b).

(4)(a) Effective July 1, 2006, for any facility whose direct care component rate allocation is set equal to its June 30, 2006, direct care component rate allocation, as provided in RCW 74.46.506(5)(i), the facility's operations component rate allocation shall also be set equal to the facility's June 30, 2006, operations component rate allocation.

(b) The operations component rate allocation for facilities whose operations component rate is set equal to their June 30, 2006, operations component rate, shall be adjusted for economic trends and conditions as provided in RCW 74.46.431(7)(b).

(5) The operations component rate allocations calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421.

NEW SECTION. Sec. 8. This act takes effect July 1, 2006.

Passed by the House March 7, 2006.

Passed by the Senate March 8, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 259

[Engrossed Substitute House Bill 2848]

DOMESTIC VIOLENCE ADVOCATES—CLIENT CONFIDENTIALITY—PRIVILEGED
INFORMATION

AN ACT Relating to protecting confidentiality of domestic violence information; amending RCW 5.60.060, 70.123.040, and 74.04.060; adding a new section to chapter 70.123 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature intends, by amending RCW 5.60.060, to recognize that advocates help domestic violence victims by giving them the support and counseling they need to recover from their abuse, and by providing resources to achieve protection from further abuse. Without assurance that communications made with a domestic violence advocate will be confidential and protected from disclosure, victims will be deterred from confiding openly or seeking information and counseling, resulting in a failure to receive vital advocacy and support needed for recovery and protection from abuse. But investigative or prosecutorial functions performed by individuals who assist victims in the criminal legal system and in other state agencies are different from the advocacy and counseling functions performed by advocates who work under the auspices or supervision of a community victim services program. The legislature recognizes the important role played by individuals who assist victims in the criminal legal system and in other state agencies, but intends that the testimonial privilege not be extended to individuals who perform an investigative or prosecutorial function.

Sec. 2. RCW 5.60.060 and 2005 c 504 s 705 are each amended to read as follows:

(1) A husband shall not be examined for or against his wife, without the consent of the wife, nor a wife for or against her husband without the consent of the husband; nor can either during marriage or afterward, be without the consent of the other, examined as to any communication made by one to the other during marriage. But this exception shall not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other, nor to a criminal action or proceeding against a spouse if the marriage occurred subsequent to the filing of formal charges against the defendant, nor to a criminal action or proceeding for a crime committed by said husband or wife against any child of whom said husband or wife is the parent or guardian, nor to a proceeding under chapter 70.96A, 70.96B, 71.05, or 71.09 RCW: PROVIDED, That the spouse of a person sought to be detained under chapter 70.96A, 70.96B, 71.05, or 71.09 RCW may not be compelled to testify and shall be so informed by the court prior to being called as a witness.

(2)(a) An attorney or counselor shall not, without the consent of his or her client, be examined as to any communication made by the client to him or her, or his or her advice given thereon in the course of professional employment.

(b) A parent or guardian of a minor child arrested on a criminal charge may not be examined as to a communication between the child and his or her attorney if the communication was made in the presence of the parent or guardian. This privilege does not extend to communications made prior to the arrest.

(3) A member of the clergy or a priest shall not, without the consent of a person making the confession, be examined as to any confession made to him or her in his or her professional character, in the course of discipline enjoined by the church to which he or she belongs.

(4) Subject to the limitations under RCW 70.96A.140 or 71.05.360 (8) and (9), a physician or surgeon or osteopathic physician or surgeon or podiatric physician or surgeon shall not, without the consent of his or her patient, be examined in a civil action as to any information acquired in attending such patient, which was necessary to enable him or her to prescribe or act for the patient, except as follows:

(a) In any judicial proceedings regarding a child's injury, neglect, or sexual abuse or the cause thereof; and

(b) Ninety days after filing an action for personal injuries or wrongful death, the claimant shall be deemed to waive the physician-patient privilege. Waiver of the physician-patient privilege for any one physician or condition constitutes a waiver of the privilege as to all physicians or conditions, subject to such limitations as a court may impose pursuant to court rules.

(5) A public officer shall not be examined as a witness as to communications made to him or her in official confidence, when the public interest would suffer by the disclosure.

(6)(a) A peer support group counselor shall not, without consent of the law enforcement officer making the communication, be compelled to testify about any communication made to the counselor by the officer while receiving counseling. The counselor must be designated as such by the sheriff, police chief, or chief of the Washington state patrol, prior to the incident that results in counseling. The privilege only applies when the communication was made to the counselor while acting in his or her capacity as a peer support group counselor. The privilege does not apply if the counselor was an initial responding officer, a witness, or a party to the incident which prompted the delivery of peer support group counseling services to the law enforcement officer.

(b) For purposes of this section, "peer support group counselor" means a:

(i) Law enforcement officer, or civilian employee of a law enforcement agency, who has received training to provide emotional and moral support and counseling to an officer who needs those services as a result of an incident in which the officer was involved while acting in his or her official capacity; or

(ii) Nonemployee counselor who has been designated by the sheriff, police chief, or chief of the Washington state patrol to provide emotional and moral support and counseling to an officer who needs those services as a result of an incident in which the officer was involved while acting in his or her official capacity.

(7) A sexual assault advocate may not, without the consent of the victim, be examined as to any communication made by the victim to the sexual assault advocate.

(a) For purposes of this section, "sexual assault advocate" means the employee or volunteer from a rape crisis center, victim assistance unit, program, or association, that provides information, medical or legal advocacy, counseling, or support to victims of sexual assault, who is designated by the victim to accompany the victim to the hospital or other health care facility and to

proceedings concerning the alleged assault, including police and prosecution interviews and court proceedings.

(b) A sexual assault advocate may disclose a confidential communication without the consent of the victim if failure to disclose is likely to result in a clear, imminent risk of serious physical injury or death of the victim or another person. Any sexual assault advocate participating in good faith in the disclosing of records and communications under this section shall have immunity from any liability, civil, criminal, or otherwise, that might result from the action. In any proceeding, civil or criminal, arising out of a disclosure under this section, the good faith of the sexual assault advocate who disclosed the confidential communication shall be presumed.

(8) A domestic violence advocate may not, without the consent of the victim, be examined as to any communication between the victim and the domestic violence advocate.

(a) For purposes of this section, "domestic violence advocate" means an employee or supervised volunteer from a community-based domestic violence program or human services program that provides information, advocacy, counseling, crisis intervention, emergency shelter, or support to victims of domestic violence and who is not employed by, or under the direct supervision of, a law enforcement agency, a prosecutor's office, or the child protective services section of the department of social and health services as defined in RCW 26.44.020.

(b) A domestic violence advocate may disclose a confidential communication without the consent of the victim if failure to disclose is likely to result in a clear, imminent risk of serious physical injury or death of the victim or another person. This section does not relieve a domestic violence advocate from the requirement to report or cause to be reported an incident under RCW 26.44.030(1) or to disclose relevant records relating to a child as required by RCW 26.44.030(11). Any domestic violence advocate participating in good faith in the disclosing of communications under this subsection is immune from liability, civil, criminal, or otherwise, that might result from the action. In any proceeding, civil or criminal, arising out of a disclosure under this subsection, the good faith of the domestic violence advocate who disclosed the confidential communication shall be presumed.

Sec. 3. RCW 70.123.040 and 1979 ex.s. c 245 s 4 are each amended to read as follows:

(1) Minimum standards established by the department under RCW 70.123.030 shall ensure that shelters receiving grants under this chapter provide services meeting basic survival needs, where not provided by other means, such as, but not limited to, food, clothing, housing, safety, security, client advocacy, client confidentiality, and counseling. These services shall be problem-oriented and designed to provide necessary assistance to the victims of domestic violence and their children.

(2) The department shall establish minimum standards that ensure that nonshelter community-based services for victims of domestic violence funded under RCW 70.123.150 provide services designed to enhance safety and security by means such as, but not limited to, client advocacy, client confidentiality, and counseling.

NEW SECTION. **Sec. 4.** A new section is added to chapter 70.123 RCW to read as follows:

(1) Except as authorized in subsections (2) and (3) of this section, or pursuant to court order under RCW 70.123.075, a domestic violence program, an individual who assists a domestic violence program in the delivery of services, or an agent, employee, or volunteer of a domestic violence program shall not disclose information about a recipient of shelter, advocacy, or counseling services without the informed authorization of the recipient. In the case of an unemancipated minor, the minor and the parent or guardian must provide the authorization. For the purposes of this section, a "domestic violence program" means an agency that provides shelter, advocacy, or counseling for domestic violence victims in a supportive environment.

(2)(a) A recipient of shelter, advocacy, or counseling services may authorize a domestic violence program to disclose information about the recipient. The authorization must be in writing, signed by the recipient, or if an unemancipated minor is the recipient, signed by the minor and the parent or guardian, and must contain a reasonable time limit on the duration of the recipient's authorization. If the authorization does not contain a date upon which the authorization to disclose information expires, the recipient's authorization expires ninety days after the date it was signed.

(b) The domestic violence program's disclosure of information shall be only to the extent authorized by the recipient. The domestic violence program, if requested, shall provide a copy of the disclosed information to the recipient.

(c) Except as provided under this chapter, an authorization is not a waiver of the recipient's rights or privileges under other statutes, rules of evidence, or common law.

(3) If disclosure of a recipient's information is required by statute or court order, the domestic violence program shall make reasonable attempts to provide notice to the recipient affected by the disclosure of information. If personally identifying information is or will be disclosed, the domestic violence program shall take steps necessary to protect the privacy and safety of the persons affected by the disclosure of the information.

(4) To comply with tribal, federal, state, or territorial reporting, evaluation, or data collection requirements, domestic violence programs may share data in the aggregate that does not contain personally identifying information and that: (a) Pertains to services to their clients; or (b) is demographic information.

Sec. 5. RCW 74.04.060 and 1987 c 435 s 29 are each amended to read as follows:

(1)(a) For the protection of applicants and recipients, the department and the county offices and their respective officers and employees are prohibited, except as hereinafter provided, from disclosing the contents of any records, files, papers and communications, except for purposes directly connected with the administration of the programs of this title. In any judicial proceeding, except such proceeding as is directly concerned with the administration of these programs, such records, files, papers and communications, and their contents, shall be deemed privileged communications and except for the right of any individual to inquire of the office whether a named individual is a recipient of welfare assistance and such person shall be entitled to an affirmative or negative answer. (~~However,~~)

(b) Upon written request of a parent who has been awarded visitation rights in an action for divorce or separation or any parent with legal custody of the child, the department shall disclose to him or her the last known address and location of his or her natural or adopted children. The secretary shall adopt rules which establish procedures for disclosing the address of the children and providing, when appropriate, for prior notice to the custodian of the children. The notice shall state that a request for disclosure has been received and will be complied with by the department unless the department receives a copy of a court order which enjoins the disclosure of the information or restricts or limits the requesting party's right to contact or visit the other party or the child. Information supplied to a parent by the department shall be used only for purposes directly related to the enforcement of the visitation and custody provisions of the court order of separation or decree of divorce. No parent shall disclose such information to any other person except for the purpose of enforcing visitation provisions of the said order or decree.

(c) The department shall review methods to improve the protection and confidentiality of information for recipients of welfare assistance who have disclosed to the department that they are past or current victims of domestic violence or stalking.

(2) The county offices shall maintain monthly at their offices a report showing the names and addresses of all recipients in the county receiving public assistance under this title, together with the amount paid to each during the preceding month.

(3) The provisions of this section shall not apply to duly designated representatives of approved private welfare agencies, public officials, members of legislative interim committees and advisory committees when performing duties directly connected with the administration of this title, such as regulation and investigation directly connected therewith: PROVIDED, HOWEVER, That any information so obtained by such persons or groups shall be treated with such degree of confidentiality as is required by the federal social security law.

(4) It shall be unlawful, except as provided in this section, for any person, body, association, firm, corporation or other agency to solicit, publish, disclose, receive, make use of, or to authorize, knowingly permit, participate in or acquiesce in the use of any lists or names for commercial or political purposes of any nature. The violation of this section shall be a gross misdemeanor.

Passed by the House February 13, 2006.

Passed by the Senate March 3, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 260

[Engrossed Substitute House Bill 2925]

ASSISTED LIVING FACILITIES—MEDICAID OCCUPANCY PERCENTAGE

AN ACT Relating to assisted living facility medicaid minimum occupancy percentage of fifty percent or greater; adding a new section to chapter 74.39A RCW; and providing an effective date.

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

NEW SECTION. Sec. 1. A new section is added to chapter 74.39A RCW to read as follows:

(1) To the extent funds are appropriated for this purpose, the department shall establish a capital add-on rate, not less than the July 1, 2005, capital add-on rate established by the department, for those assisted living facilities contracting with the department that have a medicaid occupancy percentage of sixty percent or greater.

(2) Effective for July 1, 2006, and for each July 1st rate-setting period thereafter, the department shall determine the facility's medicaid occupancy percentage using the last six months' medicaid resident days from the preceding calendar year divided by the product of all its licensed boarding home beds irrespective of use, times calendar days for the six-month period. For the purposes of this section, medicaid resident days include those clients who are enrolled in a medicaid managed long-term care program, including but not limited to the program for all inclusive care and the medicaid integration project.

(3) The medicaid occupancy percentage established beginning on July 1, 2006, and for each July 1st thereafter, shall be used to determine whether an assisted living facility qualifies for the capital add-on rate under this section. Those facilities that qualify for the capital add-on rate shall receive the capital add-on rate throughout the applicable fiscal year.

NEW SECTION. Sec. 2. This act takes effect July 1, 2006.

Passed by the House March 8, 2006.

Passed by the Senate March 8, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 261

[Substitute House Bill 3024]

SCHOOL DISTRICT PROJECTS—ALTERNATIVE PUBLIC WORK CONTRACTING

AN ACT Relating to alternative public works contracting for school district capital demonstration projects; and amending RCW 39.10.067, 39.10.115, and 39.10.902.

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

Sec. 1. RCW 39.10.067 and 2003 c 301 s 3 are each amended to read as follows:

In addition to the projects authorized in RCW 39.10.061, public bodies may also use the general contractor/construction manager contracting procedure for the construction of school district capital demonstration projects, subject to the following conditions:

(1) The project must receive approval from the school district project review board established under RCW 39.10.115.

(2) The school district project review board may not authorize more than ~~((sixteen))~~ twenty-three demonstration projects valued over ten million dollars.

(3) The school district project review board may not authorize more than two demonstration projects valued between five and ten million dollars and the authorization for the two demonstration projects shall expire upon the completion of the two projects.

Sec. 2. RCW 39.10.115 and 2001 c 328 s 4 are each amended to read as follows:

(1) The school district project review board is established to review school district proposals submitted by school districts to use alternative public works contracting procedures. The board shall select and approve qualified projects based upon an evaluation of the information submitted by the school district under subsection (2) of this section. After July 1, 2001, any appointments for full terms or to fill a vacancy shall be made by the governor and shall include the following representatives, each having experience with public works or commercial construction: One representative from the office of the superintendent of public instruction; one representative from the office of financial management; two representatives from the construction industry, one of whom works for a construction company with gross annual revenues of twenty million dollars or less; one representative from the specialty contracting industry; one representative from organized labor; one representative from the design industry; one representative from a public body previously authorized under this chapter to use an alternative public works contracting procedure who has experience using such alternative contracting procedures; one representative from school districts with ten thousand or more annual average full-time equivalent pupils; and one representative from school districts with fewer than ten thousand average full-time equivalent pupils. Each member shall be appointed for a term of three years, with the first three-year term commencing after June 8, 2000. Any member of the school district project review board who is directly affiliated with any applicant before the board must recuse him or herself from consideration of the application.

(2) A school district seeking to use alternative contracting procedures authorized under this chapter shall file an application with the school district project review board. The application form shall require the district to submit a detailed statement of the proposed project, including the school district's name; student population based upon October full-time equivalents; the current projected total budget for the project, including the estimated construction costs, costs for professional services, equipment and furnishing costs, off-site costs, contract administration costs, and other related project costs; the anticipated project design and construction schedule; a summary of the school district's construction activity for the preceding six years; and an explanation of why the school district believes the use of an alternative contracting procedure is in the public interest and why the school district is qualified to use an alternative contracting procedure, including a summary of the relevant experience of the school district's management team. The applicant shall also provide in a timely manner any other information concerning implementation of projects under this chapter requested by the school district project review board to assist in its consideration.

(3) Any school district whose application is approved by the school district project review board shall comply with the public notification and review requirements in RCW 39.10.030.

(4) Any school district whose application is approved by the school district project review board shall not use as an evaluation factor whether a contractor submitting a bid for the approved project has had prior general contractor/construction manager procedure experience.

(5) The school district project review board shall prepare and issue a report reviewing the use of the alternative public works contracting procedures by school districts. The board shall report to the capital projects advisory review board created under RCW 39.10.810 at least thirty days before January 8, 2007.

Sec. 3. RCW 39.10.902 and 2005 c 469 s 5 are each amended to read as follows:

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective July 1, 2007:

- (1) RCW 39.10.010 and 1994 c 132 s 1;
- (2) RCW 39.10.020 and 2005 c 469 s 3, 2003 c 352 s 1, 2003 c 301 s 2, 2003 c 300 s 3, 2001 c 328 s 1, 2000 c 209 s 1, 1997 c 376 s 1, & 1994 c 132 s 2;
- (3) RCW 39.10.030 and 1997 c 376 s 2 & 1994 c 132 s 3;
- (4) RCW 39.10.040 and 1994 c 132 s 4;
- (5) RCW 39.10.051 and 2003 c 352 s 2, 2003 c 300 s 4, 2002 c 46 s 1, & 2001 c 328 s 2;
- (6) RCW 39.10.061 and 2003 c 352 s 3, 2003 c 300 s 5, 2002 c 46 s 2, & 2001 c 328 s 3;
- (7) RCW 39.10.065 and 1997 c 376 s 5;
- (8) RCW 39.10.067 and 2006 c — s 1 (section 1 of this act), 2003 c 301 s 3, 2002 c 46 s 3, & 2000 c 209 s 3;
- (9) RCW 39.10.070 and 1994 c 132 s 7;
- (10) RCW 39.10.080 and 1994 c 132 s 8;
- (11) RCW 39.10.090 and 1994 c 132 s 9;
- (12) RCW 39.10.100 and 1994 c 132 s 10;
- (13) RCW 39.10.115 and 2006 c — s 2 (section 2 of this act), 2001 c 328 s 4, & 2000 c 209 s 4;
- (14) RCW 39.10.900 and 1994 c 132 s 13;
- (15) RCW 39.10.901 and 1994 c 132 s 14;
- (16) RCW 39.10.068 and 2003 c 300 s 6;
- (17) RCW 39.10.117 and 2003 c 300 s 7; and
- (18) RCW 39.10.130 and 2003 c 301 s 1.

Passed by the House February 11, 2006.

Passed by the Senate February 27, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 262

[Second Substitute House Bill 3070]

HOUSING FINANCE COMMISSION—DEBT LIMITATION

AN ACT Relating to increasing housing development capacity; and amending RCW 43.180.160.

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

Sec. 1. RCW 43.180.160 and 1999 c 131 s 2 are each amended to read as follows:

The total amount of outstanding indebtedness of the commission may not exceed ~~((three))~~ four and one-half billion dollars at any time. The calculation of outstanding indebtedness shall include the initial principal amount of an issue

and shall not include interest that is either currently payable or that accrues as a part of the face amount of an issue payable at maturity or earlier redemption. Outstanding indebtedness shall not include notes or bonds as to which the obligation of the commission has been satisfied and discharged by refunding or for which payment has been provided by reserves or otherwise.

Passed by the House March 8, 2006.

Passed by the Senate March 7, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 263

[Engrossed Second Substitute House Bill 3098]

STATE BOARD OF EDUCATION

AN ACT Relating to transferring duties of the reconstituted state board of education; amending RCW 28A.305.130, 28A.305.035, 28A.300.040, 28A.305.011, 28A.150.230, 28A.505.140, 28A.525.020, 28A.525.030, 28A.525.050, 28A.525.055, 28A.525.070, 28A.525.080, 28A.525.090, 28A.525.162, 28A.525.164, 28A.525.166, 28A.525.168, 28A.525.170, 28A.525.172, 28A.525.174, 28A.525.176, 28A.525.178, 28A.525.180, 28A.525.190, 28A.525.200, 28A.525.216, 28A.150.260, 28A.335.160, 28A.540.050, 28A.150.530, 28A.335.210, 28A.335.230, 28A.540.070, 39.35D.020, 39.35D.040, 39.35D.060, 79.17.100, 79.17.120, 28A.305.220, 28A.230.100, 28A.230.170, 28A.305.170, 28A.230.130, 28A.205.010, 28A.205.070, 28A.215.010, 28A.215.020, 28A.205.040, 28A.215.140, 28A.230.020, 28A.230.040, 28A.230.050, 28A.315.175, 28A.315.195, 28A.315.205, 28A.315.015, 28A.315.025, 28A.315.055, 28A.315.085, 28A.315.125, 28A.315.185, 28A.305.210, 28A.310.080, 28A.310.030, 28A.310.050, 28A.310.060, 28A.310.090, 28A.310.100, 28A.310.140, 28A.310.150, 28A.310.200, 28A.310.310, 28A.323.020, 28A.323.040, 29A.24.070, 84.09.037, 28A.305.160, 28A.150.300, 28A.225.160, 28A.300.150, 28A.600.020, 28A.600.030, 18.35.020, 18.35.195, 18.83.200, 28A.625.360, 28A.225.330, 28A.405.110, 28A.415.010, 28A.415.020, 28A.415.024, 28A.415.025, 28A.415.105, 28A.415.125, 28A.415.130, 28A.415.145, 28A.660.020, 28A.660.040, 28A.690.020, 28A.300.050, 28A.625.370, 28A.625.380, 28A.625.390, 28B.10.710, 28B.35.120, 28B.40.120, 43.43.832, 43.43.840, 72.40.028, 28A.600.010, 28A.225.280, 28A.600.200, 28A.160.210, 28A.160.100, 28A.210.070, 28A.210.120, 28A.210.160, 28A.210.320, 28A.335.100, 28A.335.120, 28A.320.240, 28A.155.060, 28A.600.130, and 28A.650.015; reenacting and amending RCW 28A.330.100, 28A.630.400, and 43.43.845; adding a new section to chapter 28A.525 RCW; adding a new section to chapter 28A.545 RCW; adding a new section to chapter 28A.230 RCW; adding new sections to chapter 28A.300 RCW; adding new sections to chapter 28A.600 RCW; adding a new section to chapter 28A.405 RCW; creating new sections; recodifying RCW 28A.305.220, 28A.305.170, and 28A.305.160; decodifying RCW 28A.525.120, 28A.525.122, 28A.525.124, 28A.525.126, 28A.525.128, 28A.525.130, 28A.525.132, 28A.525.134, 28A.525.140, 28A.525.142, 28A.525.144, 28A.525.146, 28A.525.148, 28A.525.150, 28A.525.152, 28A.525.154, 28A.525.156, 28A.525.158, 28A.525.160, and 28A.525.182; providing an effective date; and providing expiration dates.

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

NEW SECTION. Sec. 1. In 2005, the legislature reconstituted the state board of education to refocus its purpose; abolished the academic achievement and accountability commission; and assigned policy and rule-making authority for educator preparation and certification to the professional educator standards board. The purpose of this act is to address the remaining statutory responsibilities of the state board of education held before 2005. The legislature finds that some duties should be retained with the reconstituted board; many duties should be transferred to other agencies or organizations, primarily but not exclusively to the superintendent of public instruction; and some duties should

be repealed. This act also corrects statutes to implement fully the transfer of responsibilities authorized in 2005.

PART 1
NEW STATE BOARD OF EDUCATION

NEW SECTION. Sec. 101. The legislature encourages the members of the new state board of education to review the transfer of duties from the state board to other entities made in this act and if any of the duties that were transferred away from the state board are necessary for the board to accomplish the purpose set out in this act then the state board shall come back to the legislature to request those necessary duties to be returned to the state board of education. The state board of education is encouraged to make such a request by January 15, 2007.

Sec. 102. RCW 28A.305.130 and 2005 c 497 s 104 are each amended to read as follows:

The purpose of the state board of education is to ~~((adopt statewide policies that promote achievement of the goals of RCW 28A.150.210; implement a standards-based accountability system; and provide leadership in the creation of an education system that respects the diverse cultures, abilities, and learning styles of all students))~~ provide advocacy and strategic oversight of public education; implement a standards-based accountability system to improve student academic achievement; provide leadership in the creation of a system that personalizes education for each student and respects diverse cultures, abilities, and learning styles; and promote achievement of the goals of RCW 28A.150.210. In addition to any other powers and duties as provided by law, the state board of education shall:

(1) ~~((Until January 1, 2006, approve or disapprove the program of courses leading to teacher, school administrator, and school specialized personnel certification offered by all institutions of higher education within the state which may be accredited and whose graduates may become entitled to receive such certification.~~

(2) ~~Until January 1, 2006, conduct every five years a review of the program approval standards, including the minimum standards for teachers, administrators, and educational staff associates, to reflect research findings and assure continued improvement of preparation programs for teachers, administrators, and educational staff associates.~~

(3) ~~Until January 1, 2006, investigate the character of the work required to be performed as a condition of entrance to and graduation from any institution of higher education in this state relative to such certification as provided for in subsection (1) of this section, and prepare a list of accredited institutions of higher education of this and other states whose graduates may be awarded such certificates.~~

(4) ~~Until January 1, 2006:~~

(a) ~~Adopt rules to allow a teacher certification candidate to fulfill, in part, teacher preparation program requirements through work experience as a classified teacher's aide in a public school or private school meeting the requirements of RCW 28A.195.010. The rules shall include, but are not limited to, limitations based upon the recency of the teacher preparation candidate's~~

~~teacher aide work experience, and limitations based on the amount of work experience that may apply toward teacher preparation program requirements under this chapter; and~~

~~(b) Require that at the time of the individual's enrollment in a teacher preparation program, the supervising teacher and the building principal shall jointly provide to the teacher preparation program of the higher education institution at which the teacher candidate is enrolled, a written assessment of the performance of the teacher candidate. The assessment shall contain such information as determined by the state board of education and shall include: Evidence that at least fifty percent of the candidate's work as a classified teacher's aide was involved in instructional activities with children under the supervision of a certificated teacher and that the candidate worked a minimum of six hundred thirty hours for one school year; the type of work performed by the candidate; and a recommendation of whether the candidate's work experience as a classified teacher's aide should be substituted for teacher preparation program requirements. In compliance with such rules as may be established by the state board of education under this section, the teacher preparation programs of the higher education institution where the candidate is enrolled shall make the final determination as to what teacher preparation program requirements may be fulfilled by teacher aide work experience.~~

~~(5) Until January 1, 2006, supervise the issuance of such certificates as provided for in subsection (1) of this section and specify the types and kinds of certificates necessary for the several departments of the common schools by rule or regulation in accordance with RCW 28A.410.010.~~

~~(6)) Hold regularly scheduled meetings at such time and place within the state as the board shall determine and may hold such special meetings as may be deemed necessary for the transaction of public business((-);~~

~~((7)) (2) Form committees as necessary to effectively and efficiently conduct the work of the board((-);~~

~~((8)) (3) Seek advice from the public and interested parties regarding the work of the board((-);~~

~~((9)) (4) For purposes of statewide accountability((-the board shall):~~

(a) Adopt and revise performance improvement goals in reading, writing, science, and mathematics, by subject and grade level, once assessments in these subjects are required statewide; academic and technical skills, as appropriate, in secondary career and technical education programs; and student attendance, as the board deems appropriate to improve student learning. The goals shall be consistent with student privacy protection provisions of RCW 28A.655.090(7) and shall not conflict with requirements contained in Title I of the federal elementary and secondary education act of 1965, or the requirements of the Carl D. Perkins vocational education act of 1998, each as amended. The goals may be established for all students, economically disadvantaged students, limited English proficient students, students with disabilities, and students from disproportionately academically underachieving racial and ethnic backgrounds. The board may establish school and school district goals addressing high school graduation rates and dropout reduction goals for students in grades seven through twelve. The board shall adopt the goals by rule. However, before each goal is implemented, the board shall present the goal to the education committees of the house of representatives and the senate for the committees'

review and comment in a time frame that will permit the legislature to take statutory action on the goal if such action is deemed warranted by the legislature;

(b) Identify the scores students must achieve in order to meet the standard on the Washington assessment of student learning and, for high school students, to obtain a certificate of academic achievement. The board shall also determine student scores that identify levels of student performance below and beyond the standard. The board shall consider the incorporation of the standard error of measurement into the decision regarding the award of the certificates. The board shall set such performance standards and levels in consultation with the superintendent of public instruction and after consideration of any recommendations that may be developed by any advisory committees that may be established for this purpose. The initial performance standards and any changes recommended by the board in the performance standards for the tenth grade assessment shall be presented to the education committees of the house of representatives and the senate by November 30th of the school year in which the changes will take place to permit the legislature to take statutory action before the changes are implemented if such action is deemed warranted by the legislature. The legislature shall be advised of the initial performance standards and any changes made to the elementary level performance standards and the middle school level performance standards;

(c) Adopt objective, systematic criteria to identify successful schools and school districts and recommend to the superintendent of public instruction schools and districts to be recognized for two types of accomplishments, student achievement and improvements in student achievement. Recognition for improvements in student achievement shall include consideration of one or more of the following accomplishments:

(i) An increase in the percent of students meeting standards. The level of achievement required for recognition may be based on the achievement goals established by the legislature and by the board under (a) of this subsection;

(ii) Positive progress on an improvement index that measures improvement in all levels of the assessment; and

(iii) Improvements despite challenges such as high levels of mobility, poverty, English as a second language learners, and large numbers of students in special populations as measured by either the percent of students meeting the standard, or the improvement index. When determining the baseline year or years for recognizing individual schools, the board may use the assessment results from the initial years the assessments were administered, if doing so with individual schools would be appropriate;

(d) Adopt objective, systematic criteria to identify schools and school districts in need of assistance and those in which significant numbers of students persistently fail to meet state standards. In its deliberations, the board shall consider the use of all statewide mandated criterion-referenced and norm-referenced standardized tests;

(e) Identify schools and school districts in which state intervention measures will be needed and a range of appropriate intervention strategies after the legislature has authorized a set of intervention strategies. After the legislature has authorized a set of intervention strategies, at the request of the board, the superintendent shall intervene in the school or school district and take corrective

actions. This chapter does not provide additional authority for the board or the superintendent of public instruction to intervene in a school or school district;

(f) Identify performance incentive systems that have improved or have the potential to improve student achievement;

(g) Annually review the assessment reporting system to ensure fairness, accuracy, timeliness, and equity of opportunity, especially with regard to schools with special circumstances and unique populations of students, and a recommendation to the superintendent of public instruction of any improvements needed to the system; and

(h) Include in the biennial report required under RCW 28A.305.035, information on the progress that has been made in achieving goals adopted by the board(-);

~~((10))~~ (5) Accredit, subject to such accreditation standards and procedures as may be established by the state board of education, all private schools that apply for accreditation, and approve, subject to the provisions of RCW 28A.195.010, private schools carrying out a program for any or all of the grades kindergarten through twelve: PROVIDED, That no private school may be approved that operates a kindergarten program only: PROVIDED FURTHER, That no ((public or)) private schools shall be placed upon the list of accredited schools so long as secret societies are knowingly allowed to exist among its students by school officials(;- PROVIDED FURTHER, That the state board may elect to require all or certain classifications of the public schools to conduct and participate in such preaccreditation examination and evaluation processes as may now or hereafter be established by the board.

~~(11) Make rules and regulations governing the establishment in any existing nonhigh school district of any secondary program or any new grades in grades nine through twelve. Before any such program or any new grades are established the district must obtain prior approval of the state board.~~

~~(12) Prepare such outline of study for the common schools as the board shall deem necessary, and in conformance with legislative requirements, and prescribe such rules for the general government of the common schools, as shall seek to secure regularity of attendance, prevent truancy, secure efficiency, and promote the true interest of the common schools.~~

~~(13) Continuously reevaluate courses and other requirements and adopt and enforce regulations within the common schools so as to meet the educational needs of students.~~

~~(14) Evaluate course of study requirements and);~~

(6) Articulate with the institutions of higher education, work force representatives, and early learning policymakers and providers to coordinate and unify the work of the public school system(-);

~~((15) Carry out board powers and duties relating to the organization and reorganization of school districts.~~

~~(16) Hear and decide appeals as otherwise provided by law.~~

~~(17) Promulgate information and rules dealing with the prevention of child abuse for purposes of curriculum use in the common schools.~~

~~(18))~~ (7) Hire an executive director and an administrative assistant to reside in the office of the superintendent of public instruction for administrative purposes. Any other personnel of the board shall be appointed as provided by RCW 28A.300.020. The executive director, administrative assistant, and all but

one of the other personnel of the board are exempt from civil service, together with other staff as now or hereafter designated as exempt in accordance with chapter 41.06 RCW((-); and

~~((19))~~ (8) Adopt a seal that shall be kept in the office of the superintendent of public instruction.

Sec. 103. RCW 28A.305.035 and 2005 c 497 s 103 are each amended to read as follows:

(1) By October 15th of each even-numbered year, the state board of education and the professional educator standards board shall submit a joint report to the legislative education committees, the governor, and the superintendent of public instruction. The report shall address the progress the boards have made and the obstacles they have encountered, individually and collectively, in the work of achieving the goals in RCW 28A.150.210.

(2) The state board of education shall include the chairs and ranking minority members of the legislative education committees in board communications so that the legislature can be kept apprised of the discussions and proposed actions of the board.

Sec. 104. RCW 28A.300.040 and 2005 c 360 s 6 are each amended to read as follows:

In addition to any other powers and duties as provided by law, the powers and duties of the superintendent of public instruction shall be:

(1) To have supervision over all matters pertaining to the public schools of the state;

(2) To report to the governor and the legislature such information and data as may be required for the management and improvement of the schools;

(3) To prepare and have printed such forms, registers, courses of study, rules for the government of the common schools, and such other material and books as may be necessary for the discharge of the duties of teachers and officials charged with the administration of the laws relating to the common schools, and to distribute the same to educational service district superintendents;

(4) To travel, without neglecting his or her other official duties as superintendent of public instruction, for the purpose of attending educational meetings or conventions, of visiting schools, and of consulting educational service district superintendents or other school officials;

(5) To prepare and from time to time to revise a manual of the Washington state common school code, copies of which shall be provided in such numbers as determined by the superintendent of public instruction at no cost to those public agencies within the common school system and which shall be sold at approximate actual cost of publication and distribution per volume to all other public and nonpublic agencies or individuals, said manual to contain Titles 28A and 28C RCW, rules related to the common schools, and such other matter as the state superintendent or the state board of education shall determine. Proceeds of the sale of such code shall be transmitted to the public printer who shall credit the state superintendent's account within the state printing plant revolving fund by a like amount;

(6) ~~(To act as ex officio member and the chief executive officer of the state board of education;~~

~~(7))~~ To file all papers, reports and public documents transmitted to the superintendent by the school officials of the several counties or districts of the state, each year separately. Copies of all papers filed in the superintendent's office, and the superintendent's official acts, may, or upon request, shall be certified by the superintendent and attested by the superintendent's official seal, and when so certified shall be evidence of the papers or acts so certified to;

~~((8))~~ (7) To require annually, on or before the 15th day of August, of the president, manager, or principal of every educational institution in this state, a report as required by the superintendent of public instruction; and it is the duty of every president, manager, or principal, to complete and return such forms within such time as the superintendent of public instruction shall direct;

~~((9))~~ (8) To keep in the superintendent's office a record of all teachers receiving certificates to teach in the common schools of this state;

~~((10))~~ (9) To issue certificates as provided by law;

~~((11))~~ (10) To keep in the superintendent's office at the capital of the state, all books and papers pertaining to the business of the superintendent's office, and to keep and preserve in the superintendent's office a complete record of statistics, as well as a record of the meetings of the state board of education;

~~((12))~~ (11) With the assistance of the office of the attorney general, to decide all points of law which may be submitted to the superintendent in writing by any educational service district superintendent, or that may be submitted to the superintendent by any other person, upon appeal from the decision of any educational service district superintendent; and the superintendent shall publish his or her rulings and decisions from time to time for the information of school officials and teachers; and the superintendent's decision shall be final unless set aside by a court of competent jurisdiction;

~~((13))~~ (12) To administer oaths and affirmations in the discharge of the superintendent's official duties;

~~((14))~~ (13) To deliver to his or her successor, at the expiration of the superintendent's term of office, all records, books, maps, documents and papers of whatever kind belonging to the superintendent's office or which may have been received by the superintendent's for the use of the superintendent's office;

~~((15))~~ (14) To administer family services and programs to promote the state's policy as provided in RCW 74.14A.025;

~~((16))~~ (15) To promote the adoption of school-based curricula and policies that provide quality, daily physical education for all students, and to encourage policies that provide all students with opportunities for physical activity outside of formal physical education classes;

~~((17))~~ (16) To perform such other duties as may be required by law.

Sec. 105. RCW 28A.305.011 and 2005 c 497 s 101 are each amended to read as follows:

(1) The membership of the state board of education shall be composed of sixteen members who are residents of the state of Washington:

(a) Seven shall be members representing the educational system, as follows:

(i) Five members elected by school district directors. Three of the members elected by school district directors shall be residents of western Washington and two members shall be residents of eastern Washington;

(ii) One member elected at-large by the members of the boards of directors of all private schools in the state meeting the requirements of RCW 28A.195.010; and

(iii) The superintendent of public instruction;

(b) Seven members appointed by the governor; and

(c) Two students selected in a manner determined by the state board of education.

(2) Initial appointments shall be for terms from one to four years in length, with the terms expiring on the second Monday of January of the applicable year. As the terms of the first appointees expire or vacancies on the board occur, the governor shall appoint or reappoint members of the board to complete the initial terms or to four-year terms, as appropriate.

(a) Appointees of the governor must be individuals who have demonstrated interest in public schools and are supportive of educational improvement, have a positive record of service, and who will devote sufficient time to the responsibilities of the board.

(b) In appointing board members, the governor shall consider the diversity of the population of the state.

(c) All appointments to the board made by the governor are subject to confirmation by the senate.

(d) No person may serve as a member of the board, except the superintendent of public instruction, for more than two consecutive full four-year terms.

(3) The governor may remove an appointed member of the board for neglect of duty, misconduct, malfeasance, or misfeasance in office, or for incompetent or unprofessional conduct as defined in chapter 18.130 RCW. In such a case, the governor shall file with the secretary of state a statement of the causes for and the order of removal from office, and the secretary of state shall send a certified copy of the statement of causes and order of removal to the last known post office address of the member.

(4)(a) The chair of the board shall be elected by a majority vote of the members of the board. The chair of the board shall serve a term of two years, and may be reelected to an additional term. A member of the board may not serve as chair for more than two consecutive terms.

(b) Eight voting members of the board constitute a quorum for the transaction of business.

(c) All members except the student members are voting members.

(5) Members of the board appointed by the governor who are not public employees shall be compensated in accordance with RCW ~~((43.03.240))~~ 43.03.250 and shall be reimbursed for travel expenses incurred in carrying out the duties of the board in accordance with RCW 43.03.050 and 43.03.060.

PART 2 BASIC EDUCATION ACT RESPONSIBILITIES

Sec. 201. RCW 28A.150.230 and 1994 c 245 s 9 are each amended to read as follows:

(1) It is the intent and purpose of this section to guarantee that each common school district board of directors, whether or not acting through its respective

administrative staff, be held accountable for the proper operation of their district to the local community and its electorate. In accordance with the provisions of Title 28A RCW, as now or hereafter amended, each common school district board of directors shall be vested with the final responsibility for the setting of policies ensuring quality in the content and extent of its educational program and that such program provide students with the opportunity to achieve those skills which are generally recognized as requisite to learning.

(2) In conformance with the provisions of Title 28A RCW, as now or hereafter amended, it shall be the responsibility of each common school district board of directors to adopt policies to:

(a) Establish performance criteria and an evaluation process for its certificated personnel, including administrative staff, and for all programs constituting a part of such district's curriculum;

(b) Determine the final assignment of staff, certificated or classified, according to board enumerated classroom and program needs;

(c) Determine the amount of instructional hours necessary for any student to acquire a quality education in such district, in not less than an amount otherwise required in RCW 28A.150.220, or rules (~~and regulations~~) of the state board of education;

(d) Determine the allocation of staff time, whether certificated or classified;

(e) Establish final curriculum standards consistent with law and rules (~~and regulations of the state board of education~~) of the superintendent of public instruction, relevant to the particular needs of district students or the unusual characteristics of the district, and ensuring a quality education for each student in the district; and

(f) Evaluate teaching materials, including text books, teaching aids, handouts, or other printed material, in public hearing upon complaint by parents, guardians or custodians of students who consider dissemination of such material to students objectionable.

Sec. 202. RCW 28A.505.140 and 1990 c 33 s 422 are each amended to read as follows:

(1) Notwithstanding any other provision of law, the superintendent of public instruction (~~is hereby directed to promulgate~~) shall adopt such rules (~~and regulations~~) as will (~~insure~~) ensure proper budgetary procedures and practices, including monthly financial statements consistent with the provisions of RCW 43.09.200, and this chapter.

(2) If the superintendent of public instruction determines upon a review of the budget of any district that said budget does not comply with the budget procedures established by this chapter or by rules (~~and regulations promulgated~~) adopted by the superintendent of public instruction, or the provisions of RCW 43.09.200, the superintendent shall give written notice of this determination to the board of directors of the local school district.

(3) The local school district, notwithstanding any other provision of law, shall, within thirty days from the date the superintendent of public instruction issues a notice pursuant to subsection (2) of this section, submit a revised budget which meets the requirements of RCW 43.09.200, this chapter, and the rules (~~and regulations~~) of the superintendent of public instruction (~~PROVIDED, That if the district fails or refuses to submit a revised budget which in the determination of the superintendent of public instruction meets the requirements~~).

~~of RCW 43.09.200, this chapter, and the rules and regulations of the superintendent of public instruction, the matter shall be submitted to the state board of education, which board shall meet and adopt a financial plan which shall be in effect until a budget can be adopted and submitted by the district in compliance with this section).~~

NEW SECTION. Sec. 203. (1) As the governor's steering committee for the comprehensive education study created under chapter 496, Laws of 2005 continues the study of the state funding of public education in Washington and makes final recommendations, the legislature strongly encourages the steering committee to carefully examine whether the use of inputs, such as the number of instructional hours, the number of instructional days, and student/teacher ratios, is the most efficient and effective funding system that is oriented toward student achievement and whether any changes to the current method of allocating funds can be created to implement the intent of education reform that all children can learn.

(2) This section expires July 1, 2007.

PART 3 SCHOOL FACILITIES AND ORGANIZATION

Sec. 301. RCW 28A.525.020 and 1969 ex.s. c 223 s 28A.47.060 are each amended to read as follows:

The ~~((state board of education))~~ superintendent of public instruction, considering policy recommendations from the school facilities citizen advisory panel, shall have the power and ~~((it shall be its))~~ duty (1) to prescribe rules ~~((and regulations))~~ governing the administration, control, terms, conditions, and disbursements of allotments to school districts to assist them in providing school plant facilities; (2) to approve allotments to districts that apply for state assistance whenever ~~((the board deems))~~ such action is advisable ~~((and in so doing to give due consideration to the findings, reports, and recommendations of the superintendent of public instruction pertaining thereto))~~; (3) to authorize the payment of approved allotments by warrant of the state treasurer; and (4) in the event that the amount of state assistance applied for exceeds the funds available for such assistance during any biennium, to make allotments on the basis of the urgency of need for school facilities in the districts that apply for assistance and/or to prorate allotments among such districts in conformity with applicable procedures and ~~((regulations applicable thereto which shall be established by the state board))~~ rules.

Sec. 302. RCW 28A.525.030 and 1995 c 77 s 23 are each amended to read as follows:

Whenever funds are appropriated for modernization of existing school facilities, the ~~((state board of education))~~ superintendent of public instruction is authorized to approve the use of such funds for modernization of existing facilities, modernization being limited to major structural changes in such facilities and, as necessary to bring such facilities into compliance with the barrier free access requirements of section 504 of the federal rehabilitation act of 1973 (29 U.S.C. Sec. 706) and rules implementing the act, both major and minor structural changes, and may include as incidental thereto the replacement of fixtures, fittings, furnishings and service systems of a building in order to bring

it up to a contemporary state consistent with the needs of changing educational programs. The allocation of such funds shall be made upon the same basis as funds used for the financing of a new school plant project utilized for a similar purpose.

Sec. 303. RCW 28A.525.050 and 1969 ex.s. c 223 s 28A.47.080 are each amended to read as follows:

All applications by school districts for state assistance in providing school plant facilities shall be made to the superintendent of public instruction (~~in conformity with rules and regulations which shall be prescribed by the state board of education~~). Studies and surveys shall be conducted by the (~~aforsaid officer~~) superintendent for the purpose of securing information relating to (1) the kind and extent of the school plant facilities required and the urgency of need for such facilities in districts that seek state assistance, (2) the ability of such districts to provide capital outlay funds by local effort, (3) the need for improvement of school administrative units and school attendance areas among or within such districts, and (4) any other pertinent matters. Recommendations respecting action on the (~~aforsaid~~) applications shall be submitted to the (~~state board of education by the~~) superintendent of public instruction (~~together with such reports of the findings, studies, and surveys made by said officer as may be required by the state board~~).

Sec. 304. RCW 28A.525.055 and 1994 c 219 s 11 are each amended to read as follows:

The (~~state board of education~~) rules adopted by the superintendent of public instruction for (~~purposes of~~) determining eligibility for state assistance for new construction(~~s~~) shall (~~adopt rules excluding~~) exclude from the inventory of available educational space those spaces that have been constructed for educational and community activities from grants received from other public or private entities.

Sec. 305. RCW 28A.525.070 and 1985 c 136 s 1 are each amended to read as follows:

The superintendent of public instruction shall furnish (~~(+)~~) to school districts seeking state assistance consultatory and advisory service in connection with the development of school building programs and the planning of school plant facilities for such district(~~, and (2) to the state board of education such service as may be required by the board in the exercise of the powers and the performance of the duties vested in and required to be performed by the board~~).

Sec. 306. RCW 28A.525.080 and 1969 ex.s. c 223 s 28A.47.120 are each amended to read as follows:

Insofar as is permissible under acts of congress, funds made available by the federal government for the purpose of assisting school districts in providing school plant facilities shall be made available to such districts in conformity with rules (~~and regulations which~~) that the (~~state board of education~~) superintendent, considering policy recommendations from the school facilities citizen advisory panel, shall establish.

Sec. 307. RCW 28A.525.090 and 1999 c 313 s 2 are each amended to read as follows:

(1) The (~~state board of education~~) superintendent of public instruction, considering policy recommendations from the school facilities citizen advisory

panel, shall adopt rules for appropriate use of the following construction management techniques: Value engineering, constructibility review, building commissioning, and construction management. Rules adopted under this section shall:

- (a) Define each technique as it applies to school buildings;
 - (b) Describe the scope of work for each technique;
 - (c) Define the timing for implementing each technique in the construction process;
 - (d) Determine the appropriate size of projects for the use of each technique;
- and
- (e) Determine standards for qualification and performance for each technique.

(2) Except as provided in rules adopted under subsection (1)(d) of this section, in allocating state moneys provided under this chapter, the ~~((state board of education))~~ superintendent of public instruction shall include in funding for each project, at the state matching percentage, the cost of each of the construction management techniques listed in subsection (1) of this section.

(3) When assigning priority and allocating state funds for construction of common school facilities, the ~~((state board of education))~~ superintendent shall consider the adequacy of the construction management techniques used by a district and the compliance with the rules adopted under subsection (1) of this section.

(4) Except as provided in rules adopted under subsection (1)(d) of this section, the construction management techniques in subsection (1) of this section shall be used on each project submitted for approval by the ~~((state board of education))~~ superintendent.

(5)(a) School districts applying for state assistance for school facilities shall:

(i) Cause value engineering, constructibility review, and building commissioning to be performed by contract with a professional firm specializing in those construction management techniques; and

(ii) Contract or employ personnel to perform professional construction management.

(b) All recommendations from the value engineering and constructibility review construction techniques for a school project shall be presented to the school district's board of directors for acceptance or rejection. If the board of directors rejects a recommendation it shall provide a statement explaining the reasons for rejecting the recommendation and include the statement in the application for state assistance to the ~~((state board of education))~~ superintendent of public instruction.

(6) The office of the superintendent of public instruction shall provide:

(a) An information and training program for school districts on the use of the construction management techniques; and

(b) Consulting services to districts on the benefits and best uses of these construction management techniques.

NEW SECTION. Sec. 308. A new section is added to chapter 28A.525 RCW to read as follows:

(1) To maintain citizen oversight on issues pertaining to school facilities and funding for school construction, a school facilities citizen advisory panel shall be created by the state board of education. The panel shall advise and make

recommendations to the superintendent of public instruction regarding school facilities, funding for school construction, joint planning and financing of educational facilities, facility plans and programs for nonhigh school districts, and determinations of remote and necessary schools.

(2) The membership of the school facilities citizen advisory panel shall be as follows:

(a) One member of the state board of education;

(b) Two school district directors representing school districts of various sizes and geographic locations, who are appointed by the state board of education and selected from a list of five names submitted to the board by the Washington state school directors' association; and

(c) Four additional citizen members appointed by the state board of education.

(3) Members of the panel shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(4) In addition to the school facilities citizen advisory panel, the superintendent of public instruction may convene a technical advisory group including representatives from school business officers, building and construction contracting and trade organizations, architecture and engineering organizations, and other organizations with expertise in school facilities.

Sec. 309. RCW 28A.525.162 and 1995 c 77 s 24 are each amended to read as follows:

(1) Funds appropriated to the (~~state board of education~~) superintendent of public instruction from the common school construction fund shall be allotted by the (~~state board of education~~) superintendent of public instruction in accordance with student enrollment and the provisions of RCW 28A.525.200.

(2) No allotment shall be made to a school district until such district has provided matching funds equal to or greater than the difference between the total approved project cost and the amount of state assistance to the district for financing the project computed pursuant to RCW 28A.525.166, with the following exceptions:

(a) The (~~state board~~) superintendent of public instruction may waive the matching requirement for districts which have provided funds for school building construction purposes through the authorization of bonds or through the authorization of excess tax levies or both in an amount equivalent to two and one-half percent of the value of its taxable property, as defined in RCW 39.36.015.

(b) No such matching funds shall be required as a condition to the allotment of funds for the purpose of making major or minor structural changes to existing school facilities in order to bring such facilities into compliance with the barrier free access requirements of section 504 of the federal rehabilitation act of 1973 (29 U.S.C. Sec. 706) and rules implementing the act.

(3) For the purpose of computing the state matching percentage under RCW 28A.525.166 when a school district is granted authority to enter into contracts, adjusted valuation per pupil shall be calculated using headcount student enrollments from the most recent October enrollment reports submitted by districts to the superintendent of public instruction, adjusted as follows:

(a) In the case of projects for which local bonds were approved after May 11, 1989:

(i) For districts which have been designated as serving high school districts under RCW 28A.540.110, students residing in the nonhigh district so designating shall be excluded from the enrollment count if the student is enrolled in any grade level not offered by the nonhigh district;

(ii) The enrollment of nonhigh school districts shall be increased by the number of students residing within the district who are enrolled in a serving high school district so designated by the nonhigh school district under RCW 28A.540.110, including only students who are enrolled in grade levels not offered by the nonhigh school district; and

(iii) The number of preschool students with disabilities included in the enrollment count shall be multiplied by one-half;

(b) In the case of construction or modernization of high school facilities in districts serving students from nonhigh school districts, the adjusted valuation per pupil shall be computed using the combined adjusted valuations and enrollments of each district, each weighted by the percentage of the district's resident high school students served by the high school district; and

(c) The number of kindergarten students included in the enrollment count shall be multiplied by one-half.

(4) The ~~((state board of education))~~ superintendent of public instruction, considering policy recommendations from the school facilities citizen advisory panel, shall prescribe ~~((and make effective))~~ such rules as are necessary to equate insofar as possible the efforts made by school districts to provide capital funds by the means aforesaid.

(5) For the purposes of this section, "preschool students with disabilities" means developmentally disabled children of preschool age who are entitled to services under RCW 28A.155.010 through 28A.155.100 and are not included in the kindergarten enrollment count of the district.

Sec. 310. RCW 28A.525.164 and 1990 c 33 s 456 are each amended to read as follows:

In allotting the state funds provided by RCW ~~((28A.525.160 through 28A.525.182))~~ 28A.525.162 through 28A.525.180, the ~~((state board of education))~~ superintendent of public instruction shall:

(1) Prescribe rules ~~((and regulations))~~ not inconsistent with RCW ~~((28A.525.160 through 28A.525.182))~~ 28A.525.162 through 28A.525.180 governing the administration, control, terms, conditions, and disbursement of allotments to school districts to assist them in providing school plant facilities;

(2) Approve~~((, whenever the board deems such action advisable,))~~ allotments to districts that apply for state assistance;

(3) Authorize the payment of approved allotments by warrant of the state treasurer; and

(4) In the event that the amount of state assistance applied for pursuant to the provisions hereof exceeds the funds available for such assistance during any biennium, make allotments on the basis of the urgency of need for school facilities in the districts that apply for assistance or prorate allotments among such districts in conformity with ~~((procedures and regulations))~~ applicable ~~((thereto which shall be established by the board))~~ rules.

Sec. 311. RCW 28A.525.166 and 1997 c 369 s 9 are each amended to read as follows:

Allocations to school districts of state funds provided by RCW ~~((28A.525.160 through 28A.525.182))~~ 28A.525.162 through 28A.525.180 shall be made by the ~~((state board of education))~~ superintendent of public instruction and the amount of state assistance to a school district in financing a school plant project shall be determined in the following manner:

(1) The boards of directors of the districts shall determine the total cost of the proposed project, which cost may include the cost of acquiring and preparing the site, the cost of constructing the building or of acquiring a building and preparing the same for school use, the cost of necessary equipment, taxes chargeable to the project, necessary architects' fees, and a reasonable amount for contingencies and for other necessary incidental expenses: PROVIDED, That the total cost of the project shall be subject to review and approval by the ~~((state board of education))~~ superintendent.

(2) The state matching percentage for a school district shall be computed by the following formula:

The ratio of the school district's adjusted valuation per pupil divided by the ratio of the total state adjusted valuation per pupil shall be subtracted from three, and then the result of the foregoing shall be divided by three plus (the ratio of the school district's adjusted valuation per pupil divided by the ratio of the total state adjusted valuation per pupil).

$$\text{Computed State Ratio} = \frac{\text{District adjusted 3-valuation per pupil}}{\text{Total state adjusted valuation per pupil}} - \frac{\text{State}}{\text{Total state adjusted valuation per pupil}} = \text{\% Assistance}$$

PROVIDED, That in the event the percentage of state assistance to any school district based on the above formula is less than twenty percent and such school district is otherwise eligible for state assistance under RCW ~~((28A.525.160 through 28A.525.182))~~ 28A.525.162 through 28A.525.180, the ~~((state board of education))~~ superintendent may establish for such district a percentage of state assistance not in excess of twenty percent of the approved cost of the project, if the ~~((state board))~~ superintendent finds that such additional assistance is necessary to provide minimum facilities for housing the pupils of the district.

(3) In addition to the computed percent of state assistance developed in subsection (2) ~~((above))~~ of this section, a school district shall be entitled to additional percentage points determined by the average percentage of growth for the past three years. One percent shall be added to the computed percent of state assistance for each percent of growth, with a maximum of twenty percent.

(4) The approved cost of the project determined in the manner ~~((herein))~~ prescribed ~~((times))~~ in this section multiplied by the percentage of state assistance derived as provided for ~~((herein))~~ in this section shall be the amount of state assistance to the district for the financing of the project: PROVIDED, That need therefor has been established to the satisfaction of the ~~((state board of education))~~ superintendent: PROVIDED, FURTHER, That additional state assistance may be allowed if it is found by the ~~((state board of education))~~ superintendent, considering policy recommendations from the school facilities citizen advisory panel that such assistance is necessary in order to meet (a) a

school housing emergency resulting from the destruction of a school building by fire, the condemnation of a school building by properly constituted authorities, a sudden excessive and clearly foreseeable future increase in school population, or other conditions similarly emergent in nature; or (b) a special school housing burden resulting from industrial projects of statewide significance or imposed by virtue of the admission of nonresident students into educational programs established, maintained and operated in conformity with the requirements of law; or (c) a deficiency in the capital funds of the district resulting from financing, subsequent to April 1, 1969, and without benefit of the state assistance provided by prior state assistance programs, the construction of a needed school building project or projects approved in conformity with the requirements of such programs, after having first applied for and been denied state assistance because of the inadequacy of state funds available for the purpose, or (d) a condition created by the fact that an excessive number of students live in state owned housing, or (e) a need for the construction of a school building to provide for improved school district organization or racial balance, or (f) conditions similar to those defined under (a), (b), (c), (d), and (e) ~~(hereinabove)~~ of this subsection, creating a like emergency.

Sec. 312. RCW 28A.525.168 and 1990 c 33 s 458 are each amended to read as follows:

Whenever the voters of a school district authorize the issuance of bonds and/or the levying of excess taxes in an amount sufficient to meet the requirements of RCW 28A.525.162 respecting eligibility for state assistance in providing school facilities, the taxable valuation of the district and the percentage of state assistance in providing school facilities prevailing at the time of such authorization shall be the valuation and the percentage used for the purpose of determining the eligibility of the district for an allotment of state funds and the amount or amounts of such allotments, respectively, for all projects for which the voters authorize capital funds as aforesaid, unless a higher percentage of state assistance prevails on the date that state funds for assistance in financing a project are allotted by the ~~((state board of education))~~ superintendent of public instruction in which case the percentage prevailing on the date of allotment by the ~~((state board))~~ superintendent of funds for each project shall govern: PROVIDED, That if the ~~((state board of education))~~ superintendent of public instruction, considering policy recommendations from the school facilities citizen advisory panel, determines at any time that there has been undue or unwarranted delay on the part of school district authorities in advancing a project to the point of readiness for an allotment of state funds, the taxable valuation of the school district and the percentage of state assistance prevailing on the date that the allotment is made shall be used for the purposes aforesaid: PROVIDED, FURTHER, That the date ~~((herein))~~ specified in this section as applicable in determining the eligibility of an individual school district for state assistance and in determining the amount of such assistance shall be applicable also to cases where it is necessary in administering chapter 28A.540 RCW to determine eligibility for and the amount of state assistance for a group of school districts considered as a single school administrative unit.

Sec. 313. RCW 28A.525.170 and 1990 c 33 s 459 are each amended to read as follows:

If a school district which has qualified for an allotment of state funds under the provisions of RCW ~~((28A.525.160 through 28A.525.182))~~ 28A.525.162 through 28A.525.180 for school building construction is found by the ~~((state board of education))~~ superintendent of public instruction, considering policy recommendations from the school facilities citizen advisory panel, to have a school housing emergency requiring an allotment of state funds in excess of the amount allocable under RCW 28A.525.166, an additional allotment may be made to such district: PROVIDED, That the total amount allotted shall not exceed ninety percent of the total cost of the approved project which may include the cost of the site and equipment. At any time thereafter when the ~~((state board of education))~~ superintendent finds that the financial position of such school district has improved through an increase in its taxable valuation or through retirement of bonded indebtedness or through a reduction in school housing requirements, or for any combination of these reasons, the amount of such additional allotment, or any part of such amount as the ~~((state board of education))~~ superintendent determines, shall be deducted, under terms and conditions prescribed by the ~~((board))~~ superintendent, from any state school building construction funds which might otherwise be provided to such district.

Sec. 314. RCW 28A.525.172 and 1969 ex.s. c 244 s 7 are each amended to read as follows:

All applications by school districts for state assistance in providing school plant facilities shall be made to the superintendent of public instruction in conformity with rules ~~((and regulations which shall be prescribed))~~ adopted by the ~~((state board of education))~~ superintendent of public instruction, considering policy recommendations from the school facilities citizen advisory panel. Studies and surveys shall be conducted by the ~~((state board))~~ superintendent for the purpose of securing information relating to (a) the kind and extent of the school plant facilities required and the urgency of need for such facilities in districts that seek state assistance, (b) the ability of such districts to provide capital funds by local effort, (c) the need for improvement of school administrative units and school attendance areas among or within such districts, and (d) any other pertinent matters.

Sec. 315. RCW 28A.525.174 and 1990 c 33 s 460 are each amended to read as follows:

It shall be the duty of the ~~((state board of education))~~ superintendent of public instruction, in consultation with the Washington state department of ~~((social and))~~ health ~~((services))~~, to prepare a manual and/or to specify other materials for the information and guidance of local school district authorities and others responsible for and concerned with the designing, planning, maintenance and operation of school plant facilities for the public schools. In so doing due consideration shall be given to the presentation of information regarding ~~((a))~~ (1) the need for cooperative state-local district action in planning school plant facilities arising out of the cooperative plan for financing said facilities provided for in RCW ~~((28A.525.160 through 28A.525.182; (b))~~ 28A.525.162 through 28A.525.180; (2) procedures in inaugurating and conducting a school plant planning program for a school district; ~~((e))~~ (3) standards for use in determining the selection and development of school sites and in designing, planning, and constructing school buildings to the end that the health, safety, and

educational well-being and development of school children will be served; ~~((4))~~ (4) the planning of readily expansible and flexible school buildings to meet the requirements of an increasing school population and a constantly changing educational program; ~~((5))~~ (5) an acceptable school building maintenance program and the necessity thereof; ~~((6))~~ (6) the relationship of an efficient school building operations service to the health and educational progress of pupils; and ~~((7))~~ (7) any other matters regarded by the ~~((state board))~~ superintendent as pertinent or related to the purposes and requirements of RCW ~~((28A.525.160 through 28A.525.182))~~ 28A.525.162 through 28A.525.180.

Sec. 316. RCW 28A.525.176 and 1990 c 33 s 461 are each amended to read as follows:

The ~~((state board of education))~~ superintendent of public instruction shall furnish to school districts seeking state assistance under the provisions of RCW ~~((28A.525.160 through 28A.525.182))~~ 28A.525.162 through 28A.525.180 consultatory and advisory service in connection with the development of school building programs and the planning of school plant facilities.

Sec. 317. RCW 28A.525.178 and 1990 c 33 s 462 are each amended to read as follows:

~~((Whenever in the judgment of the state board of education))~~ When economies may be ~~((effected))~~ affected without impairing the usefulness and adequacy of school buildings, ~~((said board))~~ the superintendent of public instruction, considering policy recommendations from the school facilities citizen advisory panel, may prescribe rules ~~((and regulations))~~ and establish procedures governing the preparation and use of modifiable basic or standard plans for school building construction projects for which state assistance funds provided by RCW ~~((28A.525.160 through 28A.525.182))~~ 28A.525.162 through 28A.525.180 are allotted.

Sec. 318. RCW 28A.525.180 and 1990 c 33 s 463 are each amended to read as follows:

The total amount of funds appropriated under the provisions of RCW ~~((28A.525.160 through 28A.525.182))~~ 28A.525.162 through 28A.525.180 shall be reduced by the amount of federal funds made available during each biennium for school construction purposes under any applicable federal law. The funds appropriated by RCW ~~((28A.525.160 through 28A.525.182))~~ 28A.525.162 through 28A.525.180 and available for allotment by the ~~((state board of education))~~ superintendent of public instruction shall be reduced by the amount of such federal funds made available. Notwithstanding the foregoing provisions of this section, the total amount of funds appropriated by RCW ~~((28A.525.160 through 28A.525.182))~~ 28A.525.162 through 28A.525.180 shall not be reduced by reason of any grants to any school district of federal moneys paid under Public Law No. 815 or any other federal act authorizing school building construction assistance to federally affected areas.

Sec. 319. RCW 28A.525.190 and 1975 1st ex.s. c 98 s 2 are each amended to read as follows:

The ~~((state board of education))~~ superintendent of public instruction, considering policy recommendations from the school facilities citizen advisory

panel shall prioritize the construction of common school facilities only from funds appropriated and available in the common school construction fund.

Sec. 320. RCW 28A.525.200 and 1990 c 33 s 465 are each amended to read as follows:

Notwithstanding any other provision of RCW 28A.525.010 through 28A.525.222, the allocation and distribution of funds by the ~~((state board of education which are now or may hereafter be appropriated))~~ superintendent of public instruction, considering policy recommendations from the school facilities citizen advisory panel, for the purposes of providing assistance in the construction of school plant facilities shall be governed by ~~((RCW 28A.525.010 through 28A.525.080 and 28A.525.162 through 28A.525.178))~~ this chapter.

Sec. 321. RCW 28A.525.216 and 1990 c 33 s 467 are each amended to read as follows:

The proceeds from the sale of the bonds deposited under RCW 28A.525.214 in the common school construction fund shall be administered by the ~~((state board of education))~~ superintendent of public instruction.

Sec. 322. RCW 28A.150.260 and 1997 c 13 s 2 are each amended to read as follows:

The basic education allocation for each annual average full time equivalent student shall be determined in accordance with the following procedures:

(1) The governor shall and the superintendent of public instruction may recommend to the legislature a formula based on a ratio of students to staff for the distribution of a basic education allocation for each annual average full time equivalent student enrolled in a common school. The distribution formula shall have the primary objective of equalizing educational opportunities and shall provide appropriate recognition of the following costs among the various districts within the state:

- (a) Certificated instructional staff and their related costs;
- (b) Certificated administrative staff and their related costs;
- (c) Classified staff and their related costs;
- (d) Nonsalary costs;

(e) Extraordinary costs, including school facilities, of remote and necessary schools as judged by the superintendent of public instruction, with recommendations from the school facilities citizen advisory panel under section 308 of this act, and small high schools, including costs of additional certificated and classified staff; and

(f) The attendance of students pursuant to RCW 28A.335.160 and 28A.225.250 who do not reside within the servicing school district.

(2)(a) This formula for distribution of basic education funds shall be reviewed biennially by the superintendent and governor. The recommended formula shall be subject to approval, amendment or rejection by the legislature. The formula shall be for allocation purposes only. While the legislature intends that the allocations for additional instructional staff be used to increase the ratio of such staff to students, nothing in this section shall require districts to reduce the number of administrative staff below existing levels.

(b) The formula adopted by the legislature shall reflect the following ratios at a minimum: (i) Forty-nine certificated instructional staff to one thousand annual average full time equivalent students enrolled in grades kindergarten

through three; (ii) forty-six certificated instructional staff to one thousand annual average full time equivalent students in grades four through twelve; (iii) four certificated administrative staff to one thousand annual average full time equivalent students in grades kindergarten through twelve; and (iv) sixteen and sixty-seven one-hundredths classified personnel to one thousand annual average full time equivalent students enrolled in grades kindergarten through twelve.

(c) In the event the legislature rejects the distribution formula recommended by the governor, without adopting a new distribution formula, the distribution formula for the previous school year shall remain in effect: PROVIDED, That the distribution formula developed pursuant to this section shall be for state apportionment and equalization purposes only and shall not be construed as mandating specific operational functions of local school districts other than those program requirements identified in RCW 28A.150.220 and 28A.150.100. The enrollment of any district shall be the annual average number of full time equivalent students and part time students as provided in RCW 28A.150.350, enrolled on the first school day of each month and shall exclude full time equivalent students with disabilities recognized for the purposes of allocation of state funds for programs under RCW 28A.155.010 through 28A.155.100. The definition of full time equivalent student shall be determined by rules of the superintendent of public instruction: PROVIDED, That the definition shall be included as part of the superintendent's biennial budget request: PROVIDED, FURTHER, That any revision of the present definition shall not take effect until approved by the house appropriations committee and the senate ways and means committee: PROVIDED, FURTHER, That the office of financial management shall make a monthly review of the superintendent's reported full time equivalent students in the common schools in conjunction with RCW 43.62.050.

(3)(a) Certificated instructional staff shall include those persons employed by a school district who are nonsupervisory employees within the meaning of RCW 41.59.020(8): PROVIDED, That in exceptional cases, people of unusual competence but without certification may teach students so long as a certificated person exercises general supervision: PROVIDED, FURTHER, That the hiring of such classified people shall not occur during a labor dispute and such classified people shall not be hired to replace certificated employees during a labor dispute.

(b) Certificated administrative staff shall include all those persons who are chief executive officers, chief administrative officers, confidential employees, supervisors, principals, or assistant principals within the meaning of RCW 41.59.020(4).

Sec. 323. RCW 28A.335.160 and 1995 c 335 s 604 are each amended to read as follows:

Any school district may cooperate with one or more school districts in the joint financing, planning, construction, equipping and operating of any educational facility otherwise authorized by law: PROVIDED, That any cooperative financing plan involving the construction of school plant facilities must be approved by the ~~((state board of education))~~ superintendent of public instruction, considering policy recommendations from the school facilities citizen advisory panel under section 308 of this act, pursuant to such rules ~~((as may now or hereafter be promulgated))~~ adopted relating to state approval of school construction.

Sec. 324. RCW 28A.540.050 and 1990 c 33 s 485 are each amended to read as follows:

Subsequent to the holding of a hearing or hearings as provided in RCW 28A.540.040, the regional committee on school district organization shall determine the nonhigh school districts to be included in the plan and the amount of capital funds to be provided by every school district included therein, and shall submit the proposed plan to the ~~((state board of education))~~ superintendent of public instruction together with such maps and other materials pertaining thereto as the ~~((state board))~~ superintendent may require. The ~~((state board))~~ superintendent, considering policy recommendations from the school facilities citizen advisory panel under section 308 of this act, shall review such plan, shall approve any plan which in ~~((its))~~ his or her judgment makes adequate and satisfactory provision for participation by the nonhigh school districts in providing capital funds to be used for the purpose above stated, and shall notify the regional committee of such action. Upon receipt by the regional committee of such notification, the educational service district superintendent, or his or her designee, shall notify the board of directors of each school district included in the plan, supplying each board with complete details of the plan and shall state the total amount of funds to be provided and the amount to be provided by each district.

If any such plan submitted by a regional committee is not approved by the ~~((state board))~~ superintendent of public instruction, the regional committee shall be so notified, which notification shall contain a statement of reasons therefor and suggestions for revision. Within sixty days thereafter the regional committee shall submit to the ~~((state board))~~ superintendent a revised plan which revision shall be subject to approval or disapproval by the ~~((state board))~~ superintendent, considering policy recommendations from the school facilities citizen advisory panel, and the procedural requirements and provisions of law applicable to an original plan submitted to ~~((said board))~~ the superintendent.

NEW SECTION. Sec. 325. A new section is added to chapter 28A.545 RCW to read as follows:

The superintendent of public instruction, with recommendations from the school facilities citizen advisory panel under section 308 of this act, shall adopt rules governing the establishment in any existing nonhigh school district of any secondary program or any new grades in grades nine through twelve. Before any such program or any new grades are established, the district must obtain prior approval of the superintendent of public instruction.

Sec. 326. RCW 28A.150.530 and 2005 c 12 s 7 are each amended to read as follows:

(1) In adopting implementation rules, ~~((the state board of education, in consultation with))~~ the superintendent of public instruction ~~((and)),~~ in consultation with the department of general administration, shall review and modify the current requirement for an energy conservation report review by the department of general administration as provided in WAC 180-27-075.

(2) In adopting implementation rules, ~~((the state board of education, in consultation with))~~ the superintendent of public instruction shall:

(a) Review and modify the current requirements for value engineering, ~~((constructability))~~ constructibility review, and building commissioning as provided in WAC 180-27-080;

(b) Review private and public utility providers' capacity and financial/technical assistance programs for affected public school districts to monitor and report utility consumption for purposes of reporting to the superintendent of public instruction as provided in RCW 39.35D.040;

(c) Coordinate with the department of general administration, the state board of health, the department of ecology, federal agencies, and other affected agencies as appropriate in their consideration of rules to implement this section.

Sec. 327. RCW 28A.335.210 and 2005 c 36 s 1 are each amended to read as follows:

The ~~((state board of education and))~~ superintendent of public instruction shall allocate, as a nondeductible item, out of any moneys appropriated for state assistance to school districts for the original construction of any school plant facility the amount of one-half of one percent of the appropriation to be expended by the Washington state arts commission for the acquisition of works of art. The works of art may be placed in accordance with Article IX, sections 2 and 3 of the state Constitution on public lands, integral to or attached to a public building or structure, detached within or outside a public building or structure, part of a portable exhibition or collection, part of a temporary exhibition, or loaned or exhibited in other public facilities. The Washington state arts commission shall, in consultation with the superintendent of public instruction, determine the amount to be made available for the purchase of works of art under this section, and payments therefor shall be made in accordance with law. The designation of projects and sites, selection, contracting, purchase, commissioning, reviewing of design, execution and placement, acceptance, maintenance, and sale, exchange, or disposition of works of art shall be the responsibility of the Washington state arts commission in consultation with the superintendent of public instruction and representatives of school district boards of directors. The superintendent of public instruction and the school district board of directors of the districts where the sites are selected shall have the right to:

(1) Waive its use of the one-half of one percent of the appropriation for the acquisition of works of art before the selection process by the Washington state arts commission;

(2) Appoint a representative to the body established by the Washington state arts commission to be part of the selection process with full voting rights;

(3) Reject the results of the selection process;

(4) Reject the placement of a completed work or works of art on school district premises if such works are portable.

Rejection at any point before or after the selection process shall not cause the loss of or otherwise endanger state construction funds available to the local school district. Any works of art rejected under this section shall be applied to the provision of works of art under this chapter, at the discretion of the Washington state arts commission, notwithstanding any contract or agreement between the affected school district and the artist involved. In addition to the cost of the works of art the one-half of one percent of the appropriation as provided ~~((herein))~~ in this section shall be used to provide for the administration,

including conservation of the state art collection, by the Washington state arts commission and all costs for installation of the work of art. For the purpose of this section building shall not include sheds, warehouses, or other buildings of a temporary nature.

The executive director of the arts commission, the superintendent of public instruction, and the Washington state school directors association shall appoint a study group to review the operations of the one-half of one percent for works of art under this section.

Sec. 328. RCW 28A.335.230 and 1987 c 112 s 1 are each amended to read as follows:

School districts shall be required to lease for a reasonable fee vacant school plant facilities from a contiguous school district wherever possible.

No school district with unhoused students may be eligible for the state matching funds for the construction of school plant facilities if:

(1) The school district contiguous to the school district applying for the state matching percentage has vacant school plant facilities;

(2) The superintendent of public instruction (~~and the state board of education have~~) has determined the vacant school plant facilities available in the contiguous district will fulfill the needs of the applicant district in housing unhoused students. In determining whether the contiguous district school plant facilities meet the needs of the applicant district, consideration shall be given, but not limited to the geographic location of the vacant facilities as they relate to the applicant district; and

(3) A lease of the vacant school plant facilities can be negotiated.

Sec. 329. RCW 28A.540.070 and 1990 c 33 s 486 are each amended to read as follows:

In the event that a proposal or proposals for providing capital funds as provided in RCW 28A.540.060 is not approved by the voters of a nonhigh school district a second election thereon shall be held within sixty days thereafter. If the vote of the electors of the nonhigh school district is again in the negative, the high school students residing therein shall not be entitled to admission to the high school under the provisions of RCW 28A.225.210, following the close of the school year during which the second election is held: PROVIDED, That in any such case the regional committee on school district organization shall determine within thirty days after the date of the aforesaid election the advisability of initiating a proposal for annexation of such nonhigh school district to the school district in which the proposed facilities are to be located or to some other district where its students can attend high school without undue inconvenience: PROVIDED FURTHER, That pending such determination by the regional committee and action thereon as required by law the board of directors of the high school district shall continue to admit high school students residing in the nonhigh school district. Any proposal for annexation of a nonhigh school district initiated by a regional committee shall be subject to the procedural requirements of this chapter respecting a public hearing and submission to and approval by the (~~state board of education~~) superintendent of public instruction, considering policy recommendations from the school facilities citizen advisory panel under section 308 of this act. Upon approval by the (~~state board~~) superintendent of public instruction of any such

proposal, the educational service district superintendent shall make an order, establishing the annexation.

Sec. 330. RCW 39.35D.020 and 2005 c 12 s 2 are each amended to read as follows:

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

(1) "Department" means the department of general administration.

(2) "High-performance public buildings" means high-performance public buildings designed, constructed, and certified to a standard as identified in this chapter.

(3) "Institutions of higher education" means the state universities, the regional universities, The Evergreen State College, the community colleges, and the technical colleges.

(4) "LEED silver standard" means the United States green building council leadership in energy and environmental design green building rating standard, referred to as silver standard.

(5)(a) "Major facility project" means: (i) A construction project larger than five thousand gross square feet of occupied or conditioned space as defined in the Washington state energy code; or (ii) a building renovation project when the cost is greater than fifty percent of the assessed value and the project is larger than five thousand gross square feet of occupied or conditioned space as defined in the Washington state energy code.

(b) "Major facility project" does not include: (i) Projects for which the department, public school district, or other applicable agency and the design team determine the LEED silver standard or the Washington sustainable school design protocol to be not practicable; or (ii) transmitter buildings, pumping stations, hospitals, research facilities primarily used for sponsored laboratory experimentation, laboratory research, or laboratory training in research methods, or other similar building types as determined by the department. When the LEED silver standard is determined to be not practicable for a project, then it must be determined if any LEED standard is practicable for the project. If LEED standards or the Washington sustainable school design protocol are not followed for the project, the public school district or public agency shall report these reasons to the department.

(6) "Public agency" means every state office, officer, board, commission, committee, bureau, department, and public higher education institution.

(7) "Public school district" means a school district eligible to receive state basic education moneys pursuant to RCW 28A.150.250 and 28A.150.260.

(8) "Washington sustainable school design protocol" means the school design protocol and related information developed by the ~~((state board of education and the))~~ office of the superintendent of public instruction, in conjunction with school districts and the school facilities advisory board.

Sec. 331. RCW 39.35D.040 and 2005 c 12 s 4 are each amended to read as follows:

(1) All major facility projects of public school districts receiving any funding in a state capital budget must be designed and constructed to at least the LEED silver standard or the Washington sustainable school design protocol. To the extent appropriate LEED silver or Washington sustainable school design

protocol standards exist for the type of building or facility, this subsection applies to major facility projects that have not received project approval from the superintendent of public instruction prior to: (a) July 1, 2006, for volunteering school districts; (b) July 1, 2007, for class one school districts; and (c) July 1, 2008, for class two school districts.

(2) Public school districts under this section shall: (a) Monitor and document appropriate operating benefits and savings resulting from major facility projects designed and constructed as required under this section for a minimum of five years following local board acceptance of a project receiving state funding; and (b) report annually to the superintendent of public instruction. The form and content of each report must be mutually developed by the office of the superintendent of public instruction in consultation with school districts.

(3) The superintendent of public instruction shall consolidate the reports required in subsection (2) of this section into one report and report to the governor and legislature by September 1st of each even-numbered year beginning in 2006 and ending in 2016. In its report, the superintendent of public instruction shall also report on the implementation of this chapter, including reasons why the LEED standard or Washington sustainable school design protocol was not used as required by RCW 39.35D.020(5)(b). The superintendent of public instruction shall make recommendations regarding the ongoing implementation of this chapter, including a discussion of incentives and disincentives related to implementing this chapter.

(4) The ~~((state board of education, in consultation with the))~~ superintendent of public instruction~~((;))~~ shall develop and issue guidelines for administering this chapter for public school districts. The purpose of the guidelines is to define a procedure and method for employing and verifying compliance with the LEED silver standard or the Washington sustainable school design protocol.

(5) The superintendent of public instruction shall utilize the school facilities advisory board as a high-performance buildings advisory committee comprised of affected public schools, ~~((the state board of education,))~~ the superintendent of public instruction, the department, and others at the superintendent of public instruction's discretion to provide advice on implementing this chapter. Among other duties, the advisory committee shall make recommendations regarding an education and training process and an ongoing evaluation or feedback process to help the superintendent of public instruction ~~((and the state board of education))~~ implement this chapter.

Sec. 332. RCW 39.35D.060 and 2005 c 12 s 6 are each amended to read as follows:

(1)(a) The department, in consultation with affected public agencies, shall develop and issue guidelines for administering this chapter for public agencies. The purpose of the guidelines is to define a procedure and method for employing and verifying activities necessary for certification to at least the LEED silver standard for major facility projects.

(b) The department and the office of the superintendent of public instruction shall amend their fee schedules for architectural and engineering services to accommodate the requirements in the design of major facility projects under this chapter.

(c) The department and the office of the superintendent of public instruction shall procure architecture and engineering services consistent with chapter 39.80 RCW.

(d) Major facility projects designed to meet standards identified in this chapter must include building commissioning as a critical cost-saving part of the construction process. This process includes input from the project design and construction teams and the project ownership representatives.

(e) As provided in the request for proposals for construction services, the operating agency shall hold a preproposal conference for prospective bidders to discuss compliance with and achievement of standards identified in this chapter for prospective respondents.

(2) The department shall create a high-performance buildings advisory committee comprised of representatives from the design and construction industry involved in public works contracting, personnel from the affected public agencies responsible for overseeing public works projects, ~~((the state board of education))~~ the office of the superintendent of public instruction, and others at the department's discretion to provide advice on implementing this chapter. Among other duties, the advisory committee shall make recommendations regarding an education and training process and an ongoing evaluation or feedback process to help the department implement this chapter.

(3) The department and the ~~((state board of education))~~ office of the superintendent of public instruction shall adopt rules to implement this section.

Sec. 333. RCW 79.17.100 and 2003 c 334 s 322 are each amended to read as follows:

Except as otherwise provided in RCW 79.17.110, upon the application of a school district or any institution of higher education for the purchase or lease of lands granted to the state by the United States, the department may offer such land for sale or lease to such school district or institution of higher education in such acreage as it may determine, consideration being given upon application of a school district to school site criteria established by the ~~((state board of education))~~ superintendent of public instruction. However, in the event the department thereafter proposes to offer such land for sale or lease at public auction, such school district or institution of higher education shall have a preference right for six months from notice of such proposal to purchase or lease such land at the appraised value determined by the board.

Sec. 334. RCW 79.17.120 and 2003 c 334 s 438 are each amended to read as follows:

The purchases authorized under RCW 79.17.110 shall be classified as for the construction of common school plant facilities under RCW 28A.525.010 through 28A.525.222 and shall be payable out of the common school construction fund as otherwise provided for in RCW 28A.515.320 if the school district involved was under emergency school construction classification as established by the ~~((state board of education))~~ superintendent of public instruction at any time during the period of its lease of state lands.

NEW SECTION. Sec. 335. The following sections are each decodified:

RCW 28A.525.120

RCW 28A.525.122

RCW 28A.525.124

RCW 28A.525.126
RCW 28A.525.128
RCW 28A.525.130
RCW 28A.525.132
RCW 28A.525.134
RCW 28A.525.140
RCW 28A.525.142
RCW 28A.525.144
RCW 28A.525.146
RCW 28A.525.148
RCW 28A.525.150
RCW 28A.525.152
RCW 28A.525.154
RCW 28A.525.156
RCW 28A.525.158
RCW 28A.525.160
RCW 28A.525.182

PART 4
COURSES OF STUDY AND EDUCATIONAL PROGRAMS

Sec. 401. RCW 28A.305.220 and 2004 c 19 s 108 are each amended to read as follows:

(1) The ~~((state board of education))~~ superintendent of public instruction, in consultation with the higher education coordinating board, the state board for community and technical colleges, and the work force training and education coordinating board, shall develop for use by all public school districts a standardized high school transcript. The ~~((state board of education))~~ superintendent shall establish clear definitions for the terms "credits" and "hours" so that school programs operating on the quarter, semester, or trimester system can be compared.

(2) The standardized high school transcript shall include the following information:

(a) The highest scale score and level achieved in each content area on the high school Washington assessment of student learning or other high school measures successfully completed by the student as provided by RCW 28A.655.061 and 28A.155.045;

(b) All scholar designations as provided by RCW 28A.655.061;

(c) A notation of whether the student has earned a certificate of individual achievement or a certificate of academic achievement by means of the Washington assessment of student learning or by an alternative assessment.

(3) Transcripts are important documents to students who will apply for admission to postsecondary institutions of higher education. Transcripts are also important to students who will seek employment upon or prior to graduation from high school. It is recognized that student transcripts may be the only record available to employers in their decision-making processes regarding prospective employees. The superintendent of public instruction shall require school districts to inform annually all high school students that prospective employers may request to see transcripts and that the prospective employee's decision to

release transcripts can be an important part of the process of applying for employment.

Sec. 402. RCW 28A.230.100 and 1991 c 116 s 8 are each amended to read as follows:

The ~~((state board of education))~~ superintendent of public instruction, in consultation with the higher education coordinating board, the state board for community and technical colleges, and the work force training and education coordinating board, shall adopt rules pursuant to chapter 34.05 RCW, to implement the course requirements set forth in RCW 28A.230.090. The rules shall include, as the ~~((state board))~~ superintendent deems necessary, granting equivalencies for and temporary exemptions from the course requirements in RCW 28A.230.090 and special alterations of the course requirements in RCW 28A.230.090. In developing such rules the ~~((state board))~~ superintendent shall recognize the relevance of vocational and applied courses and allow such courses to fulfill in whole or in part the courses required for graduation in RCW 28A.230.090. The rules may include provisions for competency testing in lieu of such courses required for graduation in RCW 28A.230.090 or demonstration of specific skill proficiency or understanding of concepts through work or experience.

Sec. 403. RCW 28A.230.170 and 1985 c 341 s 1 are each amended to read as follows:

The study of the Constitution of the United States and the Constitution of the state of Washington shall be a condition prerequisite to graduation from the public and private high schools of this state. The ~~((state board of education acting upon the advice of the))~~ superintendent of public instruction shall provide by rule ~~((or regulation))~~ for the implementation of this section.

NEW SECTION. Sec. 404. The state board of education, in consultation with the state board for community and technical colleges, shall examine the statutory authority, rules, and jurisdiction between the K-12 and postsecondary education systems regarding the general educational development test and adult education. The board shall make recommendations for change or clarification to the education committees of the legislature by January 15, 2007.

NEW SECTION. Sec. 405. (1) The state board of education shall develop and propose a revised definition of the purpose and expectations for high school diplomas issued by public schools in Washington state. The revised definition shall address whether attainment of a high school diploma is intended to signify that a student is ready for success in college, ready for successful and gainful employment in the workplace, or some combination of these and other objectives. The revised definition shall focus on the knowledge, skills, and abilities that students are expected to demonstrate to receive a high school diploma, as well as the various methods to be used to measure student performance, rather than focusing on courses, credits, seat time, and test scores.

(2) In developing the revised definition of the high school diploma, the state board of education shall consult with educators, parents, institutions of higher education, employers, and community leaders. The board shall also work with the state board for community and technical colleges, the higher education coordinating board, and the work force training and education coordinating board.

(3) The state board of education shall submit the proposed revised definition of the high school diploma, along with any necessary revisions to state statutes and rules, to the education committees of the legislature by December 1, 2007.

Sec. 406. RCW 28A.305.170 and 2002 c 291 s 3 are each amended to read as follows:

(1) In addition to any other powers and duties as provided by law, the ~~((state board of education))~~ superintendent of public instruction, in consultation with the military department, shall adopt rules governing and authorizing the acceptance of national guard high school career training and the national guard youth challenge program in lieu of either required high school credits or elective high school credits.

(2) With the exception of students enrolled in the national guard youth challenge program, students enrolled in such national guard programs shall be considered enrolled in the common school last attended preceding enrollment in such national guard program.

(3) The ~~((board))~~ superintendent shall adopt rules to ensure that students who successfully complete the national guard youth challenge program are granted an appropriate number of high school credits, based on the students' levels of academic proficiency as measured by the program.

Sec. 407. RCW 28A.230.130 and 2003 c 49 s 2 are each amended to read as follows:

(1) All public high schools of the state shall provide a program, directly or in cooperation with a community college or another school district, for students whose educational plans include application for entrance to a baccalaureate-granting institution after being granted a high school diploma. The program shall help these students to meet at least the minimum entrance requirements under RCW 28B.10.050.

(2) All public high schools of the state shall provide a program, directly or in cooperation with a community or technical college, a skills center, an apprenticeship committee, or another school district, for students who plan to pursue career or work opportunities other than entrance to a baccalaureate-granting institution after being granted a high school diploma. These programs may:

(a) Help students demonstrate the application of essential academic learning requirements to the world of work, occupation-specific skills, knowledge of more than one career in a chosen pathway, and employability and leadership skills; and

(b) Help students demonstrate the knowledge and skill needed to prepare for industry certification, and/or have the opportunity to articulate to postsecondary education and training programs.

~~((3) The state board of education, upon request from local school districts, may grant waivers from the requirements to provide the program described in subsections (1) and (2) of this section for reasons relating to school district size and the availability of staff authorized to teach subjects which must be provided. In considering waiver requests related to programs in subsection (2) of this section, the state board of education shall consider the extent to which the school district has offered such programs before the 2003-04 school year.))~~

Sec. 408. RCW 28A.205.010 and 2005 c 497 s 214 are each amended to read as follows:

(1) As used in this chapter, unless the context thereof shall clearly indicate to the contrary:

"Education center" means any private school operated on a profit or nonprofit basis which does the following:

(a) Is devoted to the teaching of basic academic skills, including specific attention to improvement of student motivation for achieving, and employment orientation.

(b) Operates on a clinical, client centered basis. This shall include, but not be limited to, performing diagnosis of individual educational abilities, determination and setting of individual goals, prescribing and providing individual courses of instruction therefor, and evaluation of each individual client's progress in his or her educational program.

(c) Conducts courses of instruction by professionally trained personnel certificated by the Washington professional educator standards board according to rules adopted for the purposes of this chapter and providing, for certification purposes, that a year's teaching experience in an education center shall be deemed equal to a year's teaching experience in a common or private school.

(2) For purposes of this chapter, basic academic skills shall include the study of mathematics, speech, language, reading and composition, science, history, literature and political science or civics; it shall not include courses of a vocational training nature and shall not include courses deemed nonessential to the accrediting ~~((of the common schools))~~ or the approval of private schools under RCW 28A.305.130.

(3) The ~~((state board of education))~~ superintendent of public instruction shall certify an education center only upon application and (a) determination that such school comes within the definition thereof as set forth in subsection (1) of this section and (b) demonstration on the basis of actual educational performance of such applicants' students which shows after consideration of their students' backgrounds, educational gains that are a direct result of the applicants' educational program. Such certification may be withdrawn if the ~~((board))~~ superintendent finds that a center fails to provide adequate instruction in basic academic skills. No education center certified by the ~~((state board of education))~~ superintendent of public instruction pursuant to this section shall be deemed a common school under RCW 28A.150.020 or a private school for the purposes of RCW 28A.195.010 through 28A.195.050.

Sec. 409. RCW 28A.205.070 and 1993 c 211 s 6 are each amended to read as follows:

In allocating funds appropriated for education centers, the superintendent of public instruction shall:

(1) Place priority upon stability and adequacy of funding for education centers that have demonstrated superior performance as defined in RCW 28A.205.040(2).

(2) Initiate and maintain a competitive review process to select new or expanded center programs in unserved or underserved areas. The criteria for review of competitive proposals for new or expanded education center services shall include but not be limited to:

(a) The proposing organization shall have obtained certification from the ~~((state board of education))~~ superintendent of public instruction as provided in RCW 28A.205.010;

(b) The cost-effectiveness of the proposal; and

(c) The availability of committed nonstate funds to support, enrich, or otherwise enhance the basic program.

(3) In selecting areas for new or expanded education center programs, the superintendent of public instruction shall consider factors including but not limited to:

(a) The proportion and total number of dropouts unserved by existing center programs, if any;

(b) The availability within the geographic area of programs other than education centers which address the basic educational needs of dropouts; and

(c) Waiting lists or other evidence of demand for expanded education center programs.

(4) In the event of any curtailment of services resulting from lowered legislative appropriations, the superintendent of public instruction shall issue pro rata reductions to all centers funded at the time of the lowered appropriation. Individual centers may be exempted from such pro rata reductions if the superintendent finds that such reductions would impair the center's ability to operate at minimally acceptable levels of service. In the event of such exceptions, the superintendent shall determine an appropriate rate for reduction to permit the center to continue operation.

(5) In the event that an additional center or centers become certified and apply to the superintendent for funds to be allocated from a legislative appropriation which does not increase from the immediately preceding biennium, or does not increase sufficiently to allow such additional center or centers to operate at minimally acceptable levels of service without reducing the funds available to previously funded centers, the superintendent shall not provide funding for such additional center or centers from such appropriation.

Sec. 410. RCW 28A.215.010 and 1995 c 335 s 104 are each amended to read as follows:

The board of directors of any school district shall have the power to establish and maintain preschools and to provide before-and-after-school and vacation care in connection with the common schools of said district located at such points as the board shall deem most suitable for the convenience of the public, for the care and instruction of infants and children residing in said district. The board shall establish such courses, activities, rules, and regulations governing preschools and before-and-after-school care as it may deem best: PROVIDED, That these courses and activities shall meet the minimum standard for such preschools as established by the United States department of health, education and welfare, or its successor agency, and the ~~((state board of education))~~ superintendent of public instruction. Except as otherwise provided by state or federal law, the board of directors may fix a reasonable charge for the care and instruction of children attending such schools. The board may, if necessary, supplement such funds as are received for the superintendent of public instruction or any agency of the federal government, by an appropriation from the general school fund of the district.

Sec. 411. RCW 28A.215.020 and 1995 c 335 s 308 are each amended to read as follows:

Expenditures under federal funds and/or state appropriations made to carry out the purposes of RCW 28A.215.010 through 28A.215.050 shall be made by warrants issued by the state treasurer upon order of the superintendent of public instruction. The ~~((state board of education))~~ superintendent of public instruction shall make necessary rules ~~((and regulations))~~ to carry out the purpose of RCW 28A.215.010. After being notified by the office of the governor that there is an agency or department responsible for early learning, the superintendent shall consult with that agency when establishing relevant rules.

Sec. 412. RCW 28A.205.040 and 1999 c 348 s 4 are each amended to read as follows:

(1)(a) From funds appropriated for that purpose, the superintendent of public instruction shall pay fees to a certified center on a monthly basis for each student enrolled in compliance with RCW 28A.205.020. The superintendent shall set fees by rule.

(b) Revisions in such fees proposed by an education center shall become effective after thirty days notice unless the superintendent finds such a revision is unreasonable in which case the revision shall not take effect. ~~((An education center may, within fifteen days after such a finding by the superintendent, file notification of appeal with the state board of education which shall, no later than its second regularly scheduled meeting following notification of such appeal, either grant or deny the proposed revision.))~~ The administration of any general education development test shall not be a part of such initial diagnostic procedure.

(c) Reimbursements shall not be made for students who are absent.

(d) No center shall make any charge to any student, or the student's parent, guardian or custodian, for whom a fee is being received under the provisions of this section.

(2) Payments shall be made from available funds first to those centers that have in the judgment of the superintendent demonstrated superior performance based upon consideration of students' educational gains taking into account such students' backgrounds, and upon consideration of cost effectiveness. In considering the cost effectiveness of nonprofit centers the superintendent shall take into account not only payments made under this section but also factors such as tax exemptions, direct and indirect subsidies or any other cost to taxpayers at any level of government which result from such nonprofit status.

(3) To be eligible for such payment, every such center, without prior notice, shall permit a review of its accounting records by personnel of the state auditor during normal business hours.

(4) If total funds for this purpose approach depletion, the superintendent shall notify the centers of the date after which further funds for reimbursement of the centers' services will be exhausted.

Sec. 413. RCW 28A.215.140 and 1988 c 174 s 5 are each amended to read as follows:

The department shall establish an advisory committee composed of interested parents and representatives from ~~((the state board of education.))~~ the office of the superintendent of public instruction, the division of children and

family services within the department of social and health services, early childhood education and development staff preparation programs, the head start programs, school districts, and such other community and business organizations as deemed necessary by the department to assist with the establishment of the preschool program and advise the department on matters regarding the on-going promotion and operation of the program.

Sec. 414. RCW 28A.230.020 and 1991 c 116 s 6 are each amended to read as follows:

All common schools shall give instruction in reading, penmanship, orthography, written and mental arithmetic, geography, the history of the United States, English grammar, physiology and hygiene with special reference to the effects of alcohol and drug abuse on the human system, science with special reference to the environment, and such other studies as may be prescribed by rule (~~(or regulation)~~) of the (~~(state board of education)~~) superintendent of public instruction. All teachers shall stress the importance of the cultivation of manners, the fundamental principles of honesty, honor, industry and economy, the minimum requisites for good health including the beneficial effect of physical exercise and methods to prevent exposure to and transmission of sexually transmitted diseases, and the worth of kindness to all living creatures and the land. The prevention of child abuse may be offered as part of the curriculum in the common schools.

Sec. 415. RCW 28A.230.040 and 1984 c 52 s 1 are each amended to read as follows:

Every pupil attending grades one through eight of the public schools shall receive instruction in physical education as prescribed by rule (~~(or regulation)~~) of the (~~(state board of education)~~) superintendent of public instruction: PROVIDED, That individual pupils or students may be excused on account of physical disability, religious belief, or participation in directed athletics.

Sec. 416. RCW 28A.230.050 and 1985 c 384 s 3 are each amended to read as follows:

All high schools of the state shall emphasize the work of physical education, and carry into effect all physical education requirements established by rule (~~(or regulation)~~) of the (~~(state board of education)~~) superintendent of public instruction: PROVIDED, That individual students may be excused from participating in physical education otherwise required under this section on account of physical disability, employment, or religious belief, or because of participation in directed athletics or military science and tactics or for other good cause.

Sec. 417. RCW 28A.330.100 and 1995 c 335 s 503 and 1995 c 77 s 22 are each reenacted and amended to read as follows:

Every board of directors of a school district of the first class, in addition to the general powers for directors enumerated in this title, shall have the power:

(1) To employ for a term of not exceeding three years a superintendent of schools of the district, and for cause to dismiss him or her(~~(s)~~), and to fix his or her duties and compensation(~~(s)~~);

(2) To employ, and for cause dismiss one or more assistant superintendents and to define their duties and fix their compensation(~~(s)~~);

(3) To employ a business manager, attorneys, architects, inspectors of construction, superintendents of buildings and a superintendent of supplies, all of whom shall serve at the board's pleasure, and to prescribe their duties and fix their compensation((-));

(4) To employ, and for cause dismiss, supervisors of instruction and to define their duties and fix their compensation((-));

(5) To prescribe a course of study and a program of exercises which shall be consistent with the course of study prepared by the ~~((state board of education))~~ superintendent of public instruction for the use of the common schools of this state((-));

(6) To, in addition to the minimum requirements imposed by this title establish and maintain such grades and departments, including night, high, kindergarten, vocational training and, except as otherwise provided by law, industrial schools, and schools and departments for the education and training of any class or classes of youth with disabilities, as in the judgment of the board, best shall promote the interests of education in the district((-));

(7) To determine the length of time over and above one hundred eighty days that school shall be maintained: PROVIDED, That for purposes of apportionment no district shall be credited with more than one hundred and eighty-three days' attendance in any school year; and to fix the time for annual opening and closing of schools and for the daily dismissal of pupils before the regular time for closing schools((-));

(8) To maintain a shop and repair department, and to employ, and for cause dismiss, a foreman and the necessary help for the maintenance and conduct thereof((-));

(9) To provide free textbooks and supplies for all children attending school((-));

(10) To require of the officers or employees of the district to give a bond for the honest performance of their duties in such penal sum as may be fixed by the board with good and sufficient surety, and to cause the premium for all bonds required of all such officers or employees to be paid by the district: PROVIDED, That the board may, by written policy, allow that such bonds may include a deductible proviso not to exceed two percent of the officer's or employee's annual salary((-));

(11) To prohibit all secret fraternities and sororities among the students in any of the schools of the said districts((-); and

(12) To appoint a practicing physician, resident of the school district, who shall be known as the school district medical inspector, and whose duty it shall be to decide for the board of directors all questions of sanitation and health affecting the safety and welfare of the public schools of the district who shall serve at the board's pleasure: PROVIDED, That children shall not be required to submit to vaccination against the will of their parents or guardian.

NEW SECTION. Sec. 418. RCW 28A.305.220 is recodified as a new section in chapter 28A.230 RCW.

NEW SECTION. Sec. 419. RCW 28A.305.170 is recodified as a new section in chapter 28A.300 RCW.

PART 5
SCHOOL DISTRICT BOUNDARIES

Sec. 501. RCW 28A.315.175 and 1999 c 315 s 302 are each amended to read as follows:

~~((The powers and duties of the state board with respect to this chapter shall be))~~ The superintendent of public instruction shall:

(1) ~~((To))~~ Aid regional committees in the performance of their duties by furnishing them with plans of procedure, standards, data, maps, forms, and other necessary materials and services essential to a study and understanding of the problems of school district organization in their respective educational service districts(-); and

(2) ~~((To hear appeals as provided in RCW 28A.315.205))~~ Carry out powers and duties of the superintendent of public instruction relating to the organization and reorganization of school districts.

Sec. 502. RCW 28A.315.195 and 2003 c 413 s 2 are each amended to read as follows:

(1) A proposed change in school district organization by transfer of territory from one school district to another may be initiated by a petition in writing presented to the educational service district superintendent:

(a) Signed by at least fifty percent plus one of the active registered voters residing in the territory proposed to be transferred; or

(b) Signed by a majority of the members of the board of directors of one of the districts affected by a proposed transfer of territory.

(2) The petition shall state the name and number of each district affected, describe the boundaries of the territory proposed to be transferred, and state the reasons for desiring the change and the number of children of school age, if any, residing in the territory.

(3) The educational service district superintendent shall not complete any transfer of territory under this section that involves ten percent or more of the common school student population of the entire district from which the transfer is proposed, unless the educational service district superintendent has first called and held a special election of the voters of the entire school district from which the transfer of territory is proposed. The purpose of the election is to afford those voters an opportunity to approve or reject the proposed transfer. A simple majority shall determine approval or rejection.

(4) ~~The ((state board))~~ superintendent of public instruction may establish rules limiting the frequency of petitions that may be filed pertaining to territory included in whole or in part in a previous petition.

(5) Upon receipt of the petition, the educational service district superintendent shall notify in writing the affected districts that:

(a) Each school district board of directors, whether or not initiating a proposed transfer of territory, is required to enter into negotiations with the affected district or districts;

(b) In the case of a citizen-initiated petition, the affected districts must negotiate on the entire proposed transfer of territory;

(c) The districts have ninety calendar days in which to agree to the proposed transfer of territory;

(d) The districts may request and shall be granted by the educational service district superintendent one thirty-day extension to try to reach agreement; and

(e) Any district involved in the negotiations may at any time during the ninety-day period notify the educational service district superintendent in writing that agreement will not be possible.

(6) If the negotiating school boards cannot come to agreement about the proposed transfer of territory, the educational service district superintendent, if requested by the affected districts, shall appoint a mediator. The mediator has thirty days to work with the affected school districts to see if an agreement can be reached on the proposed transfer of territory.

(7) If the affected school districts cannot come to agreement about the proposed transfer of territory, and the districts do not request the services of a mediator or the mediator was unable to bring the districts to agreement, either district may file with the educational service district superintendent a written request for a hearing by the regional committee.

(8) If the affected school districts cannot come to agreement about the proposed transfer of territory initiated by citizen petition, and the districts do not request the services of a mediator or the mediator was unable to bring the districts to agreement, the district in which the citizens who filed the petition reside shall file with the educational service district superintendent a written request for a hearing by the regional committee, unless a majority of the citizen petitioners request otherwise.

(9) Upon receipt of a notice under subsection (7) or (8) of this section, the educational service district superintendent shall notify the chair of the regional committee in writing within ten days.

(10) Costs incurred by school districts under this section shall be reimbursed by the state from such funds as are appropriated for this purpose.

Sec. 503. RCW 28A.315.205 and 2003 c 413 s 1 are each amended to read as follows:

(1) The chair of the regional committee shall schedule a hearing on the proposed transfer of territory at a location in the educational service district within sixty calendar days of being notified under RCW 28A.315.195 (7) or (8).

(2) Within thirty calendar days of the hearing under subsection (1) of this section, or final hearing if more than one is held by the committee, the committee shall issue its written findings and decision to approve or disapprove the proposed transfer of territory. The educational service district superintendent shall transmit a copy of the committee's decision to the superintendents of the affected school districts within ten calendar days.

(3) In carrying out the purposes of RCW 28A.315.015 and in making decisions as authorized under RCW 28A.315.095(1), the regional committee shall base its judgment upon whether and to the extent the proposed change in school district organization complies with RCW 28A.315.015(2) and rules adopted by the (~~state board~~) superintendent of public instruction under chapter 34.05 RCW.

(4) (~~State board~~) The rules under subsection (3) of this section shall provide for giving consideration to all of the following:

(a) Student educational opportunities as measured by the percentage of students performing at each level of the statewide mandated assessments and data regarding student attendance, graduation, and dropout rates;

(b) The safety and welfare of pupils. For the purposes of this subsection, "safety" means freedom or protection from danger, injury, or damage and "welfare" means a positive condition or influence regarding health, character, and well-being;

(c) The history and relationship of the property affected to the students and communities affected, including, for example, inclusion within a single school district, for school attendance and corresponding tax support purposes, of entire master planned communities that were or are to be developed pursuant to an integrated commercial and residential development plan with over one thousand dwelling units;

(d) Whether or not geographic accessibility warrants a favorable consideration of a recommended change in school district organization, including remoteness or isolation of places of residence and time required to travel to and from school; and

(e) All funding sources of the affected districts, equalization among school districts of the tax burden for general fund and capital purposes through a reduction in disparities in per pupil valuation when all funding sources are considered, improvement in the economies in the administration and operation of schools, and the extent the proposed change would potentially reduce or increase the individual and aggregate transportation costs of the affected school districts.

(5)(a)(i) A petitioner or school district may appeal a decision by the regional committee to the ~~((state board))~~ superintendent of public instruction based on the claim that the regional committee failed to follow the applicable statutory and regulatory procedures or acted in an arbitrary and capricious manner. Any such appeal shall be based on the record and the appeal must be filed within thirty days of the final decision of the regional committee. The appeal shall be heard and determined by an administrative law judge in the office of administrative hearings, based on the standards in (a)(ii) of this subsection.

(ii) If the ~~((state board))~~ administrative law judge finds that all applicable procedures were not followed or that the regional committee acted in an arbitrary and capricious manner, ~~((#))~~ the administrative law judge shall refer the matter back to the regional committee with an explanation of ~~((the board's))~~ his or her findings. The regional committee shall rehear the proposal.

(iii) If the ~~((state board))~~ administrative law judge finds that all applicable procedures were followed or that the regional committee did not act in an arbitrary and capricious manner, depending on the appeal, the educational service district shall be notified and directed to implement the changes.

(b) Any school district or citizen petitioner affected by a final decision of the regional committee may seek judicial review of the committee's decision in accordance with RCW 34.05.570.

Sec. 504. RCW 28A.315.015 and 1999 c 315 s 101 are each amended to read as follows:

(1) It is the purpose of this chapter to:

(a) Incorporate into a single, comprehensive, school district organization law all essential provisions governing:

(i) The formation and establishment of new school districts;

(ii) The alteration of the boundaries of existing districts; and

(iii) The adjustment of the assets and liabilities of school districts when changes are made under this chapter; and

(b) Establish methods and procedures whereby changes in the school district system may be brought about by the people concerned and affected.

(2) It is the state's policy that decisions on proposed changes in school district organization should be made, whenever possible, by negotiated agreement between the affected school districts. If the districts cannot agree, the decision shall be made by the regional committees on school district organization, based on the committees' best judgment, taking into consideration the following factors and factors under RCW 28A.315.205:

(a) A balance of local petition requests and the needs of the statewide community at large in a manner that advances the best interest of public education in the affected school districts and communities, the educational service district, and the state;

(b) Responsibly serving all of the affected citizens and students by contributing to logical service boundaries and recognizing a changing economic pattern within the educational service districts of the state;

(c) Enhancing the educational opportunities of pupils in the territory by reducing existing disparities among the affected school districts' ability to provide operating and capital funds through an equitable adjustment of the assets and liabilities of the affected districts;

(d) Promoting a wiser use of public funds through improvement in the school district system of the educational service districts and the state; and

(e) Other criteria or considerations as may be established in rule by the ~~((state board of education))~~ superintendent of public instruction.

(3) It is neither the intent nor purpose of this chapter to apply to organizational changes and the procedure therefor relating to capital fund aid by nonhigh school districts as provided for in chapter 28A.540 RCW.

Sec. 505. RCW 28A.315.025 and 1990 c 33 s 293 are each amended to read as follows:

As used in this chapter:

(1) "Change in the organization and extent of school districts" means the formation and establishment of new school districts, the dissolution of existing school districts, the alteration of the boundaries of existing school districts, or all of them.

(2) "Regional committee" means the regional committee on school district organization created by this chapter.

(3) ~~((("State board" means the state board of education.~~

~~(4))~~ "School district" means the territory under the jurisdiction of a single governing board designated and referred to as the board of directors.

~~((5))~~ (4) "Educational service district superintendent" means the educational service district superintendent as provided for in RCW 28A.310.170 or his or her designee.

Sec. 506. RCW 28A.315.055 and 1999 c 315 s 203 are each amended to read as follows:

In case the boundaries of any of the school districts are conflicting or incorrectly described, the educational service district board of directors, after due notice and a public hearing, shall change, harmonize, and describe them and

shall so certify, with a complete transcript of boundaries of all districts affected, such action to the ~~((state board))~~ superintendent of public instruction for ~~((its))~~ approval or revision. Upon receipt of notification of ~~((state board))~~ action by the superintendent of public instruction, the educational service district superintendent shall transmit to the county legislative authority of the county or counties in which the affected districts are located a complete transcript of the boundaries of all districts affected.

Sec. 507. RCW 28A.315.085 and 2005 c 497 s 405 are each amended to read as follows:

(1) The superintendent of public instruction shall furnish ~~((to the state board and))~~ to regional committees the services of employed personnel and the materials and supplies necessary to enable them to perform the duties imposed upon them by this chapter ~~((and))~~. Members shall be reimbursed ~~((the members thereof))~~ for expenses necessarily incurred by them in the performance of their duties ~~((such reimbursement for regional committee members to be))~~ in accordance with RCW 28A.315.155 ~~((and such reimbursement for state board members to be in accordance with RCW 28A.305.011))~~.

(2) Costs that may be incurred by an educational service district in association with school district negotiations under RCW 28A.315.195 and supporting the regional committee under RCW 28A.315.205 shall be reimbursed by the state from such funds as are appropriated for these purposes.

Sec. 508. RCW 28A.315.125 and 1993 c 416 s 2 are each amended to read as follows:

The members of each regional committee shall be elected in the following manner:

(1) On or before the 25th day of September, 1994, and not later than the 25th day of September of every subsequent even-numbered year, each superintendent of an educational service district shall call an election to be held in each educational service district within which resides a member of a regional committee whose term of office expires on the second Monday of January next following, and shall give written notice thereof to each member of the board of directors of each school district in the educational service district. Such notice shall include instructions, and the rules ~~((and regulations))~~ established by the ~~((state board of education))~~ superintendent of public instruction for the conduct of the election. The ~~((state board of education))~~ superintendent of public instruction is ~~((hereby))~~ empowered to adopt rules pursuant to chapter 34.05 RCW which establish standards and procedures which the ~~((state board))~~ superintendent deems necessary to conduct elections pursuant to this section; to conduct run-off elections in the event an election for a position is indecisive; and to decide run-off elections which result in tie votes, in a fair and orderly manner.

(2) Candidates for membership on a regional committee shall file a declaration of candidacy with the superintendent of the educational service district wherein they reside. Declarations of candidacy may be filed by person or by mail not earlier than the 1st day of October, and not later than the 15th day of October of each even-numbered year. The superintendent may not accept any declaration of candidacy that is not on file in his or her office or not postmarked before the 16th day of October, or if not postmarked or the postmark is not

legible, if received by mail after the 20th day of October of each even-numbered year.

(3) Each member of the regional committee shall be elected by a majority of the votes cast for all candidates for the position by the members of the boards of directors of school districts in the educational service district. All votes shall be cast by mail ballot addressed to the superintendent of the educational service district wherein the school director resides. No votes shall be accepted for counting if postmarked after the 16th day of November or if not postmarked or the postmark is not legible, if received by mail after the 21st day of November of each even-numbered year. An election board comprised of three persons appointed by the board of the educational service district shall count and tally the votes not later than the 25th day of November or the next business day if the 25th falls on a Saturday, Sunday, or legal holiday of each even-numbered year. Each vote cast by a school director shall be recorded as one vote. Within ten days following the count of votes, the educational service district superintendent shall certify to the superintendent of public instruction the name or names of the person(s) elected to be members of the regional committee.

(4) In the event of a change in the number of educational service districts or in the number of educational service district board members pursuant to chapter 28A.310 RCW a new regional committee shall be elected for each affected educational service district at the next election conducted pursuant to this section. Those persons who were serving on a regional committee within an educational service district affected by a change in the number of districts or board members shall continue to constitute the regional committee for the educational service district within which they are registered to vote until the majority of a new board has been elected and certified.

(5) No member of a regional committee shall continue to serve thereon if he or she ceases to be a registered voter of the educational service district board member district or if he or she is absent from three consecutive meetings of the committee without an excuse acceptable to the committee.

Sec. 509. RCW 28A.315.185 and 1999 c 315 s 303 are each amended to read as follows:

To the extent funds are appropriated, the superintendent of public instruction, in cooperation with the educational service districts and the Washington state school directors' association, shall conduct an annual training meeting for the regional committees, ~~((state board members,))~~ educational service district superintendents, and local school district superintendents and boards of directors. Training may also be provided upon request.

PART 6 EDUCATIONAL SERVICE DISTRICTS

Sec. 601. RCW 28A.305.210 and 2005 c 518 s 913 are each amended to read as follows:

(1) ~~((The state board of education, by rule or regulation, may require the assistance of educational service district boards and/or superintendents in the performance of any duty, authority, or power imposed upon or granted to the state board of education by law, upon such terms and conditions as the state board of education shall establish. Such authority to assist the state board of~~

~~education shall be limited to the service function of information collection and dissemination and the attestation to the accuracy and completeness of submitted information.~~

~~(2))~~ During the 2005-2007 biennium until the effective date of this act, educational service districts may, at the request of the state board of education, receive and screen applications for school accreditation, conduct school accreditation site visits pursuant to state board of education rules, and submit to the state board of education postsite visit recommendations for school accreditation. The educational service districts may assess a cooperative service fee to recover actual plus reasonable indirect costs for the purposes of this subsection.

(2) This section expires July 1, 2007.

Sec. 602. RCW 28A.310.080 and 1977 ex.s. c 283 s 15 are each amended to read as follows:

~~((On or before the twenty-fifth day of August, 1978, and))~~ Not later than the twenty-fifth day of August of every ((subsequent)) even-numbered year, the ((secretary to the state board of education)) superintendent of public instruction shall call an election to be held in each educational service district within which resides a member of the board of the educational service district whose term of office expires on the second Monday of January next following, and shall give written notice thereof to each member of the board of directors of each school district in such educational service district. Such notice shall include instructions((:)) and rules((- and regulations)) established by the ((state board of education)) superintendent of public instruction for the conduct of the election.

Sec. 603. RCW 28A.310.030 and 1990 c 33 s 271 are each amended to read as follows:

Except as otherwise provided in this chapter, in each educational service district there shall be an educational service district board consisting of seven members elected by the school directors of the educational service district, one from each of seven educational service district board-member districts. Board-member districts in districts reorganized under RCW 28A.310.020, or as provided for in RCW 28A.310.120 and under this section, shall be initially determined by the state board of education. If a reorganization pursuant to RCW 28A.310.020 places the residence of a board member into another or newly created educational service district, such member shall serve on the board of the educational service district of residence and at the next election called by the ~~((secretary to the state board of education))~~ superintendent of public instruction pursuant to RCW 28A.310.080 a new seven member board shall be elected. If the redrawing of board-member district boundaries pursuant to this chapter shall cause the resident board-member district of two or more board members to coincide, such board members shall continue to serve on the board and at the next election called by the ~~((secretary to the state board of education))~~ superintendent of public instruction a new board shall be elected. The board-member districts shall be arranged so far as practicable on a basis of equal population, with consideration being given existing board members of existing educational service district boards. Each educational service district board member shall be elected by the school directors of each school district within the educational service district. Beginning in 1971 and every ten years thereafter,

educational service district boards shall review and, if necessary, shall change the boundaries of board-member districts so as to provide so far as practicable equal representation according to population of such board-member districts and to conform to school district boundary changes: PROVIDED, That all board-member district boundaries, to the extent necessary to conform with this chapter, shall be immediately redrawn for the purposes of the next election called by the ~~((secretary to the state board of education))~~ superintendent of public instruction following any reorganization pursuant to this chapter. Such district board, if failing to make the necessary changes prior to June 1st of the appropriate year, shall refer for settlement questions on board-member district boundaries to the ~~((state board of education))~~ office of the superintendent of public instruction, which, after a public hearing, shall decide such questions.

Sec. 604. RCW 28A.310.050 and 1977 ex.s. c 283 s 19 are each amended to read as follows:

Any educational service district board may elect by resolution of the board to increase the board member size to nine board members. In such case positions number eight and nine shall be filled at the next election called by the ~~((secretary to the state board of education))~~ superintendent of public instruction, position numbered eight to be for a term of two years, position numbered nine to be for a term of four years. Thereafter the terms for such positions shall be for four years.

Sec. 605. RCW 28A.310.060 and 1977 ex.s. c 283 s 20 are each amended to read as follows:

The term of every educational service district board member shall begin on the second Monday in January next following the election at which he or she was elected: PROVIDED, That a person elected to less than a full term pursuant to this section shall take office as soon as the election returns have been certified and he or she has qualified. In the event of a vacancy in the board from any cause, such vacancy shall be filled by appointment of a person from the same board-member district by the educational service district board. In the event that there are more than three vacancies in a seven-member board or four vacancies in a nine-member board, the ~~((state board of education))~~ superintendent of public instruction shall fill by appointment sufficient vacancies so that there shall be a quorum of the board serving. Each appointed board member shall serve until his or her successor has been elected at the next election called by the ~~((secretary to the state board of education))~~ superintendent of public instruction and has qualified.

Sec. 606. RCW 28A.310.090 and 1977 ex.s. c 283 s 16 are each amended to read as follows:

Candidates for membership on an educational service district board shall file declarations of candidacy with the ~~((secretary to the state board of education))~~ superintendent of public instruction on forms prepared by the ~~((secretary))~~ superintendent. Declarations of candidacy may be filed by person or by mail not earlier than the first day of September, nor later than the sixteenth day of September. The ~~((secretary to the state board of education))~~ superintendent may not accept any declaration of candidacy that is not on file in his or her office or is not postmarked before the seventeenth day of September.

Sec. 607. RCW 28A.310.100 and 1980 c 179 s 7 are each amended to read as follows:

Each member of an educational service district board shall be elected by a majority of the votes cast at the election for all candidates for the position. All votes shall be cast by mail addressed to the ~~((secretary to the state board of education))~~ superintendent of public instruction and no votes shall be accepted for counting if postmarked after the sixteenth day of October or if not postmarked or the postmark is not legible, if received by mail after the twenty-first day of October following the call of the election. The ~~((secretary to the state board of education))~~ superintendent of public instruction and an election board comprised of three persons appointed by the ~~((state board of education))~~ superintendent shall count and tally the votes not later than the twenty-fifth day of October in the following manner: Each vote cast by a school director shall be accorded as one vote. If no candidate receives a majority of the votes cast, then, not later than the first day of November, the ~~((secretary to the state board of education))~~ superintendent of public instruction shall call a second election to be conducted in the same manner and at which the candidates shall be the two candidates receiving the highest number of votes cast. No vote cast at such second election shall be received for counting if postmarked after the sixteenth day of November or if not postmarked or the postmark is not legible, if received by mail after the twenty-first day of November and the votes shall be counted as hereinabove provided on the twenty-fifth day of November. The candidate receiving a majority of votes at any such second election shall be declared elected. In the event of a tie in such second election, the candidate elected shall be determined by a chance drawing of a nature established by the ~~((secretary to the state board of education))~~ superintendent of public instruction. Within ten days following the count of votes in an election at which a member of an educational service district board is elected, the ~~((secretary to the state board of education))~~ superintendent of public instruction shall certify to the county auditor of the headquarters county of the educational service district the name or names of the persons elected to be members of the educational service district board.

Sec. 608. RCW 28A.310.140 and 1990 c 33 s 274 are each amended to read as follows:

Every school district must be included entirely within a single educational service district. If the boundaries of any school district within an educational service district are changed in any manner so as to extend the school district beyond the boundaries of that educational service district, the ~~((state board))~~ superintendent of public instruction shall change the boundaries of the educational service districts so affected in a manner consistent with the purposes of RCW 28A.310.010 and this section.

Sec. 609. RCW 28A.310.150 and 1990 c 33 s 275 are each amended to read as follows:

Every candidate for membership on a educational service district board shall be a registered voter and a resident of the board-member district for which such candidate files. On or before the date for taking office, every member shall make an oath or affirmation to support the Constitution of the United States and the state of Washington and to faithfully discharge the duties of the office

according to the best of such member's ability. The members of the board shall not be required to give bond unless so directed by the ~~((state board of education))~~ superintendent of public instruction. At the first meeting of newly elected members and after the qualification for office of the newly elected members, each educational service district board shall reorganize by electing a chair and a vice chair. A majority of all of the members of the board shall constitute a quorum.

Sec. 610. RCW 28A.310.200 and 2001 c 143 s 1 are each amended to read as follows:

In addition to other powers and duties as provided by law, every educational service district board shall:

(1) Approve the budgets of the educational service district in accordance with the procedures provided for in this chapter~~((:))~~;

(2) Meet regularly according to the schedule adopted at the organization meeting and in special session upon the call of the chair or a majority of the board~~((:))~~;

(3) Approve the selection of educational service district personnel and clerical staff as provided in RCW 28A.310.230~~((:))~~;

(4) Fix the amount of and approve the bonds for those educational service district employees designated by the board as being in need of bonding~~((:))~~;

(5) Keep in the educational service district office a full and correct transcript of the boundaries of each school district within the educational service district~~((:))~~;

(6) Acquire by borrowing funds or by purchase, lease, devise, bequest, and gift and otherwise contract for real and personal property necessary for the operation of the educational service district and to the execution of the duties of the board and superintendent thereof and sell, lease, or otherwise dispose of that property not necessary for district purposes. No real property shall be acquired or alienated without the prior approval of the ~~((state board of education))~~ superintendent of public instruction and the acquisition or alienation of all such property shall be subject to such provisions as the ~~((board))~~ superintendent may establish. When borrowing funds for the purpose of acquiring property, the educational service district board shall pledge as collateral the property to be acquired. Borrowing shall be evidenced by a note or other instrument between the district and the lender~~((:))~~;

(7) Under RCW 28A.310.010, upon the written request of the board of directors of a local school district or districts served by the educational service district, the educational service district board of directors may provide cooperative and informational services not in conflict with other law that provide for the development and implementation of programs, activities, services, or practices that support the education of preschool through twelfth grade students in the public schools or that support the effective, efficient, or safe management and operation of the school district or districts served by the educational service district~~((:))~~;

(8) Adopt such bylaws and rules ~~((and regulations))~~ for its own operation as it deems necessary or appropriate~~((:))~~; and

(9) Enter into contracts, including contracts with common and educational service districts and the school for the deaf and the school for the blind for the joint financing of cooperative service programs conducted pursuant to RCW

28A.310.180(3), and employ consultants and legal counsel relating to any of the duties, functions, and powers of the educational service districts.

Sec. 611. RCW 28A.310.310 and 1990 c 33 s 284 are each amended to read as follows:

The educational service district board shall designate the headquarters office of the educational service district. Educational service districts shall provide for their own office space, heating, contents insurance, electricity, and custodial services, which may be obtained through contracting with any board of county commissioners. Official records of the educational service district board and superintendent, including each of the county superintendents abolished by chapter 176, Laws of 1969 ex. sess., shall be kept by the educational service district superintendent. Whenever the boundaries of any of the educational service districts are reorganized pursuant to RCW 28A.310.020, the ~~((state board of education))~~ superintendent of public instruction shall supervise the transferral of such records so that each educational service district superintendent shall receive those records relating to school districts within the appropriate educational service district.

Sec. 612. RCW 28A.323.020 and 1985 c 385 s 25 are each amended to read as follows:

The duties in this chapter imposed upon and required to be performed by a regional committee and by an educational service district superintendent in connection with a change in the organization and extent of school districts and/or with the adjustment of the assets and liabilities of school districts and with all matters related to such change or adjustment whenever territory lying in a single educational service district is involved shall be performed jointly by the regional committees and by the superintendents of the several educational service districts as required whenever territory lying in more than one educational service district is involved in a proposed change in the organization and extent of school districts: PROVIDED, That a regional committee may designate three of its members, or two of its members and the educational service district superintendent, as a subcommittee to serve in lieu of the whole committee, but action by a subcommittee shall not be binding unless approved by a majority of the regional committee. Proposals for changes in the organization and extent of school districts and proposed terms of adjustment of assets and liabilities thus prepared and approved shall be submitted to the ~~((state board))~~ superintendent of public instruction by the regional committee of the educational service district in which is located the part of the proposed or enlarged district having the largest number of common school pupils residing therein.

Sec. 613. RCW 28A.323.040 and 1973 c 47 s 3 are each amended to read as follows:

For all purposes essential to the maintenance, operation, and administration of the schools of a district, including the apportionment of current state and county school funds, the county in which a joint school district shall be considered as belonging shall be as designated by the ~~((state board of education))~~ superintendent of public instruction. Prior to making such designation, the ~~((state board of education))~~ superintendent of public instruction shall hold at least one public hearing on the matter, at which time the recommendation of the joint school district shall be presented and, in addition to

such recommendation, the ((state board)) superintendent shall consider the following prior to its designation:

- (1) Service needs of such district;
- (2) Availability of services;
- (3) Geographic location of district and servicing agencies; and
- (4) Relationship to contiguous school districts.

Sec. 614. RCW 29A.24.070 and 2005 c 221 s 1 are each amended to read as follows:

Declarations of candidacy shall be filed with the following filing officers:

(1) The secretary of state for declarations of candidacy for statewide offices, United States senate, and United States house of representatives;

(2) The secretary of state for declarations of candidacy for the state legislature, the court of appeals, and the superior court when the candidate is seeking office in a district comprised of voters from two or more counties. The secretary of state and the county auditor may accept declarations of candidacy for candidates for the state legislature, the court of appeals, and the superior court when the candidate is seeking office in a district comprised of voters from one county;

(3) The county auditor for all other offices. For any nonpartisan office, other than judicial offices and school director in joint districts, where voters from a district comprising more than one county vote upon the candidates, a declaration of candidacy shall be filed with the county auditor of the county in which a majority of the registered voters of the district reside. For school directors in joint school districts, the declaration of candidacy shall be filed with the county auditor of the county designated by the ((state board of education)) superintendent of public instruction as the county to which the joint school district is considered as belonging under RCW 28A.323.040;

(4) For all other purposes of this title, a declaration of candidacy for the state legislature, the court of appeals, and the superior court filed with the secretary of state shall be deemed to have been filed with the county auditor when the candidate is seeking office in a district composed of voters from one county.

Each official with whom declarations of candidacy are filed under this section, within one business day following the closing of the applicable filing period, shall transmit to the public disclosure commission the information required in RCW 29A.24.031 (1) through (4) for each declaration of candidacy filed in his or her office during such filing period or a list containing the name of each candidate who files such a declaration in his or her office during such filing period together with a precise identification of the position sought by each such candidate and the date on which each such declaration was filed. Such official, within three days following his or her receipt of any letter withdrawing a person's name as a candidate, shall also forward a copy of such withdrawal letter to the public disclosure commission.

Sec. 615. RCW 84.09.037 and 1990 c 33 s 597 are each amended to read as follows:

Each school district affected by a transfer of territory from one school district to another school district under chapter 28A.315 RCW shall retain its preexisting boundaries for the purpose of the collection of excess tax levies

authorized under RCW 84.52.053 before the effective date of the transfer, for such tax collection years and for such excess tax levies as the ~~((state board of education))~~ superintendent of public instruction may approve and order that the transferred territory shall either be subject to or relieved of such excess levies, as the case may be. For the purpose of all other excess tax levies previously authorized under chapter 84.52 RCW and all excess tax levies authorized under RCW 84.52.053 subsequent to the effective date of a transfer of territory, the boundaries of the affected school districts shall be modified to recognize the transfer of territory subject to RCW 84.09.030.

PART 7 STUDENTS

Sec. 701. RCW 28A.305.160 and 1996 c 321 s 2 are each amended to read as follows:

(1) The ~~((state board of education))~~ superintendent of public instruction shall adopt and distribute to all school districts lawful and reasonable rules prescribing the substantive and procedural due process guarantees of pupils in the common schools. Such rules shall authorize a school district to use informal due process procedures in connection with the short-term suspension of students to the extent constitutionally permissible: PROVIDED, That the ~~((state board))~~ superintendent of public instruction deems the interest of students to be adequately protected. When a student suspension or expulsion is appealed, the rules shall authorize a school district to impose the suspension or expulsion temporarily after an initial hearing for no more than ten consecutive school days or until the appeal is decided, whichever is earlier. Any days that the student is temporarily suspended or expelled before the appeal is decided shall be applied to the term of the student suspension or expulsion and shall not limit or extend the term of the student suspension or expulsion.

(2) Short-term suspension procedures may be used for suspensions of students up to and including, ten consecutive school days.

Sec. 702. RCW 28A.150.300 and 1993 c 68 s 1 are each amended to read as follows:

The use of corporal punishment in the common schools is prohibited. The ~~((state board of education, in consultation with the))~~ superintendent of public instruction~~((s))~~ shall develop and adopt a policy prohibiting the use of corporal punishment in the common schools. The policy shall be adopted ~~((by the state board of education no later than February 1, 1994,))~~ and ~~((shall take effect))~~ implemented in all school districts ~~((September 1, 1994))~~.

Sec. 703. RCW 28A.225.160 and 1999 c 348 s 5 are each amended to read as follows:

Except as otherwise provided by law, it is the general policy of the state that the common schools shall be open to the admission of all persons who are five years of age and less than twenty-one years residing in that school district. Except as otherwise provided by law or rules adopted by the ~~((state board of education))~~ superintendent of public instruction, districts may establish uniform entry qualifications, including but not limited to birth date requirements, for admission to kindergarten and first grade programs of the common schools. Such rules may provide for exceptions based upon the ability, or the need, or

both, of an individual student. For the purpose of complying with any rule adopted by the (~~state board of education which~~) superintendent of public instruction that authorizes a preadmission screening process as a prerequisite to granting exceptions to the uniform entry qualifications, a school district may collect fees to cover expenses incurred in the administration of any preadmission screening process: PROVIDED, That in so establishing such fee or fees, the district shall adopt regulations for waiving and reducing such fees in the cases of those persons whose families, by reason of their low income, would have difficulty in paying the entire amount of such fees.

NEW SECTION. Sec. 704. A new section is added to chapter 28A.300 RCW to read as follows:

The superintendent of public instruction shall adopt rules relating to pupil tests and records.

Sec. 705. RCW 28A.300.150 and 1994 c 245 s 8 are each amended to read as follows:

The superintendent of public instruction shall collect and disseminate to school districts information on child abuse and neglect prevention curriculum and shall adopt rules dealing with the prevention of child abuse for purposes of curriculum use in the common schools. The superintendent of public instruction and the departments of social and health services and community, trade, and economic development shall share relevant information.

Sec. 706. RCW 28A.600.020 and 1997 c 266 s 11 are each amended to read as follows:

(1) The rules adopted pursuant to RCW 28A.600.010 shall be interpreted to (~~insure~~) ensure that the optimum learning atmosphere of the classroom is maintained, and that the highest consideration is given to the judgment of qualified certificated educators regarding conditions necessary to maintain the optimum learning atmosphere.

(2) Any student who creates a disruption of the educational process in violation of the building disciplinary standards while under a teacher's immediate supervision may be excluded by the teacher from his or her individual classroom and instructional or activity area for all or any portion of the balance of the school day, or up to the following two days, or until the principal or designee and teacher have conferred, whichever occurs first. Except in emergency circumstances, the teacher first must attempt one or more alternative forms of corrective action. In no event without the consent of the teacher may an excluded student return to the class during the balance of that class or activity period or up to the following two days, or until the principal or his or her designee and the teacher have conferred.

(3) In order to preserve a beneficial learning environment for all students and to maintain good order and discipline in each classroom, every school district board of directors shall provide that written procedures are developed for administering discipline at each school within the district. Such procedures shall be developed with the participation of parents and the community, and shall provide that the teacher, principal or designee, and other authorities designated by the board of directors, make every reasonable attempt to involve the parent or guardian and the student in the resolution of student discipline problems. Such procedures shall provide that students may be excluded from their individual

classes or activities for periods of time in excess of that provided in subsection (2) of this section if such students have repeatedly disrupted the learning of other students. The procedures must be consistent with the rules of the ~~((state board of education))~~ superintendent of public instruction and must provide for early involvement of parents in attempts to improve the student's behavior.

(4) The procedures shall assure, pursuant to RCW 28A.400.110, that all staff work cooperatively toward consistent enforcement of proper student behavior throughout each school as well as within each classroom.

(5) A principal shall consider imposing long-term suspension or expulsion as a sanction when deciding the appropriate disciplinary action for a student who, after July 27, 1997:

(a) Engages in two or more violations within a three-year period of RCW 9A.46.120, 28A.320.135, 28A.600.455, 28A.600.460, 28A.635.020, 28A.600.020, 28A.635.060, 9.41.280, or 28A.320.140; or

(b) Engages in one or more of the offenses listed in RCW 13.04.155.

The principal shall communicate the disciplinary action taken by the principal to the school personnel who referred the student to the principal for disciplinary action.

Sec. 707. RCW 28A.600.030 and 1990 c 33 s 498 are each amended to read as follows:

Each school district board of directors may establish student grading policies which permit teachers to consider a student's attendance in determining the student's overall grade or deciding whether the student should be granted or denied credit. Such policies shall take into consideration the circumstances pertaining to the student's inability to attend school. However, no policy shall be adopted whereby a grade shall be reduced or credit shall be denied for disciplinary reasons only, rather than for academic reasons, unless due process of law is provided as set forth by the ~~((state board of education))~~ superintendent of public instruction under RCW 28A.305.160 (as recodified by this act).

NEW SECTION. **Sec. 708.** RCW 28A.305.160 is recodified as a new section in chapter 28A.600 RCW.

PART 8 TRANSFER OF PROFESSIONAL EDUCATOR STANDARDS BOARD DUTIES

Sec. 801. RCW 18.35.020 and 2005 c 45 s 2 are each amended to read as follows:

(1) No person shall engage in the fitting and dispensing of hearing instruments or imply or represent that he or she is engaged in the fitting and dispensing of hearing instruments unless he or she is a licensed hearing instrument fitter/dispenser or a licensed audiologist or holds an interim permit issued by the department as provided in this chapter and is an owner or employee of an establishment that is bonded as provided by RCW 18.35.240. The owner or manager of an establishment that dispenses hearing instruments is responsible under this chapter for all transactions made in the establishment name or conducted on its premises by agents or persons employed by the establishment engaged in fitting and dispensing of hearing instruments. Every establishment that fits and dispenses shall have in its employ at least one

licensed hearing instrument fitter/dispenser or licensed audiologist at all times, and shall annually submit proof that all testing equipment at that establishment that is required by the board to be calibrated has been properly calibrated.

(2) Effective January 1, 2003, no person shall engage in the practice of audiology or imply or represent that he or she is engaged in the practice of audiology unless he or she is a licensed audiologist or holds an audiology interim permit issued by the department as provided in this chapter. Audiologists who are certified as educational staff associates by the (~~state board of education~~) Washington professional educator standards board are excluded unless they elect to become licensed under this chapter. However, a person certified by the state board of education as an educational staff associate who practices outside the school setting must be a licensed audiologist.

(3) Effective January 1, 2003, no person shall engage in the practice of speech-language pathology or imply or represent that he or she is engaged in the practice of speech-language pathology unless he or she is a licensed speech-language pathologist or holds a speech-language pathology interim permit issued by the department as provided in this chapter. Speech-language pathologists who are certified as educational staff associates by the state board of education are excluded unless they elect to become licensed under this chapter. However, a person certified by the state board of education as an educational staff associate who practices outside the school setting must be a licensed speech-language pathologist.

Sec. 802. RCW 18.35.195 and 2005 c 45 s 4 are each amended to read as follows:

(1) This chapter shall not apply to military or federal government employees.

(2) This chapter does not prohibit or regulate:

(a) Fitting or dispensing by students enrolled in a board-approved program who are directly supervised by a licensed hearing instrument fitter/dispenser, a licensed audiologist under the provisions of this chapter, or an instructor at a two-year hearing instrument fitter/dispenser degree program that is approved by the board;

(b) Hearing instrument fitter/dispensers, speech-language pathologists, or audiologists of other states, territories, or countries, or the District of Columbia while appearing as clinicians of bona fide educational seminars sponsored by speech-language pathology, audiology, hearing instrument fitter/dispenser, medical, or other healing art professional associations so long as such activities do not go beyond the scope of practice defined by this chapter; and

(c) The practice of audiology or speech-language pathology by persons certified by the (~~state board of education~~) Washington professional educator standards board as educational staff associates, except for those persons electing to be licensed under this chapter. However, a person certified by the (~~state~~) board (~~of education~~) as an educational staff associate who practices outside the school setting must be a licensed audiologist or licensed speech-language pathologist.

Sec. 803. RCW 18.83.200 and 1986 c 27 s 10 are each amended to read as follows:

This chapter shall not apply to:

(1) Any person teaching, lecturing, consulting, or engaging in research in psychology but only insofar as such activities are performed as a part of or are dependent upon a position in a college or university in the state of Washington.

(2) Any person who holds a valid school psychologist credential from the Washington (~~state board of education~~) professional educator standards board but only when such a person is practicing psychology in the course of his or her employment.

(3) Any person employed by a local, state, or federal government agency whose psychologists must qualify for employment under federal or state certification or civil service regulations; but only at those times when that person is carrying out the functions of his or her employment.

(4) Any person who must qualify under the employment requirements of a business or industry and who is employed by a business or industry which is not engaged in offering psychological services to the public, but only when such person is carrying out the functions of his or her employment: PROVIDED, That no person exempt from licensing under this subsection shall engage in the clinical practice of psychology.

(5) Any person who is a student of psychology, psychological intern, or resident in psychology preparing for the profession of psychology under supervision in a training institution or facilities and who is designated by the title such as "psychological trainee," "psychology student," which thereby indicates his or her training status.

(6) Any person who has received a doctoral degree from an accredited institution of higher learning with an adequate major in sociology or social psychology as determined by the board and who has passed comprehensive examinations in the field of social psychology as part of the requirements for the doctoral degree. Such persons may use the title "social psychologist" provided that they file a statement of their education with the board.

Sec. 804. RCW 28A.625.360 and 1990 1st ex.s. c 10 s 2 are each amended to read as follows:

(1) The (~~state board of education~~) professional educator standards board shall establish an annual award program for excellence in teacher preparation to recognize higher education teacher educators for their leadership, contributions, and commitment to education.

(2) The program shall recognize annually one teacher preparation faculty member from one of the teacher preparation programs approved by the (~~state board of education~~) professional educator standards board.

Sec. 805. RCW 28A.225.330 and 1999 c 198 s 3 are each amended to read as follows:

(1) When enrolling a student who has attended school in another school district, the school enrolling the student may request the parent and the student to briefly indicate in writing whether or not the student has:

- (a) Any history of placement in special educational programs;
- (b) Any past, current, or pending disciplinary action;
- (c) Any history of violent behavior, or behavior listed in RCW 13.04.155;
- (d) Any unpaid fines or fees imposed by other schools; and
- (e) Any health conditions affecting the student's educational needs.

(2) The school enrolling the student shall request the school the student previously attended to send the student's permanent record including records of disciplinary action, history of violent behavior or behavior listed in RCW 13.04.155, attendance, immunization records, and academic performance. If the student has not paid a fine or fee under RCW 28A.635.060, or tuition, fees, or fines at approved private schools the school may withhold the student's official transcript, but shall transmit information about the student's academic performance, special placement, immunization records, records of disciplinary action, and history of violent behavior or behavior listed in RCW 13.04.155. If the official transcript is not sent due to unpaid tuition, fees, or fines, the enrolling school shall notify both the student and parent or guardian that the official transcript will not be sent until the obligation is met, and failure to have an official transcript may result in exclusion from extracurricular activities or failure to graduate.

(3) If information is requested under subsection (2) of this section, the information shall be transmitted within two school days after receiving the request and the records shall be sent as soon as possible. Any school district or district employee who releases the information in compliance with this section is immune from civil liability for damages unless it is shown that the school district employee acted with gross negligence or in bad faith. The ~~((state board of education))~~ professional educator standards board shall provide by rule for the discipline under chapter 28A.410 RCW of a school principal or other chief administrator of a public school building who fails to make a good faith effort to assure compliance with this subsection.

(4) Any school district or district employee who releases the information in compliance with federal and state law is immune from civil liability for damages unless it is shown that the school district or district employee acted with gross negligence or in bad faith.

(5) When a school receives information under this section or RCW 13.40.215 that a student has a history of disciplinary actions, criminal or violent behavior, or other behavior that indicates the student could be a threat to the safety of educational staff or other students, the school shall provide this information to the student's teachers and security personnel.

Sec. 806. RCW 28A.405.110 and 1985 c 420 s 1 are each amended to read as follows:

The legislature recognizes the importance of teachers in the educational system. Teachers are the fundamental element in assuring a quality education for the state's and the nation's children. Teachers, through their direct contact with children, have a great impact on the development of the child. The legislature finds that this important role of the teacher requires an assurance that teachers are as successful as possible in attaining the goal of a well-educated society. The legislature finds, therefore, that the evaluation of those persons seeking to enter the teaching profession is no less important than the evaluation of those persons currently teaching. The evaluation of persons seeking teaching credentials should be strenuous while making accommodations uniquely appropriate to the applicants. Strenuous teacher training and preparation should be complemented by examinations of prospective teachers prior to candidates being granted official certification by the ~~((state board of education))~~ professional educator standards board. Teacher preparation program entrance

evaluations, teacher training, teacher preparation program exit examinations, official certification, in-service training, and ongoing evaluations of individual progress and professional growth are all part of developing and maintaining a strong precertification and postcertification professional education system.

The legislature further finds that an evaluation system for teachers has the following elements, goals, and objectives: (1) An evaluation system must be meaningful, helpful, and objective; (2) an evaluation system must encourage improvements in teaching skills, techniques, and abilities by identifying areas needing improvement; (3) an evaluation system must provide a mechanism to make meaningful distinctions among teachers and to acknowledge, recognize, and encourage superior teaching performance; and (4) an evaluation system must encourage respect in the evaluation process by the persons conducting the evaluations and the persons subject to the evaluations through recognizing the importance of objective standards and minimizing subjectivity.

Sec. 807. RCW 28A.415.010 and 1991 c 285 s 1 are each amended to read as follows:

It shall be the responsibility of each educational service district board to establish a center for the improvement of teaching. The center shall administer, coordinate, and act as fiscal agent for such programs related to the recruitment and training of certificated and classified K-12 education personnel as may be delegated to the center by the superintendent of public instruction under RCW 28A.310.470(~~(, or the state board of education under RCW 28A.310.480)~~). To assist in these activities, each educational service district board shall establish an improvement of teaching coordinating council to include, at a minimum, representatives as specified in RCW 28A.415.040. An existing in-service training task force, established pursuant to RCW 28A.415.040, may serve as the improvement of teaching coordinating council. The educational service district board shall ensure coordination of programs established pursuant to RCW 28A.415.030, 28A.410.060, and 28A.415.250.

The educational service district board may arrange each year for the holding of one or more teachers' institutes and/or workshops for professional staff preparation and in-service training in such manner and at such time as the board believes will be of benefit to the teachers and other professional staff of school districts within the educational service district and shall comply with rules (~~and regulations of the state board of education~~) of the professional educator standards board pursuant to RCW 28A.410.060 or the superintendent of public instruction (~~(or state board of education)~~) pursuant to RCW 28A.415.250. The board may provide such additional means of teacher and other professional staff preparation and in-service training as it may deem necessary or appropriate and there shall be a proper charge against the educational service district general expense fund when approved by the educational service district board.

Educational service district boards of contiguous educational service districts, by mutual arrangements, may hold joint institutes and/or workshops, the expenses to be shared in proportion to the numbers of certificated personnel as shown by the last annual reports of the educational service districts holding such joint institutes or workshops.

In local school districts employing more than one hundred teachers and other professional staff, the school district superintendent may hold a teachers' institute of one or more days in such district, said institute when so held by the

school district superintendent to be in all respects governed by the provisions of this title and (~~state board of education~~) rules (~~and regulations~~) relating to teachers' institutes held by educational service district superintendents.

Sec. 808. RCW 28A.415.020 and 1995 c 284 s 2 are each amended to read as follows:

(1) Certificated personnel shall receive for each ten clock hours of approved in-service training attended the equivalent of a one credit college quarter course on the salary schedule developed by the legislative evaluation and accountability program committee.

(2) Certificated personnel shall receive for each ten clock hours of approved continuing education earned, as continuing education is defined by rule adopted by the (~~state board of education~~) professional educator standards board, the equivalent of a one credit college quarter course on the salary schedule developed by the legislative evaluation and accountability program committee.

(3) Certificated personnel shall receive for each forty clock hours of participation in an approved internship with a business, an industry, or government, as an internship is defined by rule of the (~~state board of education~~) professional educator standards board in accordance with RCW 28A.415.025, the equivalent of a one credit college quarter course on the salary schedule developed by the legislative evaluation and accountability program committee.

(4) An approved in-service training program shall be a program approved by a school district board of directors, which meet standards adopted by the (~~state board of education~~) professional educator standards board, and the development of said program has been participated in by an in-service training task force whose membership is the same as provided under RCW 28A.415.040, or a program offered by an education agency approved to provide in-service for the purposes of continuing education as provided for under rules adopted by the (~~state board of education~~) professional educator standards board, or both.

(5) Clock hours eligible for application to the salary schedule developed by the legislative evaluation and accountability program committee as described in subsections (1) and (2) of this section, shall be those hours acquired after August 31, 1987. Clock hours eligible for application to the salary schedule as described in subsection (3) of this section shall be those hours acquired after December 31, 1995.

Sec. 809. RCW 28A.415.024 and 2005 c 461 s 1 are each amended to read as follows:

(1) All credits earned in furtherance of degrees earned by certificated staff, that are used to increase earnings on the salary schedule consistent with RCW 28A.415.023, must be obtained from an educational institution accredited by an accrediting association recognized by rule of the (~~state board of education~~) professional educator standards board.

(2) The office of the superintendent of public instruction shall verify for school districts the accreditation status of educational institutions granting degrees that are used by certificated staff to increase earnings on the salary schedule consistent with RCW 28A.415.023.

(3) The office of the superintendent of public instruction shall provide school districts with training and additional resources to ensure they can verify that degrees earned by certificated staff, that are used to increase earnings on the

salary schedule consistent with RCW 28A.415.023, are obtained from an educational institution accredited by an accrediting association recognized by rule of the (~~state board of education~~) professional educator standards board.

(4)(a) No school district may submit degree information before there has been verification of accreditation under subsection (3) of this section.

(b) Certificated staff who submit degrees received from an unaccredited educational institution for the purposes of receiving a salary increase shall be fined three hundred dollars. The fine shall be paid to the office of the superintendent of public instruction and used for costs of administering this section.

(c) In addition to the fine in (b) of this subsection, certificated staff who receive salary increases based upon degrees earned from educational institutions that have been verified to be unaccredited must reimburse the district for any compensation received based on these degrees.

Sec. 810. RCW 28A.415.025 and 1995 c 284 s 3 are each amended to read as follows:

The (~~state board of education~~) professional educator standards board shall establish rules for awarding clock hours for participation of certificated personnel in internships with business, industry, or government. To receive clock hours for an internship, the individual must demonstrate that the internship will provide beneficial skills and knowledge in an area directly related to his or her current assignment, or to his or her assignment for the following school year. An individual may not receive more than the equivalent of two college quarter credits for internships during a calendar-year period. The total number of credits for internships that an individual may earn to advance on the salary schedule developed by the legislative evaluation and accountability program committee or its successor agency is limited to the equivalent of fifteen college quarter credits.

Sec. 811. RCW 28A.415.105 and 1995 c 335 s 403 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 28A.415.125 through 28A.415.140.

(1) "Cooperating organizations" means that at least one school district, one college or university, and one educational service district are involved jointly with the development of a student teaching center.

(2) "Cooperating teacher" means a teacher who holds a continuing certificate and supervises and coaches a student teacher.

(3) "Field experience" means opportunities for observation, tutoring, microteaching, extended practicums, and clinical and laboratory experiences which do not fall within the meaning of student teaching.

(4) "School setting" means a classroom in a public, common school in the state of Washington.

(5) "Student teacher" means a candidate for initial teacher certification who is in a (~~state board of education approved~~) professional educator standards board approved, or regionally or nationally accredited teacher preparation program in a school setting as part of the field-based component of their preparation program.

(6) "Student teaching" means the full quarter or semester in a school setting during which the student teacher observes the cooperating teacher, participates

in instructional activities, and assumes both part-time and full-time teaching responsibilities under the supervision of the cooperating teacher.

(7) "Student teaching center" means the program established to provide student teachers in a geographic region of the state with special support and training as part of their teacher preparation program.

(8) "Supervisor or university supervisor" means the regular or adjunct faculty member, or college or university-approved designee, who assists and supervises the work of cooperating teachers and student teachers.

Sec. 812. RCW 28A.415.125 and 1991 c 258 s 6 are each amended to read as follows:

The (~~state board of education~~) professional educator standards board, from appropriated funds, shall establish a network of student teaching centers to support the continuing development of the field-based component of teacher preparation programs. The purpose of the training centers is to:

(1) Expand opportunities for student teacher placements in school districts statewide, with an emphasis on those populations and locations that are unserved or underserved;

(2) Provide cooperating teachers for all student teachers during their student internship for up to two academic quarters;

(3) Enhance the student teaching component of teacher preparation programs, including a placement of student teachers in special education and multi-ethnic school settings; and

(4) Expand access to each other and opportunities for collaboration in teacher education between colleges and universities and school districts.

Sec. 813. RCW 28A.415.130 and 1991 c 258 s 7 are each amended to read as follows:

Funds for the student teaching centers shall be allocated by the superintendent of public instruction among the educational service district regions on the basis of student teaching placements. The fiscal agent for each center shall be either an educational service district or a state institution of higher education. Prospective fiscal agents shall document to the (~~state board of education~~) professional educator standards board the following information:

(1) The existing or proposed center was developed jointly through a process including participation by at least one school district, one college or university, and one educational service district;

(2) Primary administration for each center shall be the responsibility of one or more of the cooperating organizations;

(3) Assurance that the training center program provides appropriate and necessary training in observation, supervision, and assistance skills and techniques for:

(a) Cooperating teachers;

(b) Other school building personnel; and

(c) School district employees.

Sec. 814. RCW 28A.415.145 and 1991 c 258 s 10 are each amended to read as follows:

The (~~state board of education~~) professional educator standards board and the superintendent of public instruction shall adopt rules as necessary under

chapter 34.05 RCW to carry out the purposes of RCW 28A.415.100 through 28A.415.140.

Sec. 815. RCW 28A.630.400 and 1995 c 335 s 202 and 1995 c 77 s 27 are each reenacted and amended to read as follows:

(1) The (~~state board of education~~) professional educator standards board and the state board for community and technical colleges, in consultation with the superintendent of public instruction, the higher education coordinating board, the state apprenticeship training council, and community colleges, shall adopt rules as necessary under chapter 34.05 RCW to implement the paraeducator associate of arts degree.

(2) As used in this section, a "paraeducator" is an individual who has completed an associate of arts degree for a paraeducator. The paraeducator may be hired by a school district to assist certificated instructional staff in the direct instruction of children in small and large groups, individualized instruction, testing of children, recordkeeping, and preparation of materials. The paraeducator shall work under the direction of instructional certificated staff.

(3) The training program for a paraeducator associate of arts degree shall include, but is not limited to, the general requirements for receipt of an associate of arts degree and training in the areas of introduction to childhood education, orientation to children with disabilities, fundamentals of childhood education, creative activities for children, instructional materials for children, fine art experiences for children, the psychology of learning, introduction to education, child health and safety, child development and guidance, first aid, and a practicum in a school setting.

(4) Consideration shall be given to transferability of credit earned in this program to teacher preparation programs at colleges and universities.

Sec. 816. RCW 28A.660.020 and 2004 c 23 s 2 are each amended to read as follows:

(1) Each district or consortia of school districts applying for the alternative route certification program shall submit a proposal to the Washington professional educator standards board specifying:

(a) The route or routes the partnership program intends to offer and a detailed description of how the routes will be structured and operated by the partnership;

(b) The number of candidates that will be enrolled per route;

(c) An identification, indication of commitment, and description of the role of approved teacher preparation programs that are partnering with the district or consortia of districts;

(d) An assurance of district provision of adequate training for mentor teachers either through participation in a state mentor training academy or district-provided training that meets state-established mentor-training standards specific to the mentoring of alternative route candidates;

(e) An assurance that significant time will be provided for mentor teachers to spend with the alternative route teacher candidates throughout the internship. Partnerships must provide each candidate with intensive classroom mentoring until such time as the candidate demonstrates the competency necessary to manage the classroom with less intensive supervision and guidance from a mentor;

(f) A description of the rigorous screening process for applicants to alternative route programs, including entry requirements specific to each route, as provided in RCW 28A.660.040; and

(g) The design and use of a teacher development plan for each candidate. The plan shall specify the alternative route coursework and training required of each candidate and shall be developed by comparing the candidate's prior experience and coursework with the state's new performance-based standards for residency certification and adjusting any requirements accordingly. The plan may include the following components:

(i) A minimum of one-half of a school year, and an additional significant amount of time if necessary, of intensive mentorship, starting with full-time mentoring and progressing to increasingly less intensive monitoring and assistance as the intern demonstrates the skills necessary to take over the classroom with less intensive support. For route one and two candidates, before the supervision is diminished, the mentor of the teacher candidate at the school and the supervisor of the teacher candidate from the higher education teacher preparation program must both agree that the teacher candidate is ready to manage the classroom with less intensive supervision. For route three and four candidates, the mentor of the teacher candidate shall make the decision;

(ii) Identification of performance indicators based on the knowledge and skills standards required for residency certification by the ~~((state board of education))~~ Washington professional educator standards board;

(iii) Identification of benchmarks that will indicate when the standard is met for all performance indicators;

(iv) A description of strategies for assessing candidate performance on the benchmarks;

(v) Identification of one or more tools to be used to assess a candidate's performance once the candidate has been in the classroom for about one-half of a school year; and

(vi) A description of the criteria that would result in residency certification after about one-half of a school year but before the end of the program.

(2) To the extent funds are appropriated for this purpose, districts may apply for program funds to pay stipends to trained mentor teachers of interns during the mentored internship. The per intern amount of mentor stipend shall not exceed five hundred dollars.

Sec. 817. RCW 28A.660.040 and 2004 c 23 s 4 are each amended to read as follows:

Partnership grants funded under this chapter shall operate one to four specific route programs. Successful completion of the program shall make a candidate eligible for residency teacher certification. For route one and two candidates, the mentor of the teacher candidate at the school and the supervisor of the teacher candidate from the higher education teacher preparation program must both agree that the teacher candidate has successfully completed the program. For route three and four candidates, the mentor of the teacher candidate shall make the determination that the candidate has successfully completed the program.

(1) Partnership grant programs seeking funds to operate route one programs shall enroll currently employed classified instructional employees with transferable associate degrees seeking residency teacher certification with

endorsements in special education, bilingual education, or English as a second language. It is anticipated that candidates enrolled in this route will complete both their baccalaureate degree and requirements for residency certification in two years or less, including a mentored internship to be completed in the final year. In addition, partnership programs shall uphold entry requirements for candidates that include:

(a) District or building validation of qualifications, including three years of successful student interaction and leadership as a classified instructional employee;

(b) Successful passage of the statewide basic skills exam, when available; and

(c) Meeting the age, good moral character, and personal fitness requirements adopted by rule for teachers.

(2) Partnership grant programs seeking funds to operate route two programs shall enroll currently employed classified staff with baccalaureate degrees seeking residency teacher certification in subject matter shortage areas and areas with shortages due to geographic location. Candidates enrolled in this route must complete a mentored internship complemented by flexibly scheduled training and coursework offered at a local site, such as a school or educational service district, or online or via video-conference over the K-20 network, in collaboration with the partnership program's higher education partner. In addition, partnership grant programs shall uphold entry requirements for candidates that include:

(a) District or building validation of qualifications, including three years of successful student interaction and leadership as classified staff;

(b) A baccalaureate degree from a regionally accredited institution of higher education. The individual's college or university grade point average may be considered as a selection factor;

(c) Successful completion of the content test, once the state content test is available;

(d) Meeting the age, good moral character, and personal fitness requirements adopted by rule for teachers; and

(e) Successful passage of the statewide basic skills exam, when available.

(3) Partnership grant programs seeking funds to operate route three programs shall enroll individuals with baccalaureate degrees, who are not employed in the district at the time of application. When selecting candidates for certification through route three, districts shall give priority to individuals who are seeking residency teacher certification in subject matter shortage areas or shortages due to geographic locations. For route three only, the districts may include additional candidates in nonshortage subject areas if the candidates are seeking endorsements with a secondary grade level designation as defined by rule by the ~~((state board of education))~~ professional educator standards board. The districts shall disclose to candidates in nonshortage subject areas available information on the demand in those subject areas. Cohorts of candidates for this route shall attend an intensive summer teaching academy, followed by a full year employed by a district in a mentored internship, followed, if necessary, by a second summer teaching academy. In addition, partnership programs shall uphold entry requirements for candidates that include:

(a) Five years' experience in the work force;

(b) A baccalaureate degree from a regionally accredited institution of higher education. The individual's grade point average may be considered as a selection factor;

(c) Successful completion of the content test, once the state content test is available;

(d) External validation of qualifications, including demonstrated successful experience with students or children, such as ~~((references [reference]))~~ reference letters and letters of support from previous employers;

(e) Meeting the age, good moral character, and personal fitness requirements adopted by rule for teachers; and

(f) Successful passage of statewide basic skills exams, when available.

(4) Partnership grant programs seeking funds to operate route four programs shall enroll individuals with baccalaureate degrees, who are employed in the district at the time of application, or who hold conditional teaching certificates or emergency substitute certificates. Cohorts of candidates for this route shall attend an intensive summer teaching academy, followed by a full year employed by a district in a mentored internship. In addition, partnership programs shall uphold entry requirements for candidates that include:

(a) Five years' experience in the work force;

(b) A baccalaureate degree from a regionally accredited institution of higher education. The individual's grade point average may be considered as a selection factor;

(c) Successful completion of the content test, once the state content test is available;

(d) External validation of qualifications, including demonstrated successful experience with students or children, such as reference letters and letters of support from previous employers;

(e) Meeting the age, good moral character, and personal fitness requirements adopted by rule for teachers; and

(f) Successful passage of statewide basic skills exams, when available.

Sec. 818. RCW 28A.690.020 and 1990 c 33 s 546 are each amended to read as follows:

The "designated state official" for this state under Article II of RCW 28A.690.010 shall be the superintendent of public instruction, who shall be the compact administrator and who shall have power to ~~((promulgate))~~ adopt rules to carry out the terms of this compact. The superintendent of public instruction shall enter into contracts pursuant to Article III of the Agreement only with the approval of the specific text thereof by the ~~((state board of education))~~ professional educator standards board.

Sec. 819. RCW 28A.300.050 and 1990 c 33 s 252 are each amended to read as follows:

The superintendent of public instruction shall provide technical assistance to the ~~((state board of education))~~ professional educator standards board in the conduct of the activities described in ~~((sections 202 through 232 of this act))~~ RCW 28A.410.040 and 28A.410.050.

Sec. 820. RCW 28A.625.370 and 1990 1st ex.s. c 10 s 3 are each amended to read as follows:

The award for the teacher educator shall include:

(1) A certificate presented to the teacher educator by the governor, the ~~((president of the state board of education))~~ chair of the professional educator standards board, and the superintendent of public instruction at a public ceremony; and

(2) A grant to the professional education advisory board of the institution from which the teacher educator is selected, which grant shall not exceed two thousand five hundred dollars and which grant shall be awarded under RCW 28A.625.390.

Sec. 821. RCW 28A.625.380 and 1990 1st ex.s. c 10 s 4 are each amended to read as follows:

The ~~((state board of education))~~ professional educator standards board shall adopt rules under chapter 34.05 RCW to carry out the purposes of RCW 28A.625.360 through 28A.625.390. These rules shall include establishing the selection criteria for the Washington award for excellence in teacher preparation. The ~~((state))~~ board ~~((of education))~~ is encouraged to consult with teacher educators, deans, and professional education advisory board members in developing the selection criteria. The criteria shall include any role performed by nominees relative to implementing innovative developments by the nominee's teacher preparation program and efforts the nominee has made to assist in communicating with legislators, common school teachers and administrators, and others about the nominee's teacher preparation program.

Sec. 822. RCW 28A.625.390 and 1990 1st ex.s. c 10 s 5 are each amended to read as follows:

The professional education advisory board for the institution from which the teacher educator has been selected to receive an award shall be eligible to apply for an educational grant as provided under RCW 28A.625.370. The ~~((state board of education))~~ professional educator standards board shall award the grant after the ~~((state))~~ board has approved the grant application as long as the written grant application is submitted to the ~~((state))~~ board within one year after the award is received by the teacher educator. The grant application shall identify the educational purpose toward which the grant shall be used.

Sec. 823. RCW 28B.10.710 and 1993 c 77 s 1 are each amended to read as follows:

There shall be a one quarter or semester course in either Washington state history and government, or Pacific Northwest history and government in the curriculum of all teachers' colleges and teachers' courses in all institutions of higher education. No person shall be graduated from any of said schools without completing said course of study, unless otherwise determined by the ~~((state board of education))~~ Washington professional educator standards board. Any course in Washington state or Pacific Northwest history and government used to fulfill this requirement shall include information on the culture, history, and government of the American Indian peoples who were the first human inhabitants of the state and the region.

Sec. 824. RCW 28B.35.120 and 2004 c 275 s 54 are each amended to read as follows:

In addition to any other powers and duties prescribed by law, each board of trustees of the respective regional universities:

(1) Shall have full control of the regional university and its property of various kinds, except as otherwise provided by law.

(2) Shall employ the president of the regional university, his assistants, members of the faculty, and other employees of the institution, who, except as otherwise provided by law, shall hold their positions, until discharged therefrom by the board for good and lawful reason.

(3) With the assistance of the faculty of the regional university, shall prescribe the course of study in the various schools and departments thereof and publish such catalogues thereof as the board deems necessary: PROVIDED, That the ~~((state))~~ Washington professional educator standards board ~~((of education))~~ shall determine the requisites for and give program approval of all courses leading to teacher certification by such board.

(4) Establish such divisions, schools or departments necessary to carry out the purposes of the regional university and not otherwise proscribed by law.

(5) Except as otherwise provided by law, may establish and erect such new facilities as determined by the board to be necessary for the regional university.

(6) May acquire real and other property as provided in RCW 28B.10.020, as now or hereafter amended.

(7) Except as otherwise provided by law, may purchase all supplies and purchase or lease equipment and other personal property needed for the operation or maintenance of the regional university.

(8) May establish, lease, operate, equip and maintain self-supporting facilities in the manner provided in RCW 28B.10.300 through 28B.10.330, as now or hereafter amended.

(9) Except as otherwise provided by law, to enter into such contracts as the trustees deem essential to regional university purposes.

(10) May receive such gifts, grants, conveyances, devises and bequests of real or personal property from whatsoever source, as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out the regional university programs; sell, lease or exchange, invest or expend the same or the proceeds, rents, profits and income thereof except as limited by the terms and conditions thereof; and adopt regulations to govern the receipt and expenditure of the proceeds, rents, profits and income thereof.

(11) Subject to the approval of the higher education coordinating board pursuant to RCW 28B.76.230, offer new degree programs, offer off-campus programs, participate in consortia or centers, contract for off-campus educational programs, and purchase or lease major off-campus facilities.

(12) May promulgate such rules and regulations, and perform all other acts not forbidden by law, as the board of trustees may in its discretion deem necessary or appropriate to the administration of the regional university.

Sec. 825. RCW 28B.40.120 and 2004 c 275 s 56 are each amended to read as follows:

In addition to any other powers and duties prescribed by law, the board of trustees of The Evergreen State College:

(1) Shall have full control of the state college and its property of various kinds, except as otherwise provided by law.

(2) Shall employ the president of the state college, his assistants, members of the faculty, and other employees of the institution, who, except as otherwise

provided by law, shall hold their positions, until discharged therefrom by the board for good and lawful reason.

(3) With the assistance of the faculty of the state college, shall prescribe the course of study in the various schools and departments thereof and publish such catalogues thereof as the board deems necessary: PROVIDED, That the ~~((state board of education))~~ Washington professional educator standards board shall determine the requisites for and give program approval of all courses leading to teacher certification by such board.

(4) Establish such divisions, schools or departments necessary to carry out the purposes of the college and not otherwise proscribed by law.

(5) Except as otherwise provided by law, may establish and erect such new facilities as determined by the board to be necessary for the college.

(6) May acquire real and other property as provided in RCW 28B.10.020, as now or hereafter amended.

(7) Except as otherwise provided by law, may purchase all supplies and purchase or lease equipment and other personal property needed for the operation or maintenance of the college.

(8) May establish, lease, operate, equip and maintain self-supporting facilities in the manner provided in RCW 28B.10.300 through 28B.10.330, as now or hereafter amended.

(9) Except as otherwise provided by law, to enter into such contracts as the trustees deem essential to college purposes.

(10) May receive such gifts, grants, conveyances, devises and bequests of real or personal property from whatsoever source, as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out the college programs; sell, lease or exchange, invest or expend the same or the proceeds, rents, profits and income thereof except as limited by the terms and conditions thereof; and adopt regulations to govern the receipt and expenditure of the proceeds, rents, profits and income thereof.

(11) Subject to the approval of the higher education coordinating board pursuant to RCW 28B.76.230, offer new degree programs, offer off-campus programs, participate in consortia or centers, contract for off-campus educational programs, and purchase or lease major off-campus facilities.

(12) May promulgate such rules and regulations, and perform all other acts not forbidden by law, as the board of trustees may in its discretion deem necessary or appropriate to the administration of the college.

Sec. 826. RCW 43.43.832 and 2005 c 421 s 2 are each amended to read as follows:

(1) The legislature finds that businesses and organizations providing services to children, developmentally disabled persons, and vulnerable adults need adequate information to determine which employees or licensees to hire or engage. The legislature further finds that many developmentally disabled individuals and vulnerable adults desire to hire their own employees directly and also need adequate information to determine which employees or licensees to hire or engage. Therefore, the Washington state patrol identification and criminal history section shall disclose, upon the request of a business or organization as defined in RCW 43.43.830, a developmentally disabled person, or a vulnerable adult as defined in RCW 43.43.830 or his or her guardian, an applicant's record for convictions as defined in chapter 10.97 RCW.

(2) The legislature also finds that the ~~((state board of education))~~ Washington professional educator standards board may request of the Washington state patrol criminal identification system information regarding a certificate applicant's record for convictions under subsection (1) of this section.

(3) The legislature also finds that law enforcement agencies, the office of the attorney general, prosecuting authorities, and the department of social and health services may request this same information to aid in the investigation and prosecution of child, developmentally disabled person, and vulnerable adult abuse cases and to protect children and adults from further incidents of abuse.

(4) The legislature further finds that the secretary of the department of social and health services must establish rules and set standards to require specific action when considering the information listed in subsection (1) of this section, and when considering additional information including but not limited to civil adjudication proceedings as defined in RCW 43.43.830 and any out-of-state equivalent, in the following circumstances:

(a) When considering persons for state employment in positions directly responsible for the supervision, care, or treatment of children, vulnerable adults, or individuals with mental illness or developmental disabilities;

(b) When considering persons for state positions involving unsupervised access to vulnerable adults to conduct comprehensive assessments, financial eligibility determinations, licensing and certification activities, investigations, surveys, or case management; or for state positions otherwise required by federal law to meet employment standards;

(c) When licensing agencies or facilities with individuals in positions directly responsible for the care, supervision, or treatment of children, developmentally disabled persons, or vulnerable adults, including but not limited to agencies or facilities licensed under chapter 74.15 or 18.51 RCW;

(d) When contracting with individuals or businesses or organizations for the care, supervision, case management, or treatment of children, developmentally disabled persons, or vulnerable adults, including but not limited to services contracted for under chapter 18.20, 18.48, 70.127, 70.128, 72.36, or 74.39A RCW or Title 71A RCW;

(e) When individual providers are paid by the state or providers are paid by home care agencies to provide in-home services involving unsupervised access to persons with physical, mental, or developmental disabilities or mental illness, or to vulnerable adults as defined in chapter 74.34 RCW, including but not limited to services provided under chapter 74.39 or 74.39A RCW.

(5) Whenever a state conviction record check is required by state law, persons may be employed or engaged as volunteers or independent contractors on a conditional basis pending completion of the state background investigation. Whenever a national criminal record check through the federal bureau of investigation is required by state law, a person may be employed or engaged as a volunteer or independent contractor on a conditional basis pending completion of the national check. The Washington personnel resources board shall adopt rules to accomplish the purposes of this subsection as it applies to state employees.

(6)(a) For purposes of facilitating timely access to criminal background information and to reasonably minimize the number of requests made under this section, recognizing that certain health care providers change employment

frequently, health care facilities may, upon request from another health care facility, share copies of completed criminal background inquiry information.

(b) Completed criminal background inquiry information may be shared by a willing health care facility only if the following conditions are satisfied: The licensed health care facility sharing the criminal background inquiry information is reasonably known to be the person's most recent employer, no more than twelve months has elapsed from the date the person was last employed at a licensed health care facility to the date of their current employment application, and the criminal background information is no more than two years old.

(c) If criminal background inquiry information is shared, the health care facility employing the subject of the inquiry must require the applicant to sign a disclosure statement indicating that there has been no conviction or finding as described in RCW 43.43.842 since the completion date of the most recent criminal background inquiry.

(d) Any health care facility that knows or has reason to believe that an applicant has or may have a disqualifying conviction or finding as described in RCW 43.43.842, subsequent to the completion date of their most recent criminal background inquiry, shall be prohibited from relying on the applicant's previous employer's criminal background inquiry information. A new criminal background inquiry shall be requested pursuant to RCW 43.43.830 through 43.43.842.

(e) Health care facilities that share criminal background inquiry information shall be immune from any claim of defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of this information in accordance with this subsection.

(f) Health care facilities shall transmit and receive the criminal background inquiry information in a manner that reasonably protects the subject's rights to privacy and confidentiality.

(g) For the purposes of this subsection, "health care facility" means a nursing home licensed under chapter 18.51 RCW, a boarding home licensed under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW.

(7) If a federal bureau of investigation check is required in addition to the state background check by the department of social and health services, an applicant who is not disqualified based on the results of the state background check shall be eligible for a one hundred twenty day provisional approval to hire, pending the outcome of the federal bureau of investigation check. The department may extend the provisional approval until receipt of the federal bureau of investigation check. If the federal bureau of investigation check disqualifies an applicant, the department shall notify the requestor that the provisional approval to hire is withdrawn and the applicant may be terminated.

Sec. 827. RCW 43.43.840 and 2005 c 421 s 6 are each amended to read as follows:

When a business or an organization terminates, fires, dismisses, fails to renew the contract, or permits the resignation of an employee because of crimes against children or other persons or because of crimes relating to the financial exploitation of a vulnerable adult, and if that employee is employed in a position requiring a certificate or license issued by a licensing agency such as the ~~((state board of education))~~ Washington professional educator standards board, the

business or organization shall notify the licensing agency of such termination of employment.

Sec. 828. RCW 43.43.845 and 2005 c 421 s 7 and 2005 c 237 s 1 are each reenacted and amended to read as follows:

(1) Upon a guilty plea or conviction of a person of any felony crime involving the physical neglect of a child under chapter 9A.42 RCW, the physical injury or death of a child under chapter 9A.32 or 9A.36 RCW (except motor vehicle violations under chapter 46.61 RCW), sexual exploitation of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44 RCW, promoting prostitution of a minor under chapter 9A.88 RCW, or the sale or purchase of a minor child under RCW 9A.64.030, the prosecuting attorney shall notify the state patrol of such guilty pleas or convictions.

(2) When the state patrol receives information that a person has pled guilty to or been convicted of one of the felony crimes under subsection (1) of this section, the state patrol shall transmit that information to the superintendent of public instruction. It shall be the duty of the superintendent of public instruction to identify whether the person holds a certificate or permit issued under chapters 28A.405 and 28A.410 RCW or is employed by a school district, and provide this information to the ~~((state board of education))~~ Washington professional educator standards board and the school district employing the individual who pled guilty or was convicted of the crimes identified in subsection (1) of this section.

Sec. 829. RCW 72.40.028 and 1985 c 378 s 18 are each amended to read as follows:

All teachers at the state school for the deaf and the state school for the blind shall meet all certification requirements and the programs shall meet all accreditation requirements and conform to the standards defined by law or by rule of the ~~((state board of education))~~ Washington professional educator standards board or the office of the state superintendent of public instruction. The superintendents, by rule, may adopt additional educational standards for their respective schools. Salaries of all certificated employees shall be set so as to conform to and be contemporary with salaries paid to other certificated employees of similar background and experience in the school district in which the program or facility is located. The superintendents may provide for provisional certification for teachers in their respective schools including certification for emergency, temporary, substitute, or provisional duty.

PART 9 OTHER DUTIES

Sec. 901. RCW 28A.600.010 and 1997 c 265 s 4 are each amended to read as follows:

Every board of directors, unless otherwise specifically provided by law, shall:

(1) Enforce the rules prescribed by the superintendent of public instruction ~~((and the state board of education))~~ for the government of schools, pupils, and certificated employees.

(2) Adopt and make available to each pupil, teacher and parent in the district reasonable written rules regarding pupil conduct, discipline, and rights, including but not limited to short-term suspensions as referred to in RCW

28A.305.160 (as recodified by this act) and suspensions in excess of ten consecutive days. Such rules shall not be inconsistent with any of the following: Federal statutes and regulations, state statutes, common law, and the rules of the superintendent of public instruction ~~((, and the state board of education))~~. The board's rules shall include such substantive and procedural due process guarantees as prescribed by the ~~((state board of education))~~ superintendent of public instruction under RCW 28A.305.160 (as recodified by this act). ~~((Commencing with the 1976-77 school year,))~~ When such rules are made available to each pupil, teacher, and parent, they shall be accompanied by a detailed description of rights, responsibilities, and authority of teachers and principals with respect to the discipline of pupils as prescribed by state statutory law, the superintendent of public instruction, ~~((and state board of education rules))~~ and the rules ~~((and regulations))~~ of the school district.

For the purposes of this subsection, computation of days included in "short-term" and "long-term" suspensions shall be determined on the basis of consecutive school days.

(3) Suspend, expel, or discipline pupils in accordance with RCW 28A.305.160 (as recodified by this act).

NEW SECTION. Sec. 902. A new section is added to chapter 28A.405 RCW to read as follows:

Each school district board of directors shall adopt a policy regarding the presence at their respective schools of teachers and other certificated personnel before the opening of school in the morning and after the closing of school in the afternoon or evening. The board of directors shall make the policy available to parents and the public through the school district report card and other means of communication.

Sec. 903. RCW 28A.225.280 and 1990 1st ex.s. c 9 s 206 are each amended to read as follows:

Eligibility of transfer students under RCW 28A.225.220 and 28A.225.225 for participation in extracurricular activities shall be subject to rules adopted by the Washington interscholastic activities association ~~((as authorized by the state board of education))~~.

Sec. 904. RCW 28A.600.200 and 1990 c 33 s 502 are each amended to read as follows:

Each school district board of directors is hereby granted and shall exercise the authority to control, supervise and regulate the conduct of interschool athletic activities and other interschool extracurricular activities of an athletic, cultural, social or recreational nature for students of the district. A board of directors may delegate control, supervision and regulation of any such activity to the Washington interscholastic activities association or any other voluntary nonprofit entity and compensate such entity for services provided, subject to the following conditions:

(1) ~~((The voluntary nonprofit entity shall submit an annual report to the state board of education of student appeal determinations, assets, and financial receipts and disbursements at such time and in such detail as the state board shall establish by rule;~~

~~(((~~) The voluntary nonprofit entity shall not discriminate in connection with employment or membership upon its governing board, or otherwise in

connection with any function it performs, on the basis of race, creed, national origin, sex or marital status;

~~((3))~~ (2) Any rules and policies applied by the voluntary nonprofit entity which govern student participation in any interschool activity shall be written ~~((and subject to the annual review and approval of the state board of education at such time as it shall establish;~~

(4) ~~All amendments and repeals of such rules and policies shall be subject to the review and approval of the state board); and~~

~~((5))~~ (3) Such rules and policies shall provide for notice of the reasons and a fair opportunity to contest such reasons prior to a final determination to reject a student's request to participate in or to continue in an interschool activity. Any such decision shall be considered a decision of the school district conducting the activity in which the student seeks to participate or was participating and may be appealed pursuant to RCW 28A.645.010 through 28A.645.030.

NEW SECTION. Sec. 905. A new section is added to chapter 28A.600 RCW to read as follows:

By July 1, 2006, the Washington interscholastic activities association shall establish a nine-person appeals committee to address appeals of noneligibility issues. The committee shall be comprised of the secretary from each of the activity districts of the Washington interscholastic activities association. The committee shall begin hearing appeals by July 1, 2006. No committee member may participate in the appeal process if the member was involved in the activity that was the basis of the appeal. A decision of the appeals committee may be appealed to the executive board of the association.

Sec. 906. RCW 28A.160.210 and 1989 c 178 s 20 are each amended to read as follows:

In addition to other powers and duties, the ~~((state board of education))~~ superintendent of public instruction shall adopt rules ~~((and regulations))~~ governing the training and qualifications of school bus drivers. Such rules ~~((and regulations))~~ shall be designed to insure that persons will not be employed to operate school buses unless they possess such physical health and driving skills as are necessary to safely operate school buses: PROVIDED, That such rules ~~((and regulations))~~ shall insure that school bus drivers are provided a due process hearing before any certification required by such rules ~~((and regulations))~~ is cancelled: PROVIDED FURTHER, That such rules ~~((and regulations))~~ shall not conflict with the authority of the department of licensing to license school bus drivers in accordance with chapter 46.25 RCW. The ~~((state board of education))~~ superintendent of public instruction may obtain a copy of the driving record, as maintained by the department of licensing, for consideration when evaluating a school bus driver's driving skills.

Sec. 907. RCW 28A.160.100 and 1990 c 33 s 138 are each amended to read as follows:

In addition to the authority otherwise provided in RCW 28A.160.010 through 28A.160.120 to school districts for the transportation of persons, whether school children, school personnel, or otherwise, any school district authorized to use school buses and drivers hired by the district for the transportation of school children to and from a school activity, along with such school employees as necessary for their supervision, shall, if such school activity

be an interscholastic activity, be authorized to transport members of the general public to such event and utilize the school district's buses, transportation equipment and facilities, and employees therefor: PROVIDED, That provision shall be made for the reimbursement and payment to the school district by such members of the general public of not less than the district's actual costs and the reasonable value of the use of the district's buses and facilities provided in connection with such transportation: PROVIDED FURTHER, That wherever private transportation certified or licensed by the utilities and transportation commission or public transportation is reasonably available (~~as determined by rule and regulation of the state board of education~~), this section shall not apply.

Sec. 908. RCW 28A.210.070 and 1990 c 33 s 191 are each amended to read as follows:

As used in RCW 28A.210.060 through 28A.210.170:

(1) "Chief administrator" shall mean the person with the authority and responsibility for the immediate supervision of the operation of a school or day care center as defined in this section or, in the alternative, such other person as may hereafter be designated in writing for the purposes of RCW 28A.210.060 through 28A.210.170 by the statutory or corporate board of directors of the school district, school, or day care center or, if none, such other persons or person with the authority and responsibility for the general supervision of the operation of the school district, school or day care center.

(2) "Full immunization" shall mean immunization against certain vaccine-preventable diseases in accordance with schedules and with immunizing agents approved by the state board of health.

(3) "Local health department" shall mean the city, town, county, district or combined city-county health department, board of health, or health officer which provides public health services.

(4) "School" shall mean and include each building, facility, and location at or within which any or all portions of a preschool, kindergarten and grades one through twelve program of education and related activities are conducted for two or more children by or in behalf of any public school district and by or in behalf of any private school or private institution subject to approval by the state board of education pursuant to RCW 28A.305.130(~~(6)~~), 28A.195.010 through 28A.195.050, and 28A.410.120.

(5) "Day care center" shall mean an agency which regularly provides care for a group of thirteen or more children for periods of less than twenty-four hours and is licensed pursuant to chapter 74.15 RCW.

(6) "Child" shall mean any person, regardless of age, in attendance at a public or private school or a licensed day care center.

Sec. 909. RCW 28A.210.120 and 1990 c 33 s 196 are each amended to read as follows:

It shall be the duty of the chief administrator of every public and private school and day care center to prohibit the further presence at the school or day care center for any and all purposes of each child for whom proof of immunization, certification of exemption, or proof of compliance with an approved schedule of immunization has not been provided in accordance with RCW 28A.210.080 and to continue to prohibit the child's presence until such proof of immunization, certification of exemption, or approved schedule has

been provided. The exclusion of a child from a school shall be accomplished in accordance with rules of the office of the superintendent, in consultation with the state board of ((education)) health. The exclusion of a child from a day care center shall be accomplished in accordance with rules of the department of social and health services. Prior to the exclusion of a child, each school or day care center shall provide written notice to the parent(s) or legal guardian(s) of each child or to the adult(s) in loco parentis to each child, who is not in compliance with the requirements of RCW 28A.210.080. The notice shall fully inform such person(s) of the following: (1) The requirements established by and pursuant to RCW 28A.210.060 through 28A.210.170; (2) the fact that the child will be prohibited from further attendance at the school unless RCW 28A.210.080 is complied with; (3) such procedural due process rights as are hereafter established pursuant to RCW 28A.210.160 and/or 28A.210.170, as appropriate; and (4) the immunization services that are available from or through the local health department and other public agencies.

Sec. 910. RCW 28A.210.160 and 1990 c 33 s 199 are each amended to read as follows:

The superintendent of public instruction with regard to public schools and the state board of education with regard to private schools, in consultation with the state board of ((education)) health, shall ((and is hereby empowered to)) each adopt rules pursuant to chapter 34.05 RCW ((which)) that establish the procedural and substantive due process requirements governing the exclusion of children from ((public and private)) schools pursuant to RCW 28A.210.120.

Sec. 911. RCW 28A.210.320 and 2002 c 101 s 1 are each amended to read as follows:

(1) The attendance of every child at every public school in the state shall be conditioned upon the presentation before or on each child's first day of attendance at a particular school of a medication or treatment order addressing any life-threatening health condition that the child has that may require medical services to be performed at the school. Once such an order has been presented, the child shall be allowed to attend school.

(2) The chief administrator of every public school shall prohibit the further presence at the school for any and all purposes of each child for whom a medication or treatment order has not been provided in accordance with this section if the child has a life-threatening health condition that may require medical services to be performed at the school and shall continue to prohibit the child's presence until such order has been provided. The exclusion of a child from a school shall be accomplished in accordance with rules of the state board of education. Before excluding a child, each school shall provide written notice to the parents or legal guardians of each child or to the adults in loco parentis to each child, who is not in compliance with the requirements of this section. The notice shall include, but not be limited to, the following: (a) The requirements established by this section; (b) the fact that the child will be prohibited from further attendance at the school unless this section is complied with; and (c) such procedural due process rights as are established pursuant to this section.

(3) The ((state board of education)) superintendent of public instruction in consultation with the state board of health shall adopt rules under chapter 34.05 RCW that establish the procedural and substantive due process requirements

governing the exclusion of children from public schools under this section. The rules shall include any requirements under applicable federal laws.

(4) As used in this section, "life-threatening condition" means a health condition that will put the child in danger of death during the school day if a medication or treatment order and a nursing plan are not in place.

(5) As used in this section, "medication or treatment order" means the authority a registered nurse obtains under RCW 18.79.260(2).

Sec. 912. RCW 28A.335.100 and 1975-'76 2nd ex.s. c 23 s 1 are each amended to read as follows:

Any association established by school districts pursuant to the interlocal cooperation act, chapter 39.34 RCW for the purpose of jointly and cooperatively purchasing school supplies, materials and equipment, if otherwise authorized for school district purposes to purchase personal or real property, is ~~((hereby))~~ authorized ~~((, subject to rules and regulations of the state board of education,))~~ to mortgage, or convey a purchase money security interest in real or personal property of such association of every kind, character or description whatsoever, or any interest in such personal or real property: PROVIDED, That any such association shall be prohibited from causing any creditor of the association to acquire any rights against the property, properties or assets of any of its constituent school districts and any creditor of such association shall be entitled to look for payment of any obligation incurred by such association solely to the assets and properties of such association.

Sec. 913. RCW 28A.335.120 and 2001 c 183 s 2 are each amended to read as follows:

(1) The board of directors of any school district of this state may:

(a) Sell for cash, at public or private sale, and convey by deed all interest of the district in or to any of the real property of the district which is no longer required for school purposes; and

(b) Purchase real property for the purpose of locating thereon and affixing thereto any house or houses and appurtenant buildings removed from school sites owned by the district and sell for cash, at public or private sale, and convey by deed all interest of the district in or to such acquired and improved real property.

(2) When the board of directors of any school district proposes a sale of school district real property pursuant to this section and the value of the property exceeds seventy thousand dollars, the board shall publish a notice of its intention to sell the property. The notice shall be published at least once each week during two consecutive weeks in a legal newspaper with a general circulation in the area in which the school district is located. The notice shall describe the property to be sold and designate the place where and the day and hour when a hearing will be held. The board shall hold a public hearing upon the proposal to dispose of the school district property at the place and the day and hour fixed in the notice and admit evidence offered for and against the propriety and advisability of the proposed sale.

(3) The board of directors of any school district desiring to sell surplus real property shall publish a notice in a newspaper of general circulation in the school district. School districts shall not sell the property for at least forty-five days following the publication of the newspaper notice.

(4) Private schools shall have the same rights as any other person or entity to submit bids for the purchase of surplus real property and to have such bids considered along with all other bids.

(5) Any sale of school district real property authorized pursuant to this section shall be preceded by a market value appraisal by a professionally designated real estate appraiser as defined in RCW 74.46.020 or a general real estate appraiser certified under chapter 18.140 RCW selected by the board of directors and no sale shall take place if the sale price would be less than ninety percent of the appraisal made by the real estate appraiser: PROVIDED, That if the property has been on the market for one year or more the property may be reappraised and sold for not less than seventy-five percent of the reappraised value with the unanimous consent of the board.

(6) If in the judgment of the board of directors of any district the sale of real property of the district not needed for school purposes would be facilitated and greater value realized through use of the services of licensed real estate brokers, a contract for such services may be negotiated and concluded: PROVIDED, That the use of a licensed real estate broker will not eliminate the obligation of the board of directors to provide the notice described in this section: PROVIDED FURTHER, That the fee or commissions charged for any broker services shall not exceed seven percent of the resulting sale value for a single parcel: PROVIDED FURTHER, That any professionally designated real estate appraiser as defined in RCW 74.46.020 or a general real estate appraiser certified under chapter 18.140 RCW selected by the board to appraise the market value of a parcel of property to be sold may not be a party to any contract with the school district to sell such parcel of property for a period of three years after the appraisal.

(7) If in the judgment of the board of directors of any district the sale of real property of the district not needed for school purposes would be facilitated and greater value realized through sale on contract terms, a real estate sales contract may be executed between the district and buyer(~~(=PROVIDED, That the terms and conditions of any such sales contract must comply with rules and regulations of the state board of education, herein authorized, governing school district real property contract sales)~~)).

Sec. 914. RCW 28A.320.240 and 1969 ex.s. c 223 s 28A.58.104 are each amended to read as follows:

(1) The purpose of this section is to identify quality criteria for school library media programs that support the student learning goals under RCW 28A.150.210, the essential academic learning requirements under RCW 28A.655.070, and high school graduation requirements adopted under RCW 28A.230.090.

(2) Every board of directors shall provide for the operation and stocking of such libraries as the board deems necessary for the proper education of the district's students or as otherwise required by law or rule ((~~or regulation~~)) of the superintendent of public instruction ((~~or the state board of education~~)).

(3) "Teacher-librarian" means a certified teacher with a library media endorsement under rules adopted by the professional educator standards board.

(4) "School-library media program" means a school-based program that is staffed by a certificated teacher-librarian and provides a variety of resources that

support student mastery of the essential academic learning requirements in all subject areas and the implementation of the district's school improvement plan.

(5) The teacher-librarian, through the school-library media program, shall collaborate as an instructional partner to help all students meet the content goals in all subject areas, and assist high school students completing the culminating project and high school and beyond plans required for graduation.

Sec. 915. RCW 28A.155.060 and 1995 c 77 s 12 are each amended to read as follows:

For the purpose of carrying out the provisions of RCW 28A.155.020 through 28A.155.050, the board of directors of every school district shall be authorized to contract with agencies approved by the ~~((state board of education))~~ superintendent of public instruction for operating special education programs for students with disabilities. Approval standards for such agencies shall conform substantially with those promulgated for approval of special education aid programs in the common schools.

Sec. 916. RCW 28A.600.130 and 1995 1st sp.s. c 5 s 1 are each amended to read as follows:

The higher education coordinating board shall establish a planning committee to develop criteria for screening and selection of the Washington scholars each year in accordance with RCW 28A.600.110(1). It is the intent that these criteria shall emphasize scholastic achievement but not exclude such criteria as leadership ability and community contribution in final selection procedures. The Washington scholars planning committee shall have members from selected state agencies and private organizations having an interest and responsibility in education, including but not limited to, the ~~((state board of education, the))~~ office of superintendent of public instruction, the council of presidents, the state board for community and technical colleges, and the Washington friends of higher education.

Sec. 917. RCW 28A.650.015 and 1995 c 335 s 507 are each amended to read as follows:

(1) The superintendent of public instruction, to the extent funds are appropriated, shall develop and implement a Washington state K-12 education technology plan. The technology plan shall be updated on at least a biennial basis, shall be developed to coordinate and expand the use of education technology in the common schools of the state. The plan shall be consistent with applicable provisions of chapter 43.105 RCW. The plan, at a minimum, shall address:

(a) The provision of technical assistance to schools and school districts for the planning, implementation, and training of staff in the use of technology in curricular and administrative functions;

(b) The continued development of a network to connect school districts, institutions of higher learning, and other sources of on-line information; and

(c) Methods to equitably increase the use of education technology by students and school personnel throughout the state.

(2) The superintendent of public instruction shall appoint an educational technology advisory committee to assist in the development and implementation of the technology plan in subsection (1) of this section. The committee shall include, but is not limited to, persons representing: The ~~((state board of~~

~~education, the commission on student learning, the~~) department of information services, educational service districts, school directors, school administrators, school principals, teachers, classified staff, higher education faculty, parents, students, business, labor, scientists and mathematicians, the higher education coordinating board, the work force training and education coordinating board, and the state library.

**PART 10
MISCELLANEOUS**

NEW SECTION. Sec. 1001. Part headings used in this act are not any part of the law.

NEW SECTION. Sec. 1002. Section 407 of this act takes effect September 1, 2009.

Passed by the House March 7, 2006.

Passed by the Senate March 7, 2006.

Approved by the Governor March 27, 2006.

Filed in Office of Secretary of State March 27, 2006.

CHAPTER 264

[Engrossed Substitute House Bill 3079]

BASIC HEALTH PLAN—MEDICAL ASSISTANCE—REPORTS

AN ACT Relating to health care services; adding a new section to chapter 70.47 RCW; adding a new section to chapter 74.09 RCW; and creating a new section.

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

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

(1) The health care authority, in coordination with the department of social and health services, shall by November 15th of each year report to the legislature:

(a) The number of basic health plan enrollees who: (i) Upon enrollment or recertification had reported being employed, and beginning with the 2008 report, the month and year they reported being hired; or (ii) upon enrollment or recertification had reported being the dependent of someone who was employed, and beginning with the 2008 report, the month and year they reported the employed person was hired; and (iii) the total cost to the state for these enrollees. The information shall be reported by employer for employers having more than fifty employees as enrollees or with dependents as enrollees. This information shall be provided for the preceding January and June of that year.

(b) The following aggregated information: (i) The number of employees who are enrollees or with dependents as enrollees by private and governmental employers; (ii) the number of employees who are enrollees or with dependents as enrollees by employer size for employers with fifty or fewer employees, fifty-one to one hundred employees, one hundred one to one thousand employees, one thousand one to five thousand employees and more than five thousand employees; and (iii) the number of employees who are enrollees or with dependents as enrollees by industry type.

For each aggregated classification, the report will include the number of hours worked and total cost to the state for these enrollees. This information shall be for each quarter of the preceding year.

NEW SECTION. Sec. 2. A new section is added to chapter 74.09 RCW to read as follows:

(1) The department of social and health services, in coordination with the health care authority, shall by November 15th of each year report to the legislature:

(a) The number of medical assistance recipients who: (i) Upon enrollment or recertification had reported being employed, and beginning with the 2008 report, the month and year they reported being hired; or (ii) upon enrollment or recertification had reported being the dependent of someone who was employed, and beginning with the 2008 report, the month and year they reported the employed person was hired. For recipients identified under (a)(i) and (ii) of this subsection, the department shall report the basis for their medical assistance eligibility, including but not limited to family medical coverage, transitional medical assistance, children's medical or aged or disabled coverage; member months; and the total cost to the state for these recipients, expressed as general fund-state, health services account and general fund-federal dollars. The information shall be reported by employer for employers having more than fifty employees as recipients or with dependents as recipients. This information shall be provided for the preceding January and June of that year.

(b) The following aggregated information: (i) The number of employees who are recipients or with dependents as recipients by private and governmental employers; (ii) the number of employees who are recipients or with dependents as recipients by employer size for employers with fifty or fewer employees, fifty-one to one hundred employees, one hundred one to one thousand employees, one thousand one to five thousand employees and more than five thousand employees; and (iii) the number of employees who are recipients or with dependents as recipients by industry type.

For each aggregated classification, the report will include the number of hours worked, the number of department of social and health services covered lives, and the total cost to the state for these recipients. This information shall be for each quarter of the preceding year.

***NEW SECTION. Sec. 3.** *If specific funding for the purpose of this act, referencing this act by bill or chapter number, is not provided by June 30, 2006, in the omnibus appropriations act, this act is null and void.*

*Sec. 3 was vetoed. See message at end of chapter.

Passed by the House March 8, 2006.

Passed by the Senate March 8, 2006.

Approved by the Governor March 27, 2006, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 27, 2006.

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

"I am returning, without my approval as to Section 3, Engrossed Substitute House Bill No. 3079 entitled:

"AN ACT Relating to health care services."

I support ESHB 3079, an act providing information about our Basic Health Plan and Medical Assistance programs. I am, however, vetoing section 3 of this act, which includes an unnecessary null and void clause.

In signing ESHB 3079, I express a cautionary note as to the interpretation of the reports that it requires to be developed. The employer information to be provided by the Health Care Authority (HCA) and the Department of Social and Health Services (DSHS) is not a requirement for enrollment or eligibility. Consequently, data contained in the reports will have been provided on a voluntary basis, and will be unverified. The two reports - an employer-specific report and an aggregated report - will originate from separate sources. Therefore, they will not be comparable. The reports will also be based on a point-in-time data collection and will therefore not reflect changes in employment status. These data limitations must be considered when interpreting the reports.

It is equally important to note that the Joint Legislative Audit and Review Committee (JLARC) study due in July 2006 will report Basic Health employment status and employer information in more detail than the aggregated report required by this bill.

It is my hope that the information collected and provided to the Legislature in accordance with ESHB 3079 will not be misconstrued to portray beneficiaries of our Basic Health and Medicaid programs in a negative light. These programs are designed to provide health care services to eligible, often working, enrollees. I am confident that they are meeting that intent.

For these reasons, I have vetoed Section 3 of Engrossed Substitute House Bill No. 3079.

With the exception of Section 3, Engrossed Substitute House Bill No. 3079 is approved."

CHAPTER 265

[Second Substitute House Bill 2964]

DEPARTMENT OF EARLY LEARNING

AN ACT Relating to a department of early learning; amending RCW 43.17.010, 42.17.2401, 41.04.385, 74.13.085, 74.13.0902, 74.13.0903, 74.13.098, 74.13.099, 74.15.350, 74.12.340, 74.08A.340, 28A.215.110, 28A.215.120, 43.63A.066, 74.15.030, 74.15.100, and 74.15.130; reenacting and amending RCW 43.17.020 and 74.15.020; adding a new section to chapter 41.06 RCW; adding a new chapter to Title 43 RCW; creating new sections; recodifying RCW 74.13.097, 74.13.098, 74.13.099, 74.15.063, 74.15.310, 74.15.320, 74.15.330, 74.15.340, 74.15.350, 28A.215.100, 28A.215.110, 28A.215.120, 28A.215.130, 28A.215.140, 28A.215.150, 28A.215.160, 28A.215.170, 28A.215.180, 28A.215.190, 28A.215.200, 28A.215.900, 28A.215.904, 28A.215.906, and 28A.215.908; prescribing penalties; and providing an effective date.

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

PART 1

DEPARTMENT OF EARLY LEARNING CREATED

NEW SECTION. Sec. 101. (1) The legislature recognizes that:

(a) Parents are their children's first and most important teachers and decision makers;

(b) Research across disciplines now demonstrates that what happens in the earliest years makes a critical difference in children's readiness to succeed in school and life;

(c) Washington's competitiveness in the global economy requires a world-class education system that starts early and supports life-long learning;

(d) Washington state currently makes substantial investments in voluntary child care and early learning services and supports, but because services are fragmented across multiple state agencies, and early learning providers lack the

supports and incentives needed to improve the quality of services they provide, many parents have difficulty accessing high quality early learning services;

(e) A more cohesive and integrated voluntary early learning system would result in greater efficiencies for the state, increased partnership between the state and the private sector, improved access to high quality early learning services, and better employment and early learning outcomes for families and all children.

(2) The legislature finds that the early years of a child's life are critical to the child's healthy brain development and that the quality of caregiving during the early years can significantly impact the child's intellectual, social, and emotional development.

(3) The purpose of this chapter is:

(a) To establish the department of early learning;

(b) To coordinate and consolidate state activities relating to child care and early learning programs;

(c) To safeguard and promote the health, safety, and well-being of children receiving child care and early learning assistance;

(d) To promote linkages and alignment between early learning programs and elementary schools and support the transition of children and families from prekindergarten environments to kindergarten;

(e) To promote the development of a sufficient number and variety of adequate child care and early learning facilities, both public and private; and

(f) To license agencies and to assure the users of such agencies, their parents, the community at large and the agencies themselves that adequate minimum standards are maintained by all child care and early learning facilities.

(4) This chapter does not expand the state's authority to license or regulate activities or programs beyond those licensed or regulated under existing law.

NEW SECTION. Sec. 102. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agency" means any person, firm, partnership, association, corporation, or facility that provides child care and early learning services outside a child's own home and includes the following irrespective of whether there is compensation to the agency:

(a) "Child day care center" means an agency that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four hours;

(b) "Early learning" includes but is not limited to programs and services for child care; state, federal, private, and nonprofit preschool; child care subsidies; child care resource and referral; parental education and support; and training and professional development for early learning professionals;

(c) "Family day care provider" means a child day care provider who regularly provides child day care and early learning services for not more than twelve children in the provider's home in the family living quarters;

(d) "Service provider" means the entity that operates a community facility.

(2) "Agency" does not include the following:

(a) Persons related to the child in the following ways:

(i) Any blood relative, including those of half-blood, and including first cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law; or

(iv) Spouses of any persons named in (i), (ii), or (iii) of this subsection (2)(a), even after the marriage is terminated;

(b) Persons who are legal guardians of the child;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where the person providing care for periods of less than twenty-four hours does not conduct such activity on an ongoing, regularly scheduled basis for the purpose of engaging in business, which includes, but is not limited to, advertising such care;

(d) Parents on a mutually cooperative basis exchange care of one another's children;

(e) Nursery schools or kindergartens that are engaged primarily in educational work with preschool children and in which no child is enrolled on a regular basis for more than four hours per day;

(f) Schools, including boarding schools, that are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, accept only school-age children, and do not accept custody of children;

(g) Seasonal camps of three months' or less duration engaged primarily in recreational or educational activities;

(h) Facilities providing care to children for periods of less than twenty-four hours whose parents remain on the premises to participate in activities other than employment;

(i) Any agency having been in operation in this state ten years before June 8, 1967, and not seeking or accepting moneys or assistance from any state or federal agency, and is supported in part by an endowment or trust fund;

(j) An agency operated by any unit of local, state, or federal government or an agency, located within the boundaries of a federally recognized Indian reservation, licensed by the Indian tribe;

(k) An agency located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter;

(l) An agency that offers early learning and support services, such as parent education, and does not provide child care services on a regular basis.

(3) "Department" means the department of early learning.

(4) "Director" means the director of the department.

(5) "Enforcement action" means denial, suspension, revocation, modification, or nonrenewal of a license pursuant to section 311(1) of this act or assessment of civil monetary penalties pursuant to section 311(3) of this act.

(6) "Probationary license" means a license issued as a disciplinary measure to an agency that has previously been issued a full license but is out of compliance with licensing standards.

(7) "Requirement" means any rule, regulation, or standard of care to be maintained by an agency.

NEW SECTION. Sec. 103. (1) The department of early learning is created as an executive branch agency. The department is vested with all powers and

duties transferred to it under this chapter and such other powers and duties as may be authorized by law.

(2) The primary duties of the department are to implement state early learning policy and to coordinate, consolidate, and integrate child care and early learning programs in order to administer programs and funding as efficiently as possible. The department's duties include, but are not limited to, the following:

(a) To support both public and private sectors toward a comprehensive and collaborative system of early learning that serves parents, children, and providers and to encourage best practices in child care and early learning programs;

(b) To improve parent education and support;

(c) To carry out activities to improve the quality of early learning opportunities for young children including activities in cooperation with the private-public partnership;

(d) To administer child care and early learning programs;

(e) To standardize internal financial audits, oversight visits, performance benchmarks, and licensing criteria, so that programs can function in an integrated fashion;

(f) To assist in the implementation of the private-public partnership and cooperate with that partnership in pursuing its goals including providing data and support necessary for the successful work of the partnership;

(g) To work cooperatively and in coordination with the early learning council; and

(h) To collaborate with the K-12 school system at the state and local levels to ensure appropriate connections and smooth transitions between early learning and K-12 programs.

(3) The department's programs shall be designed in a way that respects and preserves the ability of parents and legal guardians to direct the education, development, and upbringing of their children. The department shall include parents and legal guardians in the development of policies and program decisions affecting their children.

NEW SECTION. Sec. 104. (1) The executive head and appointing authority of the department is the director. The director shall be appointed by the governor with the consent of the senate, and shall serve at the pleasure of the governor. The governor shall solicit input from all parties involved in the private-public partnership concerning this appointment. The director shall be paid a salary to be fixed by the governor in accordance with RCW 43.03.040. If a vacancy occurs in the position of director while the senate is not in session, the governor shall make a temporary appointment until the next meeting of the senate when the governor's nomination for the office of director shall be presented.

(2) The director may employ staff members, who shall be exempt from chapter 41.06 RCW, and any additional staff members as are necessary to administer this chapter. The director may delegate any power or duty vested in him or her by this chapter, including authority to make final decisions and enter final orders in hearings conducted under chapter 34.05 RCW.

NEW SECTION. Sec. 105. It is the intent of the legislature wherever possible to place the internal affairs of the department under the control of the

director in order that the director may institute therein the flexible, alert, and intelligent management of its business that changing contemporary circumstances require. Therefore, whenever the director's authority is not specifically limited by law, the director has complete charge and supervisory powers over the department. The director may create such administrative structures as the director considers appropriate, except as otherwise specified by law. The director may employ such assistants and personnel as necessary for the general administration of the department. This employment shall be in accordance with the state civil service law, chapter 41.06 RCW, except as otherwise provided.

NEW SECTION. Sec. 106. The director may appoint such advisory committees or councils as may be required by any federal legislation as a condition to the receipt of federal funds by the department. The director may also appoint statewide committees or councils on such subject matters as are or come within the department's responsibilities. The committees or councils shall be constituted as required by federal law or as the director may determine.

Members of such state advisory committees or councils may be paid their travel expenses in accordance with RCW 43.03.050 and 43.03.060.

NEW SECTION. Sec. 107. In furtherance of the policy of the state to cooperate with the federal government in all of the programs under the jurisdiction of the department, such rules as may become necessary to entitle the state to participate in federal funds may be adopted, unless expressly prohibited by law. Any internal reorganization carried out under the terms of this chapter shall meet federal requirements that are a necessary condition to state receipt of federal funds. Any section or provision of law dealing with the department that may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to comply with federal laws entitling this state to receive federal funds for the various programs of the department.

NEW SECTION. Sec. 108. (1) In addition to other duties under this chapter, the director shall actively participate in a nongovernmental private-public partnership focused on supporting government's investments in early learning and ensuring that every child in the state is prepared to succeed in school and in life. Except for licensing as required by Washington state law and to the extent permitted by federal law, the director of the department of early learning shall grant waivers from the rules of state agencies for the operation of early learning programs requested by the nongovernmental private-public partnership to allow for flexibility to pursue market-based approaches to achieving the best outcomes for children and families.

(2) In addition to other powers granted to the director, the director may:

(a) Enter into contracts on behalf of the department to carry out the purposes of this chapter;

(b) Accept gifts, grants, or other funds for the purposes of this chapter; and

(c) Adopt, in accordance with chapter 34.05 RCW, rules necessary to implement this chapter, including rules governing child day care and early learning programs under this chapter. This section does not expand the rule-making authority of the director beyond that necessary to implement and administer programs and services existing July 1, 2006, as transferred to the department of early learning under section 501 of this act. The rule-making

authority does not include any authority to set mandatory curriculum or establish what must be taught in child day care centers or by family day care providers.

NEW SECTION. Sec. 109. Two years after the implementation of the department's early learning program, and every two years thereafter by July 1st, the department shall submit to the governor and the legislature a report measuring the effectiveness of its programs in improving early childhood education. The first report shall include program objectives and identified valid performance measures for evaluating progress toward achieving the objectives, as well as a plan for commissioning a longitudinal study comparing the kindergarten readiness of children participating in the department's programs with the readiness of other children, using nationally accepted testing and assessment methods. Such comparison shall include, but not be limited to, achievement as children of both groups progress through the K-12 system and identify year-to-year changes in achievement, if any, in later years of elementary, middle school, and high school education.

NEW SECTION. Sec. 110. A new section is added to chapter 41.06 RCW to read as follows:

In addition to the exemptions under RCW 41.06.070, the provisions of this chapter shall not apply in the department of early learning to the director, the director's personal secretary, and any other exempt staff members provided for in section 104(2) of this act.

Sec. 111. RCW 43.17.010 and 2005 c 333 s 10 are each amended to read as follows:

There shall be departments of the state government which shall be known as (1) the department of social and health services, (2) the department of ecology, (3) the department of labor and industries, (4) the department of agriculture, (5) the department of fish and wildlife, (6) the department of transportation, (7) the department of licensing, (8) the department of general administration, (9) the department of community, trade, and economic development, (10) the department of veterans affairs, (11) the department of revenue, (12) the department of retirement systems, (13) the department of corrections, (14) the department of health, (15) the department of financial institutions, ~~((and))~~ (16) the department of archaeology and historic preservation, and (17) the department of early learning, which shall be charged with the execution, enforcement, and administration of such laws, and invested with such powers and required to perform such duties, as the legislature may provide.

Sec. 112. RCW 43.17.020 and 2005 c 333 s 11 and 2005 c 319 s 2 are each reenacted and amended to read as follows:

There shall be a chief executive officer of each department to be known as: (1) The secretary of social and health services, (2) the director of ecology, (3) the director of labor and industries, (4) the director of agriculture, (5) the director of fish and wildlife, (6) the secretary of transportation, (7) the director of licensing, (8) the director of general administration, (9) the director of community, trade, and economic development, (10) the director of veterans affairs, (11) the director of revenue, (12) the director of retirement systems, (13) the secretary of corrections, (14) the secretary of health, (15) the director of financial institutions, ~~((and))~~ (16) the director of the department of archaeology and historic preservation, and (17) the director of early learning.

Such officers, except the director of fish and wildlife, shall be appointed by the governor, with the consent of the senate, and hold office at the pleasure of the governor. The director of fish and wildlife shall be appointed by the fish and wildlife commission as prescribed by RCW 77.04.055.

Sec. 113. RCW 42.17.2401 and 2005 c 424 s 17 are each amended to read as follows:

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

(1) The chief administrative law judge, the director of agriculture, the administrator of the Washington basic health plan, the director of the department of services for the blind, the director of the state system of community and technical colleges, the director of community, trade, and economic development, the secretary of corrections, the director of early learning, the director of ecology, the commissioner of employment security, the chair of the energy facility site evaluation council, the secretary of the state finance committee, the director of financial management, the director of fish and wildlife, the executive secretary of the forest practices appeals board, the director of the gambling commission, the director of general administration, the secretary of health, the administrator of the Washington state health care authority, the executive secretary of the health care facilities authority, the executive secretary of the higher education facilities authority, the executive secretary of the horse racing commission, the executive secretary of the human rights commission, the executive secretary of the indeterminate sentence review board, the director of the department of information services, the director of the interagency committee for outdoor recreation, the executive director of the state investment board, the director of labor and industries, the director of licensing, the director of the lottery commission, the director of the office of minority and women's business enterprises, the director of parks and recreation, the director of personnel, the executive director of the public disclosure commission, the director of retirement systems, the director of revenue, the secretary of social and health services, the chief of the Washington state patrol, the executive secretary of the board of tax appeals, the secretary of transportation, the secretary of the utilities and transportation commission, the director of veterans affairs, the president of each of the regional and state universities and the president of The Evergreen State College, each district and each campus president of each state community college;

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

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

(4) Central Washington University board of trustees, board of trustees of each community college, each member of the state board for community and technical colleges, state convention and trade center board of directors, committee for deferred compensation, Eastern Washington University board of trustees, Washington economic development finance authority, The Evergreen State College board of trustees, executive ethics board, forest practices appeals board, forest practices board, gambling commission, life sciences discovery fund authority board of trustees, Washington health care facilities authority, each member of the Washington health services commission, higher education coordinating board, higher education facilities authority, horse racing commission, state housing finance commission, human rights commission,

indeterminate sentence review board, board of industrial insurance appeals, information services board, interagency committee for outdoor recreation, state investment board, commission on judicial conduct, legislative ethics board, liquor control board, lottery commission, marine oversight board, Pacific Northwest electric power and conservation planning council, parks and recreation commission, personnel appeals board, board of pilotage commissioners, pollution control hearings board, public disclosure commission, public pension commission, shorelines hearing board, public employees' benefits board, salmon recovery funding board, board of tax appeals, transportation commission, University of Washington board of regents, utilities and transportation commission, Washington state maritime commission, Washington personnel resources board, Washington public power supply system executive board, Washington State University board of regents, Western Washington University board of trustees, and fish and wildlife commission.

PART 2 POLICIES AND PROGRAMS TRANSFERRED

Sec. 201. RCW 41.04.385 and 2005 c 490 s 9 are each amended to read as follows:

The legislature finds that (1) demographic, economic, and social trends underlie a critical and increasing demand for child care in the state of Washington; (2) working parents and their children benefit when the employees' child care needs have been resolved; (3) the state of Washington should serve as a model employer by creating a supportive atmosphere, to the extent feasible, in which its employees may meet their child care needs; and (4) the state of Washington should encourage the development of partnerships between state agencies, state employees, state employee labor organizations, and private employers to expand the availability of affordable quality child care. The legislature finds further that resolving employee child care concerns not only benefits the employees and their children, but may benefit the employer by reducing absenteeism, increasing employee productivity, improving morale, and enhancing the employer's position in recruiting and retaining employees. Therefore, the legislature declares that it is the policy of the state of Washington to assist state employees by creating a supportive atmosphere in which they may meet their child care needs. Policies and procedures for state agencies to address employee child care needs will be the responsibility of the director of personnel in consultation with the director of the department of early learning and state employee representatives.

Sec. 202. RCW 74.13.085 and 1989 c 381 s 2 are each amended to read as follows:

It shall be the policy of the state of Washington to:

(1) Recognize the family as the most important social and economic unit of society and support the central role parents play in child rearing. All parents are encouraged to care for and nurture their children through the traditional methods of parental care at home. ~~((However, there has been a dramatic increase in participation of women in the workforce which has made))~~ The availability of quality, affordable child care is a ~~((critical))~~ concern for ~~((the state and its citizens. There are not enough child care services and facilities to meet the~~

~~needs of~~) working parents, the costs of care are often beyond the resources of working parents, and child care facilities are not located conveniently to work places and neighborhoods. Parents are encouraged to participate fully in the effort to improve the quality of child care services.

(2) Promote a variety of culturally and developmentally appropriate child care settings and services of the highest possible quality in accordance with the basic principle of continuity of care. These settings shall include, but not be limited to, family day care homes, mini-centers, centers and schools.

(3) Promote the growth, development and safety of children by working with community groups including providers and parents to establish standards for quality service, training of child care providers, fair and equitable monitoring, and salary levels commensurate with provider responsibilities and support services.

(4) Promote equal access to quality, affordable, socio-economically integrated child care for all children and families.

(5) Facilitate broad community and private sector involvement in the provision of quality child care services to foster economic development and assist industry through the department of early learning.

Sec. 203. RCW 74.13.0902 and 1989 c 381 s 6 are each amended to read as follows:

An employer liaison position is established in the department of ~~((social and health services to be collocated at the business assistance center established under RCW 43.31.083))~~ early learning to be collocated with the department of community, trade, and economic development. The employer liaison shall, within appropriated funds:

(1) Staff and assist the child care partnership in the implementation of its duties ~~((under RCW 74.13.0901));~~

(2) Provide technical assistance to employers regarding child care services, working with and through local resource and referral organizations whenever possible. Such technical assistance shall include at a minimum:

(a) Assessing the child care needs of employees and prospective employees;

(b) Reviewing options available to employers interested in increasing access to child care for their employees;

(c) Developing techniques to permit small businesses to increase access to child care for their employees;

(d) Reviewing methods of evaluating the impact of child care activities on employers; and

(e) Preparing, collecting, and distributing current information for employers on options for increasing involvement in child care; and

(3) Provide assistance to local child care resource and referral organizations to increase their capacity to provide quality technical assistance to employers in their community.

Sec. 204. RCW 74.13.0903 and 2005 c 490 s 10 are each amended to read as follows:

The ~~((office of child care policy is established to operate under the authority of the department of social and health services. The duties and responsibilities of the office include, but are not limited to, the following, within appropriated funds))~~ department of early learning shall:

(1) Work in conjunction with the statewide child care resource and referral network as well as local governments, nonprofit organizations, businesses, and community child care advocates to create local child care resource and referral organizations. These organizations may carry out needs assessments, resource development, provider training, technical assistance, and parent information and training;

(2) Actively seek public and private money for distribution as grants to the statewide child care resource and referral network and to existing or potential local child care resource and referral organizations;

(3) Adopt rules regarding the application for and distribution of grants to local child care resource and referral organizations. The rules shall, at a minimum, require an applicant to submit a plan for achieving the following objectives:

(a) Provide parents with information about child care resources, including location of services and subsidies;

(b) Carry out child care provider recruitment and training programs, including training under RCW 74.25.040;

(c) Offer support services, such as parent and provider seminars, toy-lending libraries, and substitute banks;

(d) Provide information for businesses regarding child care supply and demand;

(e) Advocate for increased public and private sector resources devoted to child care;

(f) Provide technical assistance to employers regarding employee child care services; and

(g) Serve recipients of temporary assistance for needy families and working parents with incomes at or below household incomes of one hundred seventy-five percent of the federal poverty line;

(4) Provide staff support and technical assistance to the statewide child care resource and referral network and local child care resource and referral organizations;

(5) Maintain a statewide child care licensing data bank and work with department ~~((of social and health services))~~ licensors to provide information to local child care resource and referral organizations about licensed child care providers in the state;

(6) Through the statewide child care resource and referral network and local resource and referral organizations, compile data about local child care needs and availability for future planning and development;

(7) Coordinate with the statewide child care resource and referral network and local child care resource and referral organizations for the provision of training and technical assistance to child care providers; and

(8) Collect and assemble information regarding the availability of insurance and of federal and other child care funding to assist state and local agencies, businesses, and other child care providers in offering child care services.

Sec. 205. RCW 74.13.098 and 2005 c 507 s 2 are each amended to read as follows:

(1) Subject to the availability of funds appropriated for this specific purpose, the ~~((division of child care and early learning in the))~~ department ~~((of social and health services))~~ shall establish a child care career and wage ladder in licensed

child care centers that meet the following criteria: (a) At least ten percent of child care slots are dedicated to children whose care is subsidized by the state or any political subdivision thereof or any local government; (b) the center agrees to adopt the child care career and wage ladder, which, at a minimum, shall be at the same pay schedule as existed in the previous child care career and wage ladder pilot project; and (c) the center meets further program standards as established by rule pursuant to section 4 ~~((of this act))~~, chapter 507, Laws of 2005.

The child care career and wage ladder shall include wage increments for levels of education, years of relevant experience, levels of work responsibility, relevant early childhood education credits, and relevant requirements in the state training and registry system.

(2) The ~~((division))~~ department shall establish procedures for the allocation of funds to implement the child care career and wage ladder among child care centers meeting the criteria identified in subsection (1) of this section. In developing these procedures, the ~~((division))~~ department shall:

(a) Review past efforts or administration of the child care career and wage ladder pilot project in order to take advantage of any findings, recommendations, or administrative practices that contributed to that pilot project's success;

(b) Consult with stakeholders, including organizations representing child care teachers and providers, in developing an allocation formula that incorporates consideration of geographic and demographic distribution of child care centers adopting the child care career and wage ladder; and

(c) Develop a system for prioritizing child care centers interested in adopting the child care career and wage ladder that is based on the criteria identified in subsection (1) of this section.

(3) Notwithstanding the requirements of subsection (2) of this section, child care centers meeting the criteria in subsection (1) of this section located in urban areas of the department of social and health services region one shall receive a minimum of fifteen percent of the funds allocated through the child care career and wage ladder, and of these centers, child care centers meeting the criteria in subsection (1) of this section participating in the ~~((department of social and health services))~~ Spokane tiered reimbursement pilot project shall have first priority for child care career and wage ladder funding.

Sec. 206. RCW 74.13.099 and 2005 c 507 s 3 are each amended to read as follows:

Child care centers adopting the child care career and wage ladder established pursuant to RCW 74.13.098 (as recodified by this act) shall increase wages for child care workers who have earned a high school diploma or GED certificate, gain additional years of experience, or accept increasing levels of responsibility in providing child care, in accordance with the child care career and wage ladder. The adoption of a child care career and wage ladder shall not prohibit the provision of wage increases based upon merit. The department ~~((of social and health services))~~ shall pay wage increments for child care workers employed by child care centers adopting the child care career and wage ladder established pursuant to RCW 74.13.098 (as recodified by this act) who earn early childhood education credits or meet relevant requirements in the state training and registry system, in accordance with the child care career and wage ladder.

Sec. 207. RCW 74.15.350 and 2005 c 490 s 7 are each amended to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the department (~~(of social and health services)~~) shall implement the tiered-reimbursement system developed pursuant to section 6, chapter 490, Laws of 2005. Implementation of the tiered-reimbursement system shall initially consist of two pilot sites in different geographic regions of the state with demonstrated public-private partnerships, with statewide implementation to follow.

(2) In implementing the tiered-reimbursement system, consideration shall be given to child care providers who provide staff wage progression.

(3) The department shall begin implementation of the two pilot sites by March 30, 2006.

Sec. 208. RCW 74.12.340 and 1973 1st ex.s. c 154 s 111 are each amended to read as follows:

(1) The department is authorized to (~~(promulgate)~~) adopt rules (~~(and regulations)~~) governing the provision of day care as a part of child welfare services when the secretary determines that a need exists for such day care and that it is in the best interests of the child, the parents, or the custodial parent and in determining the need for such day care priority shall be given to geographical areas having the greatest need for such care and to members of low income groups in the population: PROVIDED, That where the family is financially able to pay part or all of the costs of such care, fees shall be imposed and paid according to the financial ability of the family.

(2) This section does not affect the authority of the department of early learning to adopt rules governing child day care and early learning programs.

Sec. 209. RCW 74.08A.340 and 1997 c 58 s 321 are each amended to read as follows:

The department of social and health services shall operate the Washington WorkFirst program authorized under RCW 74.08A.200 through 74.08A.330, 43.330.145, 74.13.0903 and 74.25.040, and chapter 74.12 RCW within the following constraints:

(1) The full amount of the temporary assistance for needy families block grant, plus qualifying state expenditures as appropriated in the biennial operating budget, shall be appropriated to the department each year in the biennial appropriations act to carry out the provisions of the program authorized in RCW 74.08A.200 through 74.08A.330, 43.330.145, 74.13.0903 and 74.25.040, and chapter 74.12 RCW.

(2)(a) The department may expend funds defined in subsection (1) of this section in any manner that will effectively accomplish the outcome measures defined in RCW 74.08A.410 with the following exception: Beginning with the 2007-2009 biennium, funds that constitute the working connections child care program, child care quality programs, and child care licensing functions.

(b) Beginning in the 2007-2009 fiscal biennium, the legislature shall appropriate and the department of early learning shall expend funds defined in subsection (1) of this section that constitute the working connections child care program, child care quality programs, and child care licensing functions in a

manner that is consistent with the outcome measures defined in RCW 74.08A.410.

(c) No more than fifteen percent of the amount provided in subsection (1) of this section may be spent for administrative purposes. For the purpose of this subsection, "administrative purposes" does not include expenditures for information technology and computerization needed for tracking and monitoring required by P.L. 104-193. The department shall not increase grant levels to recipients of the program authorized in RCW 74.08A.200 through 74.08A.330 and 43.330.145 and chapter 74.12 RCW.

(3) The department shall implement strategies that accomplish the outcome measures identified in RCW 74.08A.410 that are within the funding constraints in this section. Specifically, the department shall implement strategies that will cause the number of cases in the program authorized in RCW 74.08A.200 through 74.08A.330 and 43.330.145 and chapter 74.12 RCW to decrease by at least fifteen percent during the 1997-99 biennium and by at least five percent in the subsequent biennium. The department may transfer appropriation authority between funding categories within the economic services program in order to carry out the requirements of this subsection.

(4) The department shall monitor expenditures against the appropriation levels provided for in subsection (1) of this section. The department shall quarterly make a determination as to whether expenditure levels will exceed available funding and communicate its finding to the legislature. If the determination indicates that expenditures will exceed funding at the end of the fiscal year, the department shall take all necessary actions to ensure that all services provided under this chapter shall be made available only to the extent of the availability and level of appropriation made by the legislature.

Sec. 210. RCW 28A.215.110 and 1999 c 350 s 1 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 28A.215.100 through 28A.215.200 and 28A.215.900 through 28A.215.908 (as recodified by this act).

(1) "Advisory committee" means the advisory committee under RCW 28A.215.140 (as recodified by this act).

(2) "Department" means the department of ~~((community, trade, and economic development))~~ early learning.

(3) "Eligible child" means a child not eligible for kindergarten whose family income is at or below one hundred ten percent of the federal poverty level, as published annually by the federal department of health and human services, and includes a child whose family is eligible for public assistance, and who is not a participant in a federal or state program providing comprehensive services and may include children who are eligible under rules adopted by the department if the number of such children equals not more than ten percent of the total enrollment in the early childhood program. Priority for enrollment shall be given to children from families with the lowest income, children in foster care, or to eligible children from families with multiple needs.

(4) "Approved programs" means those state-supported education and special assistance programs which are recognized by the department ~~((of community, trade, and economic development))~~ as meeting the minimum program rules adopted by the department to qualify under RCW 28A.215.100

through 28A.215.200 and 28A.215.900 through 28A.215.908 (as recodified by this act) and are designated as eligible for funding by the department under RCW 28A.215.160 and 28A.215.180 (as recodified by this act).

(5) "Comprehensive" means an assistance program that focuses on the needs of the child and includes education, health, and family support services.

(6) "Family support services" means providing opportunities for parents to:

- (a) Actively participate in their child's early childhood program;
- (b) Increase their knowledge of child development and parenting skills;
- (c) Further their education and training;
- (d) Increase their ability to use needed services in the community;
- (e) Increase their self-reliance.

Sec. 211. RCW 28A.215.120 and 1994 c 166 s 4 are each amended to read as follows:

The department (~~(of community, trade, and economic development)~~) shall administer a state-supported early childhood education and assistance program to assist eligible children with educational, social, health, nutritional, and cultural development to enhance their opportunity for success in the common school system. Eligible children shall be admitted to approved early childhood programs to the extent that the legislature provides funds, and additional eligible children may be admitted to the extent that grants and contributions from community sources provide sufficient funds for a program equivalent to that supported by state funds.

Sec. 212. RCW 43.63A.066 and 1993 c 280 s 58 are each amended to read as follows:

The department of (~~community, trade, and economic development~~) early learning shall have primary responsibility for providing child abuse and neglect prevention training to preschool age children participating in the federal head start program or the early childhood education and assistance program established under RCW 28A.215.010 through 28A.215.050, 28A.215.100 through 28A.215.200, and 28A.215.900 through 28A.215.908 (as recodified by this act).

PART 3 DEPARTMENT OF EARLY LEARNING LICENSING

NEW SECTION. **Sec. 301.** It shall be the director's duty with regard to licensing:

(1) In consultation and with the advice and assistance of persons representative of the various type agencies to be licensed, to designate categories of child care facilities for which separate or different requirements shall be developed as may be appropriate whether because of variations in the ages and other characteristics of the children served, variations in the purposes and services offered or size or structure of the agencies to be licensed, or because of any other factor relevant thereto;

(2) In consultation and with the advice and assistance of persons representative of the various type agencies to be licensed, to adopt and publish minimum requirements for licensing applicable to each of the various categories of agencies to be licensed under this chapter.

The minimum requirements shall be limited to:

(a) The size and suitability of a facility and the plan of operation for carrying out the purpose for which an applicant seeks a license;

(b) The character, suitability, and competence of an agency and other persons associated with an agency directly responsible for the care of children. In consultation with law enforcement personnel, the director shall investigate the conviction record or pending charges and dependency record information under chapter 43.43 RCW of each agency and its staff seeking licensure or relicensure. No unfounded allegation of child abuse or neglect as defined in RCW 26.44.020 may be disclosed to a provider licensed under this chapter. In order to determine the suitability of applicants for an agency license, licensees, their employees, and other persons who have unsupervised access to children in care, and who have not resided in the state of Washington during the three-year period before being authorized to care for children shall be fingerprinted. The fingerprints shall be forwarded to the Washington state patrol and federal bureau of investigation for a criminal history records check. The fingerprint criminal history records checks will be at the expense of the licensee. The licensee may not pass this cost on to the employee or prospective employee, unless the employee is determined to be unsuitable due to his or her criminal history record. The director shall use the information solely for the purpose of determining eligibility for a license and for determining the character, suitability, and competence of those persons or agencies, excluding parents, not required to be licensed who are authorized to care for children. Criminal justice agencies shall provide the director such information as they may have and that the director may require for such purpose;

(c) The number of qualified persons required to render the type of care for which an agency seeks a license;

(d) The health, safety, cleanliness, and general adequacy of the premises to provide for the comfort, care, and well-being of children;

(e) The provision of necessary care and early learning, including food, supervision, and discipline; physical, mental, and social well-being; and educational and recreational opportunities for those served;

(f) The financial ability of an agency to comply with minimum requirements established under this chapter; and

(g) The maintenance of records pertaining to the care of children;

(3) To issue, revoke, or deny licenses to agencies pursuant to this chapter. Licenses shall specify the category of care that an agency is authorized to render and the ages and number of children to be served;

(4) To prescribe the procedures and the form and contents of reports necessary for the administration of this chapter and to require regular reports from each licensee;

(5) To inspect agencies periodically to determine whether or not there is compliance with this chapter and the requirements adopted under this chapter;

(6) To review requirements adopted under this chapter at least every two years and to adopt appropriate changes after consultation with affected groups for child day care requirements; and

(7) To consult with public and private agencies in order to help them improve their methods and facilities for the care and early learning of children.

NEW SECTION. Sec. 302. The chief of the Washington state patrol, through the director of fire protection, shall have the power and it shall be his or her duty:

(1) In consultation with the director and with the advice and assistance of persons representative of the various type agencies to be licensed, to adopt recognized minimum standard requirements pertaining to each category of agency established pursuant to this chapter necessary to protect all persons residing therein from fire hazards;

(2) To make or cause to be made such inspections and investigations of agencies as he or she deems necessary;

(3) To make a periodic review of requirements under section 301(5) of this act and to adopt necessary changes after consultation as required in subsection (1) of this section;

(4) To issue to applicants for licenses under this chapter who comply with the requirements, a certificate of compliance, a copy of which shall be presented to the department before a license shall be issued, except that an initial license may be issued as provided in section 309 of this act.

NEW SECTION. Sec. 303. Licensed child day care centers shall provide notice of pesticide use to parents or guardians of students and employees pursuant to chapter 17.21 RCW.

NEW SECTION. Sec. 304. A copy of the articles of incorporation of any agency or amendments to the articles of existing corporation agencies shall be sent by the secretary of state to the department at the time such articles or amendments are filed.

NEW SECTION. Sec. 305. All agencies subject to this chapter shall accord the department, the chief of the Washington state patrol, and the director of fire protection, or their designees, the right of entrance and the privilege of access to and inspection of records for the purpose of determining whether or not there is compliance with the provisions of this chapter and the requirements adopted under it.

NEW SECTION. Sec. 306. (1) It is unlawful for any agency to care for children unless the agency is licensed as provided in this chapter.

(2) A license issued under chapter 74.15 RCW before July 1, 2006, for an agency subject to this chapter after July 1, 2006, is valid until its next renewal, unless otherwise suspended or revoked by the department.

NEW SECTION. Sec. 307. Each agency shall make application for a license or renewal of license to the department on forms prescribed by the department. Upon receipt of such application, the department shall either grant or deny a license within ninety days. A license shall be granted if the agency meets the minimum requirements set forth in this chapter and the departmental requirements consistent with the chapter, except that an initial license may be issued as provided in section 309 of this act. Licenses provided for in this chapter shall be issued for a period of three years. The licensee, however, shall advise the director of any material change in circumstances which might constitute grounds for reclassification of license as to category. The license issued under this chapter is not transferable and applies only to the licensee and the location stated in the application. For licensed family day care homes having

an acceptable history of child care, the license may remain in effect for two weeks after a move.

NEW SECTION. Sec. 308. If a licensee desires to apply for a renewal of its license, a request for a renewal shall be filed ninety days before the expiration date of the license. If the department has failed to act at the time of the expiration date of the license, the license shall continue in effect until such time as the department acts.

NEW SECTION. Sec. 309. The director may, at his or her discretion, issue an initial license instead of a full license, to an agency or facility for a period not to exceed six months, renewable for a period not to exceed two years, to allow such agency or facility reasonable time to become eligible for full license.

NEW SECTION. Sec. 310. (1) The department may issue a probationary license to a licensee who has had a license but is temporarily unable to comply with a rule or has been the subject of multiple complaints or concerns about noncompliance if:

(a) The noncompliance does not present an immediate threat to the health and well-being of the children but would be likely to do so if allowed to continue; and

(b) The licensee has a plan approved by the department to correct the area of noncompliance within the probationary period.

(2) A probationary license may be issued for up to six months, and at the discretion of the department it may be extended for an additional six months. The department shall immediately terminate the probationary license, if at any time the noncompliance for which the probationary license was issued presents an immediate threat to the health or well-being of the children.

(3) The department may, at any time, issue a probationary license for due cause that states the conditions of probation.

(4) An existing license is invalidated when a probationary license is issued.

(5) At the expiration of the probationary license, the department shall reinstate the original license for the remainder of its term, issue a new license, or revoke the original license.

(6) A right to an adjudicative proceeding shall not accrue to the licensee whose license has been placed on probationary status unless the licensee does not agree with the placement on probationary status and the department then suspends, revokes, or modifies the license.

NEW SECTION. Sec. 311. (1) An agency may be denied a license, or any license issued pursuant to this chapter may be suspended, revoked, modified, or not renewed by the director upon proof (a) that the agency has failed or refused to comply with the provisions of this chapter or the requirements adopted pursuant to this chapter; or (b) that the conditions required for the issuance of a license under this chapter have ceased to exist with respect to such licenses. RCW 43.20A.205 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

(2) In any adjudicative proceeding regarding the denial, modification, suspension, or revocation of any license under this chapter, the department's decision shall be upheld if it is supported by a preponderance of the evidence.

(3) The department may assess civil monetary penalties upon proof that an agency has failed or refused to comply with the rules adopted under this chapter

or that an agency subject to licensing under this chapter is operating without a license except that civil monetary penalties shall not be levied against a licensed foster home. Monetary penalties levied against unlicensed agencies that submit an application for licensure within thirty days of notification and subsequently become licensed will be forgiven. These penalties may be assessed in addition to or in lieu of other disciplinary actions. Civil monetary penalties, if imposed, may be assessed and collected, with interest, for each day an agency is or was out of compliance. Civil monetary penalties shall not exceed seventy-five dollars per violation for a family day care home and two hundred fifty dollars per violation for child day care centers. Each day upon which the same or substantially similar action occurs is a separate violation subject to the assessment of a separate penalty. The department shall provide a notification period before a monetary penalty is effective and may forgive the penalty levied if the agency comes into compliance during this period. The department may suspend, revoke, or not renew a license for failure to pay a civil monetary penalty it has assessed pursuant to this chapter within ten days after such assessment becomes final. Chapter 43.20A RCW governs notice of a civil monetary penalty and provides the right of an adjudicative proceeding. The preponderance of evidence standard shall apply in adjudicative proceedings related to assessment of civil monetary penalties.

(4)(a) In addition to or in lieu of an enforcement action being taken, the department may place a child day care center or family day care provider on nonreferral status if the center or provider has failed or refused to comply with this chapter or rules adopted under this chapter or an enforcement action has been taken. The nonreferral status may continue until the department determines that: (i) No enforcement action is appropriate; or (ii) a corrective action plan has been successfully concluded.

(b) Whenever a child day care center or family day care provider is placed on nonreferral status, the department shall provide written notification to the child day care center or family day care provider.

(5) The department shall notify appropriate public and private child care resource and referral agencies of the department's decision to: (a) Take an enforcement action against a child day care center or family day care provider; or (b) place or remove a child day care center or family day care provider on nonreferral status.

NEW SECTION. Sec. 312. (1) The office of administrative hearings shall not assign nor allow an administrative law judge to preside over an adjudicative hearing regarding denial, modification, suspension, or revocation of any license to provide child care under this chapter, unless such judge has received training related to state and federal laws and department policies and procedures regarding:

- (a) Child abuse, neglect, and maltreatment;
- (b) Child protective services investigations and standards;
- (c) Licensing activities and standards;
- (d) Child development; and
- (e) Parenting skills.

(2) The office of administrative hearings shall develop and implement a training program that carries out the requirements of this section. The office of administrative hearings shall consult and coordinate with the department in

developing the training program. The department may assist the office of administrative hearings in developing and providing training to administrative law judges.

NEW SECTION. Sec. 313. The director shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

NEW SECTION. Sec. 314. Notwithstanding the existence or pursuit of any other remedy, the director may, in the manner provided by law, upon the advice of the attorney general, who shall represent the department in the proceeding, maintain an action in the name of the state for injunction or such other relief as he or she may deem advisable against any agency subject to licensing under the provisions of this chapter or against any such agency not having a license as heretofore provided in this chapter.

NEW SECTION. Sec. 315. Any agency operating without a license shall be guilty of a misdemeanor. This section shall not be enforceable against an agency until sixty days after the effective date of new rules, applicable to such agency, have been adopted under this chapter.

PART 4 DEPARTMENT OF SOCIAL AND HEALTH SERVICES LICENSING REVISIONS

Sec. 401. RCW 74.15.020 and 2001 c 230 s 1, 2001 c 144 s 1, and 2001 c 137 s 3 are each reenacted and amended to read as follows:

For the purpose of chapter 74.15 RCW and RCW 74.13.031, and unless otherwise clearly indicated by the context thereof, the following terms shall mean:

(1) "Agency" means any person, firm, partnership, association, corporation, or facility which receives children, expectant mothers, or persons with developmental disabilities for control, care, or maintenance outside their own homes, or which places, arranges the placement of, or assists in the placement of children, expectant mothers, or persons with developmental disabilities for foster care or placement of children for adoption, and shall include the following irrespective of whether there is compensation to the agency or to the children, expectant mothers or persons with developmental disabilities for services rendered:

(a) (~~"Child day care center" means an agency which regularly provides care for a group of children for periods of less than twenty-four hours;~~

~~(b))~~ "Child-placing agency" means an agency which places a child or children for temporary care, continued care, or for adoption;

~~((c))~~ ~~(b)~~ "Community facility" means a group care facility operated for the care of juveniles committed to the department under RCW 13.40.185. A county

detention facility that houses juveniles committed to the department under RCW 13.40.185 pursuant to a contract with the department is not a community facility;

~~((d))~~ (c) "Crisis residential center" means an agency which is a temporary protective residential facility operated to perform the duties specified in chapter 13.32A RCW, in the manner provided in RCW 74.13.032 through 74.13.036;

~~((e))~~ (d) "Emergency respite center" is an agency that may be commonly known as a crisis nursery, that provides emergency and crisis care for up to seventy-two hours to children who have been admitted by their parents or guardians to prevent abuse or neglect. Emergency respite centers may operate for up to twenty-four hours a day, and for up to seven days a week. Emergency respite centers may provide care for children ages birth through seventeen, and for persons eighteen through twenty with developmental disabilities who are admitted with a sibling or siblings through age seventeen. Emergency respite centers may not substitute for crisis residential centers or HOPE centers, or any other services defined under this section, and may not substitute for services which are required under chapter 13.32A or 13.34 RCW;

~~((f))~~ "Family day care provider" means a child day care provider who regularly provides child day care for not more than twelve children in the provider's home in the family living quarters;

~~((g))~~ (e) "Foster-family home" means an agency which regularly provides care on a twenty-four hour basis to one or more children, expectant mothers, or persons with developmental disabilities in the family abode of the person or persons under whose direct care and supervision the child, expectant mother, or person with a developmental disability is placed;

~~((h))~~ (f) "Group-care facility" means an agency, other than a foster-family home, which is maintained and operated for the care of a group of children on a twenty-four hour basis;

~~((i))~~ (g) "HOPE center" means an agency licensed by the secretary to provide temporary residential placement and other services to street youth. A street youth may remain in a HOPE center for thirty days while services are arranged and permanent placement is coordinated. No street youth may stay longer than thirty days unless approved by the department and any additional days approved by the department must be based on the unavailability of a long-term placement option. A street youth whose parent wants him or her returned to home may remain in a HOPE center until his or her parent arranges return of the youth, not longer. All other street youth must have court approval under chapter 13.34 or 13.32A RCW to remain in a HOPE center up to thirty days;

~~((j))~~ (h) "Maternity service" means an agency which provides or arranges for care or services to expectant mothers, before or during confinement, or which provides care as needed to mothers and their infants after confinement;

~~((k))~~ (i) "Responsible living skills program" means an agency licensed by the secretary that provides residential and transitional living services to persons ages sixteen to eighteen who are dependent under chapter 13.34 RCW and who have been unable to live in his or her legally authorized residence and, as a result, the minor lived outdoors or in another unsafe location not intended for occupancy by the minor. Dependent minors ages fourteen and fifteen may be eligible if no other placement alternative is available and the department approves the placement;

~~((4))~~ (j) "Service provider" means the entity that operates a community facility.

(2) "Agency" shall not include the following:

(a) Persons related to the child, expectant mother, or person with developmental disability in the following ways:

(i) Any blood relative, including those of half-blood, and including first cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law;

(iv) Spouses of any persons named in (i), (ii), or (iii) of this subsection (2)(a), even after the marriage is terminated; or

(v) Extended family members, as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent who provides care in the family abode on a twenty-four-hour basis to an Indian child as defined in 25 U.S.C. Sec. 1903(4);

(b) Persons who are legal guardians of the child, expectant mother, or persons with developmental disabilities;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where ~~((: (i) The person providing care for periods of less than twenty-four hours does not conduct such activity on an ongoing, regularly scheduled basis for the purpose of engaging in business, which includes, but is not limited to, advertising such care; or (ii))~~ the parent and person providing care on a twenty-four-hour basis have agreed to the placement in writing and the state is not providing any payment for the care;

(d) ~~((Parents on a mutually cooperative basis exchange care of one another's children;~~

~~((e))~~ A person, partnership, corporation, or other entity that provides placement or similar services to exchange students or international student exchange visitors or persons who have the care of an exchange student in their home;

~~((f))~~ (e) A person, partnership, corporation, or other entity that provides placement or similar services to international children who have entered the country by obtaining visas that meet the criteria for medical care as established by the United States immigration and naturalization service, or persons who have the care of such an international child in their home;

~~((g) Nursery schools or kindergartens which are engaged primarily in educational work with preschool children and in which no child is enrolled on a regular basis for more than four hours per day;~~

~~((h))~~ (f) Schools, including boarding schools, which are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, accept only school-age children and do not accept custody of children;

~~((i) Seasonal camps of three months' or less duration engaged primarily in recreational or educational activities;~~

~~(j))~~ (g) Hospitals licensed pursuant to chapter 70.41 RCW when performing functions defined in chapter 70.41 RCW, nursing homes licensed under chapter 18.51 RCW and boarding homes licensed under chapter 18.20 RCW;

~~((k))~~ (h) Licensed physicians or lawyers;

~~((l))~~ Facilities providing care to children for periods of less than twenty-four hours whose parents remain on the premises to participate in activities other than employment;

~~((m))~~ (i) Facilities approved and certified under chapter 71A.22 RCW;

~~((n))~~ (j) Any agency having been in operation in this state ten years prior to June 8, 1967, and not seeking or accepting moneys or assistance from any state or federal agency, and is supported in part by an endowment or trust fund;

~~((o))~~ (k) Persons who have a child in their home for purposes of adoption, if the child was placed in such home by a licensed child-placing agency, an authorized public or tribal agency or court or if a replacement report has been filed under chapter 26.33 RCW and the placement has been approved by the court;

~~((p))~~ (l) An agency operated by any unit of local, state, or federal government or an agency, located within the boundaries of a federally recognized Indian reservation, licensed by the Indian tribe;

~~((q))~~ (m) A maximum or medium security program for juvenile offenders operated by or under contract with the department;

~~((r))~~ (n) An agency located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter.

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

(4) "Juvenile" means a person under the age of twenty-one who has been sentenced to a term of confinement under the supervision of the department under RCW 13.40.185.

(5) "Probationary license" means a license issued as a disciplinary measure to an agency that has previously been issued a full license but is out of compliance with licensing standards.

(6) "Requirement" means any rule, regulation, or standard of care to be maintained by an agency.

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

(8) "Street youth" means a person under the age of eighteen who lives outdoors or in another unsafe location not intended for occupancy by the minor and who is not residing with his or her parent or at his or her legally authorized residence.

(9) "Transitional living services" means at a minimum, to the extent funds are available, the following:

(a) Educational services, including basic literacy and computational skills training, either in local alternative or public high schools or in a high school equivalency program that leads to obtaining a high school equivalency degree;

(b) Assistance and counseling related to obtaining vocational training or higher education, job readiness, job search assistance, and placement programs;

(c) Counseling and instruction in life skills such as money management, home management, consumer skills, parenting, health care, access to community resources, and transportation and housing options;

- (d) Individual and group counseling; and
- (e) Establishing networks with federal agencies and state and local organizations such as the United States department of labor, employment and training administration programs including the job training partnership act which administers private industry councils and the job corps; vocational rehabilitation; and volunteer programs.

Sec. 402. RCW 74.15.030 and 2005 c 490 s 11 are each amended to read as follows:

The secretary shall have the power and it shall be the secretary's duty:

(1) In consultation with the children's services advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to designate categories of facilities for which separate or different requirements shall be developed as may be appropriate whether because of variations in the ages, sex and other characteristics of persons served, variations in the purposes and services offered or size or structure of the agencies to be licensed hereunder, or because of any other factor relevant thereto;

(2) In consultation with the children's services advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to adopt and publish minimum requirements for licensing applicable to each of the various categories of agencies to be licensed.

The minimum requirements shall be limited to:

(a) The size and suitability of a facility and the plan of operation for carrying out the purpose for which an applicant seeks a license;

(b) The character, suitability and competence of an agency and other persons associated with an agency directly responsible for the care and treatment of children, expectant mothers or developmentally disabled persons. In consultation with law enforcement personnel, the secretary shall investigate the conviction record or pending charges and dependency record information under chapter 43.43 RCW of each agency and its staff seeking licensure or relicensure. No unfounded allegation of child abuse or neglect as defined in RCW 26.44.020 may be disclosed to a child-placing agency, private adoption agency, or any other provider licensed under this chapter. In order to determine the suitability of applicants for an agency license, licensees, their employees, and other persons who have unsupervised access to children in care, and who have not resided in the state of Washington during the three-year period before being authorized to care for children shall be fingerprinted. The fingerprints shall be forwarded to the Washington state patrol and federal bureau of investigation for a criminal history records check. The fingerprint criminal history records checks will be at the expense of the licensee except that in the case of a foster family home, if this expense would work a hardship on the licensee, the department shall pay the expense. The licensee may not pass this cost on to the employee or prospective employee, unless the employee is determined to be unsuitable due to his or her criminal history record. The secretary shall use the information solely for the purpose of determining eligibility for a license and for determining the character, suitability, and competence of those persons or agencies, excluding parents, not required to be licensed who are authorized to care for children, expectant mothers, and developmentally disabled persons. Criminal justice agencies shall provide the secretary such information as they may have and that the secretary may require for such purpose;

(c) The number of qualified persons required to render the type of care and treatment for which an agency seeks a license;

(d) The safety, cleanliness, and general adequacy of the premises to provide for the comfort, care and well-being of children, expectant mothers or developmentally disabled persons;

(e) The provision of necessary care, including food, clothing, supervision and discipline; physical, mental and social well-being; and educational, recreational and spiritual opportunities for those served;

(f) The financial ability of an agency to comply with minimum requirements established pursuant to chapter 74.15 RCW and RCW 74.13.031; and

(g) The maintenance of records pertaining to the admission, progress, health and discharge of persons served;

(3) To investigate any person, including relatives by blood or marriage except for parents, for character, suitability, and competence in the care and treatment of children, expectant mothers, and developmentally disabled persons prior to authorizing that person to care for children, expectant mothers, and developmentally disabled persons. However, if a child is placed with a relative under RCW 13.34.065 or 13.34.130, and if such relative appears otherwise suitable and competent to provide care and treatment the criminal history background check required by this section need not be completed before placement, but shall be completed as soon as possible after placement;

(4) On reports of alleged child abuse and neglect, to investigate agencies in accordance with chapter 26.44 RCW, including child day-care centers and family day-care homes, to determine whether the alleged abuse or neglect has occurred, and whether child protective services or referral to a law enforcement agency is appropriate;

(5) To issue, revoke, or deny licenses to agencies pursuant to chapter 74.15 RCW and RCW 74.13.031. Licenses shall specify the category of care which an agency is authorized to render and the ages, sex and number of persons to be served;

(6) To prescribe the procedures and the form and contents of reports necessary for the administration of chapter 74.15 RCW and RCW 74.13.031 and to require regular reports from each licensee;

(7) To inspect agencies periodically to determine whether or not there is compliance with chapter 74.15 RCW and RCW 74.13.031 and the requirements adopted hereunder;

(8) To review requirements adopted hereunder at least every two years and to adopt appropriate changes after consultation (~~((with affected groups for child day care requirements and))~~) with the children's services advisory committee for requirements for other agencies; and

(9) To consult with public and private agencies in order to help them improve their methods and facilities for the care of children, expectant mothers and developmentally disabled persons.

Sec. 403. RCW 74.15.100 and 1995 c 302 s 8 are each amended to read as follows:

Each agency shall make application for a license or renewal of license to the department of social and health services on forms prescribed by the department. A licensed agency having foster-family homes under its supervision may make application for a license on behalf of any such foster-family home. Such a foster

home license shall cease to be valid when the home is no longer under the supervision of that agency. Upon receipt of such application, the department shall either grant or deny a license within ninety days unless the application is for licensure as a foster-family home, in which case RCW 74.15.040 shall govern. A license shall be granted if the agency meets the minimum requirements set forth in chapter 74.15 RCW and RCW 74.13.031 and the departmental requirements consistent herewith, except that an initial license may be issued as provided in RCW 74.15.120. Licenses provided for in chapter 74.15 RCW and RCW 74.13.031 shall be issued for a period of three years. The licensee, however, shall advise the secretary of any material change in circumstances which might constitute grounds for reclassification of license as to category. The license issued under this chapter is not transferable and applies only to the licensee and the location stated in the application. For licensed foster-family (~~and family day care~~) homes having an acceptable history of child care, the license may remain in effect for two weeks after a move, except that (~~for the foster family home~~) this will apply only if the family remains intact.

Sec. 404. RCW 74.15.130 and 2005 c 473 s 6 are each amended to read as follows:

(1) An agency may be denied a license, or any license issued pursuant to chapter 74.15 RCW and RCW 74.13.031 may be suspended, revoked, modified, or not renewed by the secretary upon proof (a) that the agency has failed or refused to comply with the provisions of chapter 74.15 RCW and RCW 74.13.031 or the requirements promulgated pursuant to the provisions of chapter 74.15 RCW and RCW 74.13.031; or (b) that the conditions required for the issuance of a license under chapter 74.15 RCW and RCW 74.13.031 have ceased to exist with respect to such licenses. RCW 43.20A.205 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

(2) In any adjudicative proceeding regarding the denial, modification, suspension, or revocation of a foster family home license, the department's decision shall be upheld if there is reasonable cause to believe that:

(a) The applicant or licensee lacks the character, suitability, or competence to care for children placed in out-of-home care, however, no unfounded report of child abuse or neglect may be used to deny employment or a license;

(b) The applicant or licensee has failed or refused to comply with any provision of chapter 74.15 RCW, RCW 74.13.031, or the requirements adopted pursuant to such provisions; or

(c) The conditions required for issuance of a license under chapter 74.15 RCW and RCW 74.13.031 have ceased to exist with respect to such licenses.

(3) In any adjudicative proceeding regarding the denial, modification, suspension, or revocation of any license under this chapter, other than a foster family home license, the department's decision shall be upheld if it is supported by a preponderance of the evidence.

(4) The department may assess civil monetary penalties upon proof that an agency has failed or refused to comply with the rules adopted under the provisions of this chapter and RCW 74.13.031 or that an agency subject to licensing under this chapter and RCW 74.13.031 is operating without a license except that civil monetary penalties shall not be levied against a licensed foster

home. Monetary penalties levied against unlicensed agencies that submit an application for licensure within thirty days of notification and subsequently become licensed will be forgiven. These penalties may be assessed in addition to or in lieu of other disciplinary actions. Civil monetary penalties, if imposed, may be assessed and collected, with interest, for each day an agency is or was out of compliance. Civil monetary penalties shall not exceed ~~((seventy-five dollars per violation for a family day care home and))~~ two hundred fifty dollars per violation for group homes~~((, child day care centers,))~~ and child-placing agencies. Each day upon which the same or substantially similar action occurs is a separate violation subject to the assessment of a separate penalty. The department shall provide a notification period before a monetary penalty is effective and may forgive the penalty levied if the agency comes into compliance during this period. The department may suspend, revoke, or not renew a license for failure to pay a civil monetary penalty it has assessed pursuant to this chapter within ten days after such assessment becomes final. Chapter 43.20A RCW governs notice of a civil monetary penalty and provides the right of an adjudicative proceeding. The preponderance of evidence standard shall apply in adjudicative proceedings related to assessment of civil monetary penalties.

~~((5)(a) In addition to or in lieu of an enforcement action being taken, the department may place a child day care center or family day care provider on nonreferral status if the center or provider has failed or refused to comply with this chapter or rules adopted under this chapter or an enforcement action has been taken. The nonreferral status may continue until the department determines that: (i) No enforcement action is appropriate; or (ii) a corrective action plan has been successfully concluded.~~

~~(b) Whenever a child day care center or family day care provider is placed on nonreferral status, the department shall provide written notification to the child day care center or family day care provider.~~

~~(6) The department shall notify appropriate public and private child care resource and referral agencies of the department's decision to: (a) Take an enforcement action against a child day care center or family day care provider; or (b) place or remove a child day care center or family day care provider on nonreferral status.))~~

PART 5 TRANSFER OF POWERS, DUTIES, AND FUNCTIONS

NEW SECTION. Sec. 501. (1) All powers, duties, and functions of the office of the superintendent of public instruction and the department of community, trade, and economic development pertaining to the early childhood education and assistance (ECEAP) program and the early reading initiative are transferred to the department of early learning. All references to the director or the department of community, trade, and economic development in the Revised Code of Washington shall be construed to mean the director or the department of early learning when referring to the functions transferred in this section.

(2) All powers, duties, and functions of the division of child care and early learning in the department of social and health services pertaining to the working connections child care program, child care licensing, child care quality activities,

and the head start collaboration office are transferred to the department of early learning. However, eligibility staffing and eligibility payment functions for the working connections child care program shall not be transferred to the department of early learning. All references to the secretary or the department of social and health services in the Revised Code of Washington shall be construed to mean the director or the department of early learning when referring to the functions transferred in this section.

(3) Child day care services provided through the children's administration within the department of social and health services are not transferred to the department of early learning.

NEW SECTION. Sec. 502. All reports, documents, surveys, books, records, files, papers, or written material in the possession of the office of the superintendent of public instruction, the department of social and health services, and the department of community, trade, and economic development pertaining to the powers, functions, and duties transferred in section 501 of this act shall be delivered to the custody of the department of early learning. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the office of the superintendent of public instruction, the department of social and health services, and the department of community, trade, and economic development in carrying out the powers, functions, and duties transferred shall be made available to the department of early learning. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the department of early learning.

NEW SECTION. Sec. 503. (1) Any appropriations made to the office of the superintendent of public instruction or the department of community, trade, and economic development for carrying out the powers, functions, and duties transferred in section 501 of this act shall, on the effective date of this section, be transferred and credited to the department of early learning;

(2) Any appropriations made to the department of social and health services for carrying out the powers, functions, and duties transferred shall, on the effective date of this section, be transferred to the department of early learning through an interagency agreement.

NEW SECTION. Sec. 504. (1) All employees of the office of the superintendent of public instruction, the department of social and health services, and the department of community, trade, and economic development engaged in performing the powers, functions, and duties transferred in section 501 of this act are transferred to the jurisdiction of the department of early learning. All employees classified under chapter 41.06 RCW, the state civil service law, are assigned to the department of early learning to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(2) Nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified by action of the public employment relations commission as provided by law.

NEW SECTION. Sec. 505. (1) All rules and all pending business before the office of the superintendent of public instruction, the department of social and health services, and the department of community, trade, and economic development pertaining to the powers, functions, and duties transferred in section 501 of this act shall be continued and acted upon by the department of early learning. All existing contracts and obligations shall remain in full force and shall be performed by the department of early learning.

(2) The transfer of the powers, duties, functions, and personnel of the office of the superintendent of public instruction, the department of social and health services, and the department of community, trade, and economic development shall not affect the validity of any act performed before the effective date of this section.

(3) Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(4) If apportionments of budgeted funds are required because of the transfers directed by this section and sections 501 through 504 of this act, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

NEW SECTION. Sec. 506. By November 15, 2006, the department of early learning, in collaboration with the early learning council, shall prepare a report and make recommendations to the governor and appropriate committees of the legislature detailing:

(1) Coordination and collaboration between the department and the K-12 system at the state and local levels to ensure appropriate connections and smooth transitions between early learning and K-12;

(2) Ongoing coordination and collaboration between the department and other programs not included in the department;

(3) Ways the department will support local communities in encouraging public-private partnerships, innovative solutions to local issues, coordination of early learning services, and improved transitions from early learning to kindergarten;

(4) The relationship between the department and the private-public partnership;

(5) Internal governance of the department, to be implemented July 1, 2007, upon termination of the early learning council; and

(6) Transition of any additional early learning programs and responsibilities, including administration of federal child care funds and subsidy eligibility and payment functions.

NEW SECTION. Sec. 507. By July 1, 2010, the joint legislative audit and review committee shall conduct an evaluation of the implementation and operation of the department of early learning to assess the extent to which:

- (1) Services and programs that previously were administered separately have been effectively integrated;
- (2) Reporting and monitoring activities have been consolidated and made more efficient;
- (3) Consolidation has resulted in administrative efficiencies within the department;
- (4) Child care and early learning services are improved;
- (5) Subsidized child care is available;
- (6) Subsidized child care is affordable;
- (7) The department has been an effective partner in the private-public partnership;
- (8) Procedures have been put in place to respect parents and legal guardians and provide them the opportunity to participate in the development of policies and program decisions affecting their children; and
- (9) The degree and methods by which the agency conducts parent outreach and education.

**PART 6
MISCELLANEOUS PROVISIONS**

NEW SECTION. Sec. 601. The following sections are each recodified as new sections in the new chapter created in section 603 of this act:

RCW 74.13.097
RCW 74.13.098
RCW 74.13.099
RCW 74.15.063
RCW 74.15.310
RCW 74.15.320
RCW 74.15.330
RCW 74.15.340
RCW 74.15.350
RCW 28A.215.100
RCW 28A.215.110
RCW 28A.215.120
RCW 28A.215.130
RCW 28A.215.140
RCW 28A.215.150
RCW 28A.215.160
RCW 28A.215.170
RCW 28A.215.180
RCW 28A.215.190
RCW 28A.215.200
RCW 28A.215.900
RCW 28A.215.904
RCW 28A.215.906
RCW 28A.215.908

NEW SECTION. Sec. 602. PART HEADINGS NOT LAW. Part headings used in this act are not any part of the law.

NEW SECTION. Sec. 603. Sections 101 through 109, 301 through 315, and 501 of this act constitute a new chapter in Title 43 RCW.

NEW SECTION. Sec. 604. This act takes effect July 1, 2006.

NEW SECTION. Sec. 605. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed by the House March 4, 2006.

Passed by the Senate February 28, 2006.

Approved by the Governor March 28, 2006.

Filed in Office of Secretary of State March 28, 2006.

CHAPTER 266

[Second Substitute House Bill 2002]

CONTINUING FOSTER CARE

AN ACT Relating to authorizing continuing foster care and support services to age twenty-one to youths who are in state-supervised foster care on their eighteenth birthday; amending RCW 74.13.031; and creating new sections.

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

Sec. 1. RCW 74.13.031 and 2004 c 183 s 3 are each amended to read as follows:

The department shall have the duty to provide child welfare services and shall:

(1) Develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of runaway, dependent, or neglected children.

(2) Within available resources, recruit an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, teens, pregnant and parenting teens, and annually report to the governor and the legislature concerning the department's success in: (a) Meeting the need for adoptive and foster home placements; (b) reducing the foster parent turnover rate; (c) completing home studies for legally free children; and (d) implementing and operating the passport program required by RCW 74.13.285. The report shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) Investigate complaints of any recent act or failure to act on the part of a parent or caretaker that results in death, serious physical or emotional harm, or sexual abuse or exploitation, or that presents an imminent risk of serious harm, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency: PROVIDED, That an investigation is not required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. If the investigation reveals that a crime against a child may have been committed, the department shall notify the appropriate law enforcement agency.

(4) Offer, on a voluntary basis, family reconciliation services to families who are in conflict.

(5) Monitor out-of-home placements, on a timely and routine basis, to assure the safety, well-being, and quality of care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010, and annually submit a report measuring the extent to which the department achieved the specified goals to the governor and the legislature.

(6) Have authority to accept custody of children from parents and to accept custody of children from juvenile courts, where authorized to do so under law, to provide child welfare services including placement for adoption, and to provide for the physical care of such children and make payment of maintenance costs if needed. Except where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency which receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

(7) Have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

(8) Have authority to purchase care for children; and shall follow in general the policy of using properly approved private agency services for the actual care and supervision of such children insofar as they are available, paying for care of such children as are accepted by the department as eligible for support at reasonable rates established by the department.

(9) Establish a children's services advisory committee which shall assist the secretary in the development of a partnership plan for utilizing resources of the public and private sectors, and advise on all matters pertaining to child welfare, licensing of child care agencies, adoption, and services related thereto. At least one member shall represent the adoption community.

(10)(a) ~~Have authority to provide continued foster care or group care ((for individuals from eighteen through twenty years of age to enable them to complete their high school or vocational school program)) as needed to participate in or complete a high school or vocational school program.~~

(b)(i) Beginning in 2006, the department has the authority to allow up to fifty youth reaching age eighteen to continue in foster care or group care as needed to participate in or complete a posthigh school academic or vocational program, and to receive necessary support and transition services.

(ii) In 2007 and 2008, the department has the authority to allow up to fifty additional youth per year reaching age eighteen to remain in foster care or group care as provided in (b)(i) of this subsection.

(iii) A youth who remains eligible for such placement and services pursuant to department rules may continue in foster care or group care until the youth reaches his or her twenty-first birthday. Eligibility requirements shall include active enrollment in a posthigh school academic or vocational program and maintenance of a 2.0 grade point average.

(11) Refer cases to the division of child support whenever state or federal funds are expended for the care and maintenance of a child, including a child with a developmental disability who is placed as a result of an action under chapter 13.34 RCW, unless the department finds that there is good cause not to pursue collection of child support against the parent or parents of the child.

Cases involving individuals age eighteen through twenty shall not be referred to the division of child support unless required by federal law.

(12) Have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order; and the purchase of such care shall be subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

Notwithstanding any other provision of RCW 13.32A.170 through 13.32A.200 and 74.13.032 through 74.13.036, or of this section all services to be provided by the department of social and health services under subsections (4), (6), and (7) of this section, subject to the limitations of these subsections, may be provided by any program offering such services funded pursuant to Titles II and III of the federal juvenile justice and delinquency prevention act of 1974.

(13) Within amounts appropriated for this specific purpose, provide preventive services to families with children that prevent or shorten the duration of an out-of-home placement.

(14) Have authority to provide independent living services to youths, including individuals who have attained eighteen (~~(through twenty)~~) years of age, and have not attained twenty-one years of age who are or have been in foster care.

NEW SECTION. Sec. 2. Nothing in this act shall be construed to create:

- (1) An entitlement to services;
- (2) Judicial authority to extend the jurisdiction of juvenile court in a proceeding under chapter 13.34 RCW to a youth who has attained eighteen years of age or to order the provision of services to the youth; or
- (3) A private right of action or claim on the part of any individual, entity, or agency against the department of social and health services or any contractor of the department.

NEW SECTION. Sec. 3. The department of social and health services is authorized to adopt rules establishing eligibility for independent living services and placement for youths under this act.

NEW SECTION. Sec. 4. (1) Beginning in July 2008 and subject to the approval of its governing board, the Washington state institute for public policy shall conduct a study measuring the outcomes for foster youth who have received continued support pursuant to RCW 74.13.031(10). The study should include measurements of any savings to the state and local government. The institute shall issue a report containing its preliminary findings to the legislature by December 1, 2008, and a final report by December 1, 2009.

(2) The institute is authorized to accept nonstate funds to conduct the study required in subsection (1) of this section.

Passed by the House March 4, 2006.

Passed by the Senate March 1, 2006.

Approved by the Governor March 28, 2006.

Filed in Office of Secretary of State March 28, 2006.

CHAPTER 267

[Substitute Senate Bill 6308]

TASK FORCE ON OFFENDERS PROGRAMS, SENTENCING, AND SUPERVISION

AN ACT Relating to creating a joint select committee on offenders programs, sentencing, and supervision; creating new sections; and providing an expiration date.

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

NEW SECTION. Sec. 1. The legislature recognizes that "good time" should be productive time, especially for those incarcerated in Washington's criminal justice facilities. The legislature finds that it is important to the safety of the public and to rehabilitation of offenders that changes be considered to other programs offered in prisons and in the community. The legislature further finds that reforms to sentencing and supervision of offenders returning to the community may enhance public safety, lower recidivism, and reduce crime and victimization. Therefore, the legislature intends to create a joint legislative task force on offenders programs, sentencing, and supervision to provide findings and recommendations for the 2007 legislative session.

NEW SECTION. Sec. 2. (1) A joint legislative task force on offenders programs, sentencing, and supervision is established, with members as provided in this subsection.

(a) The president of the senate shall appoint one member from each of the two largest caucuses of the senate, with at least one member being a member of the senate human services and corrections committee;

(b) The speaker of the house of representatives shall appoint one member from each of the two largest caucuses of the house of representatives, with at least one member being a member of the house criminal justice and corrections committee;

(c) The governor shall appoint the following members:

(i) The attorney general, or the attorney general's designee;

(ii) The secretary of corrections, or the secretary's designee;

(iii) The executive director of the sentencing guidelines commission, or the director's designee;

(d) In addition, the joint legislative task force, where feasible, may consult with individuals representing the following:

(i) Superior court judges;

(ii) Mental health treatment providers who provide alcohol and substance abuse counseling;

(iii) Mental health treatment providers who provide medical assistance services to offenders;

(iv) Counties;

(v) Cities;

(vi) Crime victims;

(vii) Prosecuting attorneys;

(viii) Criminal defense lawyers;

(ix) Faculty members who educate incarcerated offenders;

(x) Faculty members who educate released offenders;

(xi) Community corrections officers;

(xii) Labor organizations representing correctional officers who work in adult correctional facilities;

- (xiii) Multifamily housing;
- (xiv) City local law enforcement;
- (xv) County law enforcement;
- (xvi) Ex-offenders;
- (xvii) A faith-based organization that provides outreach or services to offenders;
- (xviii) Washington businesses; and
- (xix) Nonprofit organizations providing work force training to released offenders.

(2) The joint legislative task force shall be cochaired by a legislative member from the senate and a legislative member from the house of representatives, as chosen by the task force.

(3) The joint legislative task force shall review and make recommendations regarding:

(a) The type of offender that would benefit most in terms of personal achievement, responsibility, and community safety, by having the opportunity to receive enhanced training and education while in prison;

(b) The types of training and educational programs that would provide the greatest return on investment with regard to offender achievement, responsibility, and community;

(c) Changes to the sentencing law and policies related to "good time" or early release, that would encourage incarcerated offenders to participate in training and programs that will increase the likelihood that they will be able to support themselves when they leave prison and reduce recidivism;

(d) A method for evaluating the return on the investment and determining from frontline department of corrections staff and community partners, whether the changes are improving personal responsibility on the part of the offender and reducing crime in the community;

(e) Changes to community supervision that would provide greater safety to the public and incentives for prisons in adhering to treatment, educational goals, and reducing recidivism; and

(f) The operation of inmate work release programs and on how such work release programs are sited and placed throughout the state.

(4) The joint legislative task force shall present a report of its findings and recommendations to the governor and the appropriate committees of the legislature, including any proposed legislation, by November 15, 2006.

(5) The joint legislative task force may, where feasible, consult with individuals from the public and private sector in carrying out its duties under this section.

(6)(a) The joint legislative task force shall use legislative facilities, and staff support shall be provided by senate committee services, the house of representatives office of program research, and the Washington state institute for public policy. The department of corrections and the sentencing guidelines commission shall cooperate with the joint legislative task force, and shall provide information as the task force reasonably requests.

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

(c) Legislative members of the joint legislative task force shall be reimbursed for travel expenses in accordance with RCW 44.04.120.

(d) The expenses of the joint legislative task force shall be paid jointly by the senate and the house of representatives.

(7) This section expires December 1, 2006.

Passed by the Senate March 4, 2006.

Passed by the House March 2, 2006.

Approved by the Governor March 28, 2006.

Filed in Office of Secretary of State March 28, 2006.

CHAPTER 268

[House Bill 2612]

FAILURE TO SECURE A LOAD—CRIME VICTIMS' COMPENSATION

AN ACT Relating to including failure to secure a load in the first degree as a compensable crime under the crime victims' compensation program; and amending RCW 7.68.020.

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

Sec. 1. RCW 7.68.020 and 2002 c 10 s 3 are each amended to read as follows:

The following words and phrases as used in this chapter have the meanings set forth in this section unless the context otherwise requires.

(1) "Department" means the department of labor and industries.

(2) "Criminal act" means an act committed or attempted in this state which is: (a) Punishable as a federal offense that is comparable to a felony or gross misdemeanor in this state; (b) punishable as a felony or gross misdemeanor under the laws of this state; (c) an act committed outside the state of Washington against a resident of the state of Washington which would be compensable had it occurred inside this state and the crime occurred in a state which does not have a crime victims compensation program, for which the victim is eligible as set forth in the Washington compensation law; or (d) an act of terrorism as defined in 18 U.S.C. Sec. 2331, as it exists on May 2, 1997, committed outside of the United States against a resident of the state of Washington, except as follows:

(i) The operation of a motor vehicle, motorcycle, train, boat, or aircraft in violation of law does not constitute a "criminal act" unless:

(A) The injury or death was intentionally inflicted;

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

(C) The death or injury was the result of the operation of a motor vehicle after July 24, 1983, and a preponderance of the evidence establishes that the death was the result of vehicular homicide under RCW 46.61.520, or a conviction of vehicular assault under RCW 46.61.522, has been obtained: PROVIDED, That in cases where a probable criminal defendant has died in perpetration of vehicular assault or, in cases where the perpetrator of the vehicular assault is unascertainable because he or she left the scene of the accident in violation of RCW 46.52.020 or, because of physical or mental infirmity or disability the perpetrator is incapable of standing trial for vehicular assault, the department may, by a preponderance of the evidence, establish that a vehicular assault had been committed and authorize benefits; ((~~or~~))

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

(E) The injury or death was caused by a driver in violation of RCW 46.61.655(7)(a), failure to secure a load in the first degree;

(ii) Neither an acquittal in a criminal prosecution nor the absence of any such prosecution is admissible in any claim or proceeding under this chapter as evidence of the noncriminal character of the acts giving rise to such claim or proceeding, except as provided for in (d)(i)(C) of this subsection;

(iii) Evidence of a criminal conviction arising from acts which are the basis for a claim or proceeding under this chapter is admissible in such claim or proceeding for the limited purpose of proving the criminal character of the acts; and

(iv) Acts which, but for the insanity or mental irresponsibility of the perpetrator, would constitute criminal conduct are deemed to be criminal conduct within the meaning of this chapter.

(3) "Victim" means a person who suffers bodily injury or death as a proximate result of a criminal act of another person, the victim's own good faith and reasonable effort to prevent a criminal act, or his or her good faith effort to apprehend a person reasonably suspected of engaging in a criminal act. For the purposes of receiving benefits pursuant to this chapter, "victim" is interchangeable with "employee" or "worker" as defined in chapter 51.08 RCW as now or hereafter amended.

(4) "Child," "accredited school," "dependent," "beneficiary," "average monthly wage," "director," "injury," "invalid," "permanent partial disability," and "permanent total disability" have the meanings assigned to them in chapter 51.08 RCW as now or hereafter amended.

(5) "Gainfully employed" means engaging on a regular and continuous basis in a lawful activity from which a person derives a livelihood.

(6) "Private insurance" means any source of recompense provided by contract available as a result of the claimed injury or death at the time of such injury or death, or which becomes available any time thereafter.

(7) "Public insurance" means any source of recompense provided by statute, state or federal, available as a result of the claimed injury or death at the time of such injury or death, or which becomes available any time thereafter.

Passed by the House February 14, 2006.

Passed by the Senate March 8, 2006.

Approved by the Governor March 28, 2006.

Filed in Office of Secretary of State March 28, 2006.

CHAPTER 269

[Substitute House Bill 1107]

EARLY INTERVENTION SERVICES—CHILDREN WITH DISABILITIES

AN ACT Relating to early intervention services for children with disabilities; amending RCW 28A.155.070; adding new sections to chapter 28A.155 RCW; and providing an effective date.

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

NEW SECTION. Sec. 1. A new section is added to chapter 28A.155 RCW to read as follows:

The legislature finds an urgent and substantial need to enhance the development of all infants and toddlers with disabilities in Washington in order to minimize developmental delays and to maximize individual potential for learning and functioning.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.155 RCW to read as follows:

(1) By September 1, 2009, each school district shall provide or contract for early intervention services to all eligible children with disabilities from birth to three years of age. Eligibility shall be determined according to Part C of the federal individuals with disabilities education act and as specified in the Washington Administrative Code. School districts shall provide or contract for early intervention services in partnership with local birth-to-three lead agencies and birth-to-three providers. Services provided under this section shall not supplant services or funding currently provided in the state for early intervention services to eligible children with disabilities from birth to three years of age. The state-designated birth-to-three lead agency shall be payor of last resort for birth-to-three early intervention services provided under this section.

(2) The services in this section are not part of the state's program of basic education pursuant to Article IX of the state Constitution.

Sec. 3. RCW 28A.155.070 and 1995 c 77 s 13 are each amended to read as follows:

Special educational and training programs provided by the state and the school districts thereof for children with disabilities ~~((may))~~ shall be extended to include children of preschool age. School districts ~~((which extend such special programs to children of preschool age))~~ shall be entitled to the regular apportionments from state and county school funds, as provided by law, and in addition to allocations from state excess cost funds made available for such special services for those children with disabilities who are given such special services.

NEW SECTION. Sec. 4. Section 3 of this act takes effect September 1, 2009.

Passed by the House March 4, 2006.

Passed by the Senate March 1, 2006.

Approved by the Governor March 28, 2006.

Filed in Office of Secretary of State March 28, 2006.

CHAPTER 270

[Substitute House Bill 1650]

CITATIONS AND INFRACTIONS

AN ACT Relating to citations and infractions; amending RCW 46.61.021, 46.63.060, 46.64.015, 46.64.025, 7.80.070, 7.80.160, 7.84.050, 18.27.240, 18.106.190, 20.01.482, 43.63B.140, and 81.112.230; repealing RCW 18.27.280; and prescribing penalties.

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

Sec. 1. RCW 46.61.021 and 1997 1st sp.s. c 1 s 1 are each amended to read as follows:

(1) Any person requested or signaled to stop by a law enforcement officer for a traffic infraction has a duty to stop.

(2) Whenever any person is stopped for a traffic infraction, the officer may detain that person for a reasonable period of time necessary to identify the person, check for outstanding warrants, check the status of the person's license, insurance identification card, and the vehicle's registration, and complete and issue a notice of traffic infraction.

(3) Any person requested to identify himself or herself to a law enforcement officer pursuant to an investigation of a traffic infraction has a duty to identify himself or herself(,) ~~and~~ give his or her current address(~~(, and sign an acknowledgement of receipt of the notice of infraction)~~).

Sec. 2. RCW 46.63.060 and 1993 c 501 s 9 are each amended to read as follows:

(1) A notice of traffic infraction represents a determination that an infraction has been committed. The determination will be final unless contested as provided in this chapter.

(2) The form for the notice of traffic infraction shall be prescribed by rule of the supreme court and shall include the following:

(a) A statement that the notice represents a determination that a traffic infraction has been committed by the person named in the notice and that the determination shall be final unless contested as provided in this chapter;

(b) A statement that a traffic infraction is a noncriminal offense for which imprisonment may not be imposed as a sanction; that the penalty for a traffic infraction may include sanctions against the person's driver's license including suspension, revocation, or denial; that the penalty for a traffic infraction related to standing, stopping, or parking may include nonrenewal of the vehicle license;

(c) A statement of the specific traffic infraction for which the notice was issued;

(d) A statement of the monetary penalty established for the traffic infraction;

(e) A statement of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options;

(f) A statement that at any hearing to contest the determination the state has the burden of proving, by a preponderance of the evidence, that the infraction was committed; and that the person may subpoena witnesses including the officer who issued the notice of infraction;

(g) A statement that at any hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the infraction the person will be deemed to have committed the infraction and may not subpoena witnesses;

(h) A statement that the person must respond to the notice as provided in this chapter within fifteen days or the person's driver's license or driving privilege will be suspended by the department until any penalties imposed pursuant to this chapter have been satisfied; and

(i) A statement that failure to appear at a hearing requested for the purpose of contesting the determination or for the purpose of explaining mitigating circumstances will result in the suspension of the person's driver's license or driving privilege, or in the case of a standing, stopping, or parking violation, refusal of the department to renew the vehicle license, until any penalties imposed pursuant to this chapter have been satisfied(,;

~~(j) A statement, which the person shall sign, that the person promises to respond to the notice of infraction in one of the ways provided in this chapter).~~

Sec. 3. RCW 46.64.015 and 2004 c 43 s 5 are each amended to read as follows:

Whenever any person is arrested for any violation of the traffic laws or regulations which is punishable as a misdemeanor or by imposition of a fine, the arresting officer may serve upon him or her a traffic citation and notice to appear in court. Such citation and notice shall conform to the requirements of RCW 46.64.010, and in addition, shall include spaces for the name and address of the person arrested, the license number of the vehicle involved, the driver's license number of such person, if any, the offense or violation charged, and the time and place where such person shall appear in court ~~(, and a place where the person arrested may sign)~~. Such spaces shall be filled with the appropriate information by the arresting officer. ~~((The arrested person, in order to secure release, and when permitted by the arresting officer, must give his or her written promise to appear in court as required by the citation and notice by signing in the appropriate place the written or electronic citation and notice served by the arresting officer, and if the arrested person is a nonresident of the state, shall also post a bond, cash security, or bail as required under RCW 46.64.035.))~~ An officer may not serve or issue any traffic citation or notice for any offense or violation except either when the offense or violation is committed in his or her presence or when a person may be arrested pursuant to RCW 10.31.100, as now or hereafter amended. The detention arising from an arrest under this section may not be for a period of time longer than is reasonably necessary to issue and serve a citation and notice, except that the time limitation does not apply under any of the following circumstances:

~~(1) ((Where the arrested person refuses to sign a written promise to appear in court as required by the citation and notice provisions of this section;~~

~~(2))~~ Where the arresting officer has probable cause to believe that the arrested person has committed any of the offenses enumerated in RCW 10.31.100(3) ~~(, as now or hereafter amended);~~

~~((3))~~ (2) When the arrested person is a nonresident and is being detained for a hearing under RCW 46.64.035.

Sec. 4. RCW 46.64.025 and 1999 c 86 s 7 are each amended to read as follows:

Whenever any person ~~((violates his or her written promise to appear in court, or))~~ served with a traffic citation willfully fails to appear for a scheduled court hearing, the court in which the defendant failed to appear shall promptly give notice of such fact to the department of licensing. Whenever thereafter the case in which the defendant failed to appear is adjudicated, the court hearing the case shall promptly file with the department a certificate showing that the case has been adjudicated.

Sec. 5. RCW 7.80.070 and 1987 c 456 s 15 are each amended to read as follows:

(1) A notice of civil infraction represents a determination that a civil infraction has been committed. The determination is final unless contested as provided in this chapter.

(2) The form for the notice of civil infraction shall be prescribed by rule of the supreme court and shall include the following:

(a) A statement that the notice represents a determination that a civil infraction has been committed by the person named in the notice and that the determination is final unless contested as provided in this chapter;

(b) A statement that a civil infraction is a noncriminal offense for which imprisonment may not be imposed as a sanction;

(c) A statement of the specific civil infraction for which the notice was issued;

(d) A statement of the monetary penalty established for the civil infraction;

(e) A statement of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options;

(f) A statement that at any hearing to contest the determination the state has the burden of proving, by a preponderance of the evidence, that the civil infraction was committed and that the person may subpoena witnesses including the enforcement officer who issued the notice of civil infraction;

(g) A statement that at any hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the civil infraction, the person will be deemed to have committed the civil infraction and may not subpoena witnesses;

(h) A statement that the person must respond to the notice as provided in this chapter within fifteen days;

(i) A statement that failure to respond to the notice or a failure to appear at a hearing requested for the purpose of contesting the determination or for the purpose of explaining mitigating circumstances will result in a default judgment against the person in the amount of the penalty and that this failure may be referred to the prosecuting attorney for criminal prosecution for failure to respond or appear;

(j) ~~((A statement, which the person shall sign, that the person promises to respond to the notice of civil infraction in one of the ways provided in this chapter;~~

~~((k))~~ A statement that failure to respond to a notice of civil infraction ~~((as promised))~~ or to appear at a requested hearing is a misdemeanor and may be punished by a fine or imprisonment in jail.

Sec. 6. RCW 7.80.160 and 2002 c 175 s 2 are each amended to read as follows:

(1) ~~((A person who fails to sign a notice of civil infraction is guilty of a misdemeanor.~~

~~((2))~~ Any person ~~((willfully violating his or her written and signed promise to appear in court or his or her written and signed promise to respond to a notice of civil infraction))~~ who, after receiving a statement of the options provided in this chapter for responding to the notice of civil infraction and the procedures necessary to exercise these options, fails to exercise one of the options in a timely manner is guilty of a misdemeanor regardless of the disposition of the notice of civil infraction. A ~~((written promise to appear in court or a written promise to respond to a))~~ notice of civil infraction may be complied with by an appearance by counsel.

~~((3))~~ (2) A person who willfully fails to pay a monetary penalty or to perform community restitution as required by a court under this chapter may be found in contempt of court as provided in chapter 7.21 RCW.

Sec. 7. RCW 7.84.050 and 1987 c 380 s 5 are each amended to read as follows:

(1) A notice of infraction represents a determination that an infraction has been committed. The determination shall be final unless contested as provided in this chapter.

(2) The form for the notice of infraction shall be prescribed by rule of the supreme court and shall include the following:

(a) A statement that the notice represents a determination that an infraction has been committed by the person named in the notice and that the determination shall be final unless contested as provided in this chapter;

(b) A statement that an infraction is a noncriminal offense for which imprisonment will not be imposed as a sanction;

(c) A statement of the specific infraction for which the notice was issued;

(d) A statement of the monetary penalty established for the infraction;

(e) A statement of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options;

(f) A statement that at any hearing to contest the determination, the state has the burden of proving, by a preponderance of the evidence, that the infraction was committed; and that the person may subpoena witnesses including the officer who issued the notice of infraction;

(g) A statement that at any hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the infraction the person shall be deemed to have committed the infraction and shall not subpoena witnesses;

(h) A statement that failure to respond to a notice of infraction within fifteen days is a misdemeanor and may be punished by fine or imprisonment; and

(i) A statement that failure to appear at a hearing requested for the purpose of contesting the determination or for the purpose of explaining mitigating circumstances is a misdemeanor and may be punished by fine or imprisonment(~~and~~);

~~(j) A statement, which the person shall sign, that the person promises to respond to the notice of infraction in one of the ways provided in this chapter).~~

Sec. 8. RCW 18.27.240 and 1986 c 197 s 4 are each amended to read as follows:

The form of the notice of infraction issued under this chapter shall include the following:

(1) A statement that the notice represents a determination that the infraction has been committed by the contractor named in the notice and that the determination shall be final unless contested as provided in this chapter;

(2) A statement that the infraction is a noncriminal offense for which imprisonment shall not be imposed as a sanction;

(3) A statement of the specific violation which necessitated issuance of the infraction;

(4) A statement of penalty involved if the infraction is established;

(5) A statement of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options;

(6) A statement that at any hearing to contest the notice of infraction the state has the burden of proving, by a preponderance of the evidence, that the infraction was committed; and that the contractor may subpoena witnesses, including the compliance inspector of the department who issued and served the notice of infraction;

(7) A statement(~~(, which the person who has been served with the notice of infraction shall sign,)~~) that the contractor (~~(promises to)~~) must respond to the notice of infraction in one of the ways provided in this chapter; and

~~((A statement that refusal to sign the infraction as directed in subsection (7) of this section is a misdemeanor and may be punished by a fine or imprisonment in jail; and~~

~~(9))~~) A statement that a contractor's failure to (~~(respond to a notice of infraction as promised)~~) timely select one of the options for responding to the notice of infraction after receiving a statement of the options provided in this chapter for responding to the notice of infraction and the procedures necessary to exercise these options is guilty of a misdemeanor and may be punished by a fine or imprisonment in jail.

Sec. 9. RCW 18.106.190 and 1994 c 174 s 4 are each amended to read as follows:

The form of the notice of infraction issued under this chapter shall include the following:

(1) A statement that the notice represents a determination that the infraction has been committed by the person named in the notice and that the determination shall be final unless contested as provided in this chapter;

(2) A statement that the infraction is a noncriminal offense for which imprisonment shall not be imposed as a sanction;

(3) A statement of the specific infraction for which the notice was issued;

(4) A statement of the monetary penalty that has been established for the infraction;

(5) A statement of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options;

(6) A statement that at any hearing to contest the determination the state has the burden of proving, by a preponderance of the evidence, that the infraction was committed; and that the person may subpoena witnesses, including the authorized representative of the department who issued and served the notice of infraction; and

(7) A statement(~~(, which the person shall sign,)~~) that the person (~~(promises to)~~) must respond to the notice of infraction in one of the ways provided in this chapter(~~(;)~~).

~~((8) A statement that refusal to sign the infraction as directed in subsection (7) of this section is a misdemeanor; and~~

~~(9))~~) A statement that failure to (~~(respond to a notice of infraction as promised)~~) timely select one of the options for responding to the notice of civil infraction after receiving a statement of the options provided in this chapter for responding to the notice of infraction and the procedures necessary to exercise these options is a misdemeanor and may be punished by a fine or imprisonment in jail.

Sec. 10. RCW 20.01.482 and 2004 c 43 s 3 are each amended to read as follows:

(1) The director shall have the authority to issue a notice of civil infraction if an infraction is committed in his or her presence or, if after investigation, the director has reasonable cause to believe an infraction has been committed.

(2) It is a misdemeanor for any person to refuse to properly identify himself or herself for the purpose of issuance of a notice of infraction (~~or to refuse to sign the written or electronic promise to appear or respond to a notice of infraction~~).

(3) Any person willfully (~~violating a written or electronic and signed promise~~) failing to respond to a notice of infraction is guilty of a misdemeanor regardless of the disposition of the notice of infraction.

Sec. 11. RCW 43.63B.140 and 1994 c 284 s 26 are each amended to read as follows:

(1) The department shall prescribe the form of the notice of infraction issued under this chapter.

(2) The notice of infraction shall include the following:

(a) A statement that the notice represents a determination that the infraction has been committed by the person named in the notice and that the determination is final unless contested as provided in this chapter;

(b) A statement that the infraction is a noncriminal offense for which imprisonment may not be imposed as a sanction;

(c) A statement of the specific infraction for which the notice was issued;

(d) A statement of a monetary penalty that has been established for the infraction;

(e) A statement of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options;

(f) A statement that, at a hearing to contest the determination, the state has the burden of proving, by a preponderance of the evidence, that the infraction was committed, and that the person may subpoena witnesses including the authorized representative who issued and served the notice of the infraction; and

(g) (~~A statement, that the person shall sign, that the person promises to respond to the notice of infraction in one of the ways provided in this chapter;~~

(h) ~~A statement that refusal to sign the infraction as directed in (g) of this subsection is a misdemeanor; and~~

(i)) A statement that failure to respond to a notice of infraction (~~as promised~~) is a misdemeanor and may be punished by a fine or imprisonment in jail.

Sec. 12. RCW 81.112.230 and 1999 c 20 s 5 are each amended to read as follows:

Nothing in RCW 81.112.020 and 81.112.210 through 81.112.230 shall be deemed to prevent law enforcement authorities from prosecuting for theft, trespass, or other charges by any individual who:

(1) Fails to pay the required fare on more than one occasion within a twelve-month period;

(2) Fails to (~~sign a notice of civil infraction~~) timely select one of the options for responding to the notice of civil infraction after receiving a statement

of the options provided in this chapter for responding to the notice of infraction and the procedures necessary to exercise these options; or

(3) Fails to depart the train, including but not limited to commuter trains and light rail trains, when requested to do so by a person designated to monitor fare payment.

NEW SECTION. Sec. 13. RCW 18.27.280 (Notice—Penalty for person refusing to promise to respond) and 1983 1st ex.s. c 2 s 10 are each repealed.

Passed by the House March 4, 2006.

Passed by the Senate March 3, 2006.

Approved by the Governor March 28, 2006.

Filed in Office of Secretary of State March 28, 2006.

CHAPTER 271

[House Bill 1966]

IDENTITY THEFT—CRIMES AGAINST PERSONS

AN ACT Relating to classifying identity theft as a crime against persons; and reenacting and amending RCW 9.94A.411.

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

Sec. 1. RCW 9.94A.411 and 2000 c 119 s 28 and 2000 c 28 s 17 are each reenacted and amended to read as follows:

(1) Decision not to prosecute.

STANDARD: A prosecuting attorney may decline to prosecute, even though technically sufficient evidence to prosecute exists, in situations where prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law.

GUIDELINE/COMMENTARY:

Examples

The following are examples of reasons not to prosecute which could satisfy the standard.

(a) Contrary to Legislative Intent - It may be proper to decline to charge where the application of criminal sanctions would be clearly contrary to the intent of the legislature in enacting the particular statute.

(b) Antiquated Statute - It may be proper to decline to charge where the statute in question is antiquated in that:

- (i) It has not been enforced for many years; and
- (ii) Most members of society act as if it were no longer in existence; and
- (iii) It serves no deterrent or protective purpose in today's society; and
- (iv) The statute has not been recently reconsidered by the legislature.

This reason is not to be construed as the basis for declining cases because the law in question is unpopular or because it is difficult to enforce.

(c) De Minimis Violation - It may be proper to decline to charge where the violation of law is only technical or insubstantial and where no public interest or deterrent purpose would be served by prosecution.

(d) Confinement on Other Charges - It may be proper to decline to charge because the accused has been sentenced on another charge to a lengthy period of confinement; and

(i) Conviction of the new offense would not merit any additional direct or collateral punishment;

(ii) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and

(iii) Conviction of the new offense would not serve any significant deterrent purpose.

(e) Pending Conviction on Another Charge - It may be proper to decline to charge because the accused is facing a pending prosecution in the same or another county; and

(i) Conviction of the new offense would not merit any additional direct or collateral punishment;

(ii) Conviction in the pending prosecution is imminent;

(iii) The new offense is either a misdemeanor or a felony which is not particularly aggravated; and

(iv) Conviction of the new offense would not serve any significant deterrent purpose.

(f) High Disproportionate Cost of Prosecution - It may be proper to decline to charge where the cost of locating or transporting, or the burden on, prosecution witnesses is highly disproportionate to the importance of prosecuting the offense in question. This reason should be limited to minor cases and should not be relied upon in serious cases.

(g) Improper Motives of Complainant - It may be proper to decline charges because the motives of the complainant are improper and prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or would result in decreased respect for the law.

(h) Immunity - It may be proper to decline to charge where immunity is to be given to an accused in order to prosecute another where the accused's information or testimony will reasonably lead to the conviction of others who are responsible for more serious criminal conduct or who represent a greater danger to the public interest.

(i) Victim Request - It may be proper to decline to charge because the victim requests that no criminal charges be filed and the case involves the following crimes or situations:

(i) Assault cases where the victim has suffered little or no injury;

(ii) Crimes against property, not involving violence, where no major loss was suffered;

(iii) Where doing so would not jeopardize the safety of society.

Care should be taken to insure that the victim's request is freely made and is not the product of threats or pressure by the accused.

The presence of these factors may also justify the decision to dismiss a prosecution which has been commenced.

Notification

The prosecutor is encouraged to notify the victim, when practical, and the law enforcement personnel, of the decision not to prosecute.

(2) Decision to prosecute.

(a) STANDARD:

Crimes against persons will be filed if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable

and objective fact-finder. With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050, 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and 9A.64.020 the prosecutor should avoid pre-filing agreements or diversions intended to place the accused in a program of treatment or counseling, so that treatment, if determined to be beneficial, can be provided pursuant to RCW 9.94A.670.

Crimes against property/other crimes will be filed if the admissible evidence is of such convincing force as to make it probable that a reasonable and objective fact-finder would convict after hearing all the admissible evidence and the most plausible defense that could be raised.

See table below for the crimes within these categories.

CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

CRIMES AGAINST PERSONS

Aggravated Murder
 1st Degree Murder
 2nd Degree Murder
 1st Degree Manslaughter
 2nd Degree Manslaughter
 1st Degree Kidnapping
 2nd Degree Kidnapping
 1st Degree Assault
 2nd Degree Assault
 3rd Degree Assault
 1st Degree Assault of a Child
 2nd Degree Assault of a Child
 3rd Degree Assault of a Child
 1st Degree Rape
 2nd Degree Rape
 3rd Degree Rape
 1st Degree Rape of a Child
 2nd Degree Rape of a Child
 3rd Degree Rape of a Child
 1st Degree Robbery
 2nd Degree Robbery
 1st Degree Arson
 1st Degree Burglary
1st Degree Identity Theft
2nd Degree Identity Theft
 1st Degree Extortion
 2nd Degree Extortion
 Indecent Liberties
 Incest
 Vehicular Homicide
 Vehicular Assault
 1st Degree Child Molestation
 2nd Degree Child Molestation
 3rd Degree Child Molestation
 1st Degree Promoting Prostitution

Intimidating a Juror
Communication with a Minor
Intimidating a Witness
Intimidating a Public Servant
Bomb Threat (if against person)
Unlawful Imprisonment
Promoting a Suicide Attempt
Riot (if against person)
Stalking
Custodial Assault
Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050,
26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
Counterfeiting (if a violation of RCW 9.16.035(4))

CRIMES AGAINST PROPERTY/OTHER CRIMES

2nd Degree Arson
1st Degree Escape
2nd Degree Escape
2nd Degree Burglary
1st Degree Theft
2nd Degree Theft
1st Degree Perjury
2nd Degree Perjury
1st Degree Introducing Contraband
2nd Degree Introducing Contraband
1st Degree Possession of Stolen Property
2nd Degree Possession of Stolen Property
Bribery
Bribing a Witness
Bribe received by a Witness
Bomb Threat (if against property)
1st Degree Malicious Mischief
2nd Degree Malicious Mischief
1st Degree Reckless Burning
Taking a Motor Vehicle without Authorization
Forgery
2nd Degree Promoting Prostitution
Tampering with a Witness
Trading in Public Office
Trading in Special Influence
Receiving/Granting Unlawful Compensation
Bigamy
Eluding a Pursuing Police Vehicle
Willful Failure to Return from Furlough
Escape from Community Custody
Riot (if against property)
1st Degree Theft of Livestock
2nd Degree Theft of Livestock

ALL OTHER UNCLASSIFIED FELONIES

Selection of Charges/Degree of Charge

(i) The prosecutor should file charges which adequately describe the nature of defendant's conduct. Other offenses may be charged only if they are necessary to ensure that the charges:

- (A) Will significantly enhance the strength of the state's case at trial; or
- (B) Will result in restitution to all victims.

(ii) The prosecutor should not overcharge to obtain a guilty plea. Overcharging includes:

- (A) Charging a higher degree;
- (B) Charging additional counts.

This standard is intended to direct prosecutors to charge those crimes which demonstrate the nature and seriousness of a defendant's criminal conduct, but to decline to charge crimes which are not necessary to such an indication. Crimes which do not merge as a matter of law, but which arise from the same course of conduct, do not all have to be charged.

(b) GUIDELINES/COMMENTARY:

(i) Police Investigation

A prosecuting attorney is dependent upon law enforcement agencies to conduct the necessary factual investigation which must precede the decision to prosecute. The prosecuting attorney shall ensure that a thorough factual investigation has been conducted before a decision to prosecute is made. In ordinary circumstances the investigation should include the following:

- (A) The interviewing of all material witnesses, together with the obtaining of written statements whenever possible;
- (B) The completion of necessary laboratory tests; and
- (C) The obtaining, in accordance with constitutional requirements, of the suspect's version of the events.

If the initial investigation is incomplete, a prosecuting attorney should insist upon further investigation before a decision to prosecute is made, and specify what the investigation needs to include.

(ii) Exceptions

In certain situations, a prosecuting attorney may authorize filing of a criminal complaint before the investigation is complete if:

- (A) Probable cause exists to believe the suspect is guilty; and
- (B) The suspect presents a danger to the community or is likely to flee if not apprehended; or
- (C) The arrest of the suspect is necessary to complete the investigation of the crime.

In the event that the exception to the standard is applied, the prosecuting attorney shall obtain a commitment from the law enforcement agency involved to complete the investigation in a timely manner. If the subsequent investigation does not produce sufficient evidence to meet the normal charging standard, the complaint should be dismissed.

(iii) Investigation Techniques

The prosecutor should be fully advised of the investigatory techniques that were used in the case investigation including:

- (A) Polygraph testing;
- (B) Hypnosis;

- (C) Electronic surveillance;
- (D) Use of informants.
- (iv) Pre-Filing Discussions with Defendant

Discussions with the defendant or his/her representative regarding the selection or disposition of charges may occur prior to the filing of charges, and potential agreements can be reached.

- (v) Pre-Filing Discussions with Victim(s)

Discussions with the victim(s) or victims' representatives regarding the selection or disposition of charges may occur before the filing of charges. The discussions may be considered by the prosecutor in charging and disposition decisions, and should be considered before reaching any agreement with the defendant regarding these decisions.

Passed by the House January 13, 2006.

Passed by the Senate March 3, 2006.

Approved by the Governor March 28, 2006.

Filed in Office of Secretary of State March 28, 2006.

CHAPTER 272

[Substitute House Bill 2033]

MUNICIPAL BUSINESS AND OCCUPATION TAX—PRINTING AND PUBLISHING INCOME

AN ACT Relating to the allocation of printing and publishing income for municipal business and occupation taxes; adding a new section to chapter 35.102 RCW; and providing an effective date.

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

NEW SECTION. Sec. 1. A new section is added to chapter 35.102 RCW to read as follows:

Notwithstanding RCW 35.102.130, a city that imposes a business and occupation tax shall allocate a person's gross income from the activities of printing, and of publishing newspapers, periodicals, or magazines, to the principal place in this state from which the taxpayer's business is directed or managed. As used in this section, the activities of printing, and of publishing newspapers, periodicals, or magazines, have the same meanings as attributed to those terms in RCW 82.04.280(1) by the department of revenue.

NEW SECTION. Sec. 2. This act takes effect January 1, 2008.

Passed by the House February 11, 2006.

Passed by the Senate March 3, 2006.

Approved by the Governor March 28, 2006.

Filed in Office of Secretary of State March 28, 2006.

CHAPTER 273

[House Bill 2544]

PUBLIC WORKS BOARD—RECOMMENDED PROJECTS

AN ACT Relating to authorization for projects recommended by the public works board; creating new sections; and declaring an emergency.

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

NEW SECTION. Sec. 1. Pursuant to chapter 43.155 RCW, the following project loans recommended by the public works board are authorized to be made with funds appropriated from the public works assistance account:

(1) Alderwood water and wastewater district—sanitary sewer project—upgrade the picnic point wastewater treatment facility and increase the maximum month flow capacity from three million gallons per day to six million gallons per day by improving the fine screening, vortex grit removal, membrane bioreactor, and ultraviolet disinfection \$7,000,000

(2) Arlington—sanitary sewer project—improve the solids handling capacity of the wastewater treatment plant, expand the capacity of both the solids processing and liquid treatment portions of the plant, and alter the type of treatment process \$7,000,000

(3) Bainbridge Island—sanitary sewer project—construct an enclosed building to house the headworks equipment, construct a new building to house solid handling equipment, convert aeration for both basins from surface aeration to diffused air, add solid storage basins, upgrade two existing clarifiers and associated return activated sludge pumps, construct vactor decanting station, and replace existing electrical system \$3,564,500

(4) Bellingham—domestic water project—remove an aging diversion dam and replace its function with a withdrawal structure built into the river that will not impede the natural flow of the river to restore runs of two endangered species to the upper reaches of the middle fork of the Nooksack river and connect it with the existing system. \$3,400,000

(5) Birch Bay water and sewer district—sanitary sewer project—replace the sanitary sewer force main from pump station number 3 to the wastewater treatment plant and divert a portion of the districts sewer flow around pump station number 4 directly to pump station number 3 resulting in a twenty-six percent increase in sanitary sewer conveyance capacity \$2,305,625

(6) Buckley—sanitary sewer project—construction of a dewatering building to house a belt filter press sludge dewatering machine, rebuild and expand the wastewater treatment plant to provide nutrient removal and accommodate the wastewater from Rainier school and anticipated growth over the next twenty years, and construction of a gravity interceptor. Improvements to the plant include enclosed headworks with fine screens, grit removal, flow measurement and sampling, biological nutrient removal activated sludge process with new anaerobic basins, anoxic basins, and aeration basins, activated sludge clarifiers, and return sludge pumping, followed by ultraviolet light disinfection. \$7,000,000

(7) Enumclaw—sanitary sewer project—upgrade and expand the existing wastewater treatment plant including new headworks, new extended aeration activated sludge basins, new anaerobic/anoxic basins for phosphorus removal and denitrification, two additional secondary clarifiers, chemical facilities for additional phosphorus removal in the existing secondary clarifiers, sludge dewatering and stabilization facilities, enlarged laboratory area, increasing capacity to accommodate projected urban growth through 2022 \$5,700,000

(8) Everett—sanitary sewer project—limit biochemical oxygen demand loads of the wastewater flowing into the aeration ponds to less than 20,000 pounds per day by construction of a new treatment process in the wastewater stream by constructing the primary clarifiers that will feed up to 21,000,000 gallons per day to the trickling filters for additional treatment, eliminate the use of chlorine gas and replace it with a twelve percent sodium hypochlorite solution, construct a new 4.8 acre solids handling area to process biosolids, and modifications to the laboratory and operations room \$7,000,000

(9) Holmes Harbor sewer district—sanitary sewer project—modify the existing wastewater treatment plant and related systems to include 1,500,000 gallons of storage for incompletely treated effluent, including appurtenant pumping, piping, and control systems \$950,000

(10) King county water district number 54—domestic water project—replace and dispose of an eight-inch water distribution line and an abandoned six-inch water line as part of a project to replace a fill and box culvert with a bridge across Des Moines creek that will improve fish migration and alleviate excess pooling and flooding, provide a temporary line during construction, and install a permanent twelve-inch line under the new bridge \$150,300

(11) Kitsap county sewer district number 7—sanitary sewer project—upgrade and add capacity to the wastewater treatment plant by adding a second aeration basin, changing the existing aeration from a floating aerator to fine bubble diffusers, add a third clarifier, change influent screening from bars to a fine screen, add a second bank of ultraviolet lights, add a third return activated sludge pump, add a second sludge digester, and construct a utility building to house the equipment \$1,288,000

(12) Lake Stevens—sanitary sewer project—construction of a membrane bioreactor tertiary wastewater treatment plant outside the flood plain, construction of an interceptor line and pump station to intercept and redirect existing flows to the new plant, and associated easement acquisition, permit fees, construction management services, and startup and operation and maintenance manuals \$7,000,000

(13) Lakehaven utility district—sanitary sewer project—remove/replace and/or line approximately 1,030 feet of the existing outfall pipe starting from 100 feet inland to the end of the existing outfall, and extend the existing/new outfall from the previous end point approximately 800 feet further into Puget Sound to ensure the protection of shellfish beds in the area. \$2,400,000

(14) Malaga water district—domestic water project—design and construction of two pump stations, an approximately 60,000 gallon reservoir, approximately 11,000 feet of transmission/distribution main, a pressure reducing station, and other water system appurtenances \$1,064,950

(15) Mercer Island—sanitary sewer project—install approximately 16,000 feet of eight to sixteen-inch sewer main and 7,000 feet of six-inch side sewer laterals in Lake Washington along the north and northwest shoreline, replace and modify two pump stations, extend and connect side sewer laterals to the new main, finalize easements with approximately seventy-five property owners, install approximately ten maintenance manholes and cleanouts, and environmental mitigation \$7,000,000

- (16) Mill Creek—road project—replace existing culverts carrying Penny creek under Mill Creek Road with a new bridge structure in a different location by drilling piers along the outer edge of the alignment, installing pipe caps and precast concrete bridge deck panels, excavating under the panels, installing timber lagging as the excavation progresses, and constructing concrete walls over the lagging, reroute the streambed with some wetland mitigation work, relocate existing water line, and plugging and abandoning the existing culvert \$921,500
- (17) Mount Vernon—sanitary sewer project—construction of the phase one improvements for the wastewater treatment facility including a new pretreatment (grit and debris screening) facility, two additional primary clarifiers, upgrade of the existing aeration basins, two additional secondary clarifiers, an ultraviolet disinfection system for the effluent (replacing chlorine gas system), and an extensive odor control system. \$7,000,000
- (18) Moxee—sanitary sewer project—construct approximately 13,500 feet of wastewater conveyance piping and appurtenances along state route number 24 from Moxee to Riverside Road, discharging to a new lift station owned and operated by the Terrace Heights sewer district. \$2,000,000
- (19) Mukilteo—storm sewer project—construct approximately 16,500 feet of new eighteen to forty-eight inch storm water conveyance pipeline to transfer high storm water flows from Smugglers Gulch and Big Gulch stream channels, restoring the stream channel, associated fish and wildlife habitat, and adjacent infrastructure, as well as provide mitigation for disturbed wetlands \$3,587,200
- (20) North Bend—domestic water project—drilling, testing, and development of a new municipal supply well for the perfection of a new water right application with the department of ecology to supply the city and urban growth area with needed additional water, construction of approximately 21,200 lineal foot twelve-inch diversion pipeline from the south fork Tolt river reservoir to the north fork Snoqualmie river \$3,474,675
- (21) North Bonneville—sanitary sewer project—install a new headworks screen in the existing headworks structure, install a new clarifier, including piping modifications, in the existing sewer treatment plant, and painting existing metal surfaces in the existing treatment plant unit \$450,000
- (22) Oak Harbor—domestic water project—design and construction of approximately 5,700 feet of twenty-four inch diameter ductile iron water transmission main along highway 20 between Pass Lake and Sharpe's Corner as a replacement for existing water transmission main being destroyed as a result of planned highway construction \$2,694,500
- (23) Okanogan county—sanitary sewer project—construction, right of way acquisition and engineering for gravity and pressure pipe, lift stations, telemetry, treatment plant improvements, and associated facilities, water system improvements including supply main, fire hydrants, air/vac facilities, storage, booster pumping, telemetry, and applicable appurtenances \$7,000,000
- (24) Othello—road project—reconstruct 1,850 lineal feet of arterial truck route (Broadway Avenue), to include surface, subsurface, and impacted utilities, improved to heavy truck traffic standards, retaining the existing sidewalks, curbs, and gutters \$555,000

(25) Pullman—sanitary sewer project—construction of a new, approximately 500,000 gallon, variable volume digester at the wastewater treatment plant including site preparation, construction of the digester, necessary piping modifications, upgrades to the existing digesters as required to facilitate the new digester, and modifications to the plant's existing electrical and supervisory control system \$1,870,000

(26) Sammamish Plateau water and sewer district—domestic water project—design and construction of a new approximately 6.2 million gallon per day water treatment facility to remove arsenic, hydrogen sulfide, iron and manganese, and silica \$2,843,250

(27) Sedro-Woolley—sanitary sewer project—construction of approximately 29,700 linear feet of eight to thirty-inch pipes, and the design of two sewer pump stations. \$7,000,000

(28) Stanwood—domestic water project—prepare a feasibility study, well desktop treatment study, and a preliminary engineering report to determine the most cost-effective water system improvements, the most effective well treatment methods, and outlining the principal design criteria for all planned facilities, conduct a pilot plant study to confirm effectiveness of treatment and provide/confirm design criteria, obtain all necessary permits, prepare plans, specifications, and cost estimates for all improvements, construct a new treatment plant for the removal of arsenic, manganese, and hydrogen sulfide, construct approximately 500 lineal feet of new transmission water main, and approximately 1,500 linear feet of new distribution water mains to connect to the existing system \$3,194,733

(29) Stanwood—sanitary sewer project—parallel existing sewer alignment with approximately 4,000 lineal feet of thirty-inch sewer pipe in the same right of way corridor as the existing fourteen-inch interceptor and have a flow capacity of 6.5 million gallons a day sufficient to handle the projected 5.8 million gallons a day build outflow, and the replacement of the existing eight and twelve-inch water mains \$2,031,500

(30) Tenino—sanitary sewer project—construction of a new wastewater treatment plant and collection system with a membrane bioreactor treatment plant with a capacity of 360,000 gallons per day that will produce Class A reclaimed water, and approximately 68,516 lineal feet of one and one-half to six-inch diameter pipe and 784 individual grinder pumps \$7,000,000

(31) Terrace Heights sewer district—sanitary sewer project—construct a new lift station with a capacity of approximately 4,400 gallon per minute, approximately 11,700 feet of twelve-inch diameter force mains from the new lift station to the Yakima regional wastewater treatment facility, and approximately 4,200 feet of eight-inch diameter gravity sewer main \$3,655,000

(32) Union Gap—sanitary sewer project—replace approximately 3,800 feet of sewer line, institute hydrogen sulfide control measures at the master lift station to reduce corrosion problems, complete eight sewer pipeline point repairs, replace seven manholes, install manhole shields on forty-five manholes located in areas of potential flooding, investigate sixteen side sewer connections, conduct an inflow evaluation during the next flooding event, and visually inspect previously uninspected portions of the system \$1,037,000

(33) Val Vue sewer district—sanitary sewer project—replace approximately 11,000 linear feet of pipe and associated side sewers, construction of

approximately 1,900 linear feet of replacement main line sewers, construction of approximately 1,600 linear feet of sewer main replacement, replacement of approximately 300 linear feet of main, replacement of approximately 120 side sewer stubs, and improvements to a pump station by the addition of an emergency power generator \$3,554,700

(34) Whitworth water district number 2—domestic water project—install approximately 11,900 feet of sixteen-inch water pipe, 22,440 feet of twelve-inch water pipe, 4,140 feet of eight-inch water pipe together with valves, fire hydrants, and other appurtenances, and construct an approximately two million gallon ground level steel water reservoir, complete with access road, valving, level controls, and other appurtenances \$3,496,600

(35) Zillah—sanitary sewer project—construct wastewater facility improvements including a new screening system, construct a new aeration basin of approximately 159,000 gallons, install baffles in both clarifiers and replace the 28-year-old mechanical components of clarifier number 1, install a positive displacement pump in the aerobic digester building for automated daily sludge wasting, replace the existing ultraviolet system with a new and larger system, construct an effluent pump station to accommodate design peak hour flow, replace the submerged turbine aerators with fine bubble diffusers, and provide 480 volt service to all process electrical equipment, and eliminate dual voltage system now found at the plant \$2,295,000

(36) Auburn—sanitary sewer project—replace approximately 13,100 linear feet of 10, 12, and 15 inch concrete pipes with 24, 27, and 36 inch sewer pipes to handle existing and future wastewater flows. Removal of eight pressure reducing valves on a water transmission line and storm system revisions. \$3,500,000

(37) Battle Ground—sanitary sewer project—upgrades at Salmon Creek treatment plant to achieve added capacity and security. Construction of the new Kline sewer pump station and approximately five miles of force main system to accommodate future pumping capacity needs \$4,000,000

(38) Bellevue—road project—improve a section of NE 24th Street including widening the roadway to add five-foot bike lanes, constructing curb, gutter, and sidewalk, and introduce calming elements. The project is designed to improve safety by reducing areas of conflict between vehicular and nonmotorized traffic by reducing overall speeds \$750,000

(39) Burien—storm sewer project—construct approximately 1,450 linear feet of 30 to 42 inch and approximately 300 linear feet of 24 inch storm water trunk lines to eliminate flooding in downtown Burien during a 25-year storm event. Modify and expand the Ambaum regional detention pond to accommodate peak flows and to control the release of storm water in order to protect downstream habitat. \$1,547,000

(40) Clark public utilities—domestic water project—construct a 1,000 gallon per minute water supply well, construct and paint an approximately 300,000 gallon reservoir, install a 500 gallon per minute booster station, and replace approximately 90,000 feet of undersized and deteriorated water line. These projects will increase fire flow and generally improve the performance and reliability of the system \$5,087,250

- (41) Edmonds—road project—provide the necessary slope stability and improve the integrity of approximately 300 feet of roadway section that has been slowly moving down the hill toward a house due to slope failure \$624,750
- (42) Franklin County—road project—pave approximately 30 miles of gravel roads throughout the county to save wear and tear on the public's vehicles and savings in annual costs for maintenance \$4,500,000
- (43) Ilwaco—sanitary sewer project—replace a sewage pump station and renovate another sewage pump station, both of which are 35 years old to meet the department of ecology's requirements and save approximately \$13,000 every three years \$237,960
- (44) Lakewood—sanitary sewer project—construct three pump stations, approximately 17,200 linear feet of force main, approximately 13,500 linear feet of gravity collector pipeline, and approximately 320 side sewer stubs to eliminate septic systems in the American Lake gardens and Tillicum neighborhoods \$5,000,000
- (45) Olympus terrace sewer district—sanitary sewer project—construction of approximately 8,000 linear feet of trunk pipeline and approximately 16,500 linear feet of storm water conveyance pipeline to prevent high storm water flows from further eroding stream channels \$7,000,000
- (46) Seattle—storm sewer project—install approximately 2,860 feet of storm drain and approximately 6,800 feet of pipe to alleviate chronic flooding problems for at least 38 businesses and several residences in South Park \$5,000,000
- (47) Southwest suburban sewer district—sanitary sewer project—replace/rehabilitate approximately 16,700 linear feet of sewer mains to reduce environmental and public health issues associated with sewer backups \$3,910,000
- (48) Stevenson—domestic water project—replace a failing, unsafe, and hazardous pump station to address fire flow requirements, convert the vacated pump station into additional water reservoir storage, and install approximately 6,250 feet of transmission main to eliminate leaks \$795,000
- (49) Tacoma—domestic water project—construction of an ozonation treatment plant capable of treating approximately 168 million gallons per day that will provide disinfection and taste and odor compound control \$7,000,000
- (50) Vancouver—road project—widen approximately 5,000 linear feet of NE 138th Street to four lanes with center left turn lane, bike lanes, sidewalks, street lighting, and landscaping to increase capacity and safety, and upgrade traffic control. \$2,200,000
- (51) Washougal—sanitary sewer project—replace a pump station with approximately 6,250 linear feet of force and gravity mains, extending approximately 2,200 linear feet of gravity sewer, and extension of approximately 2,000 linear feet of interceptor sewer. The improvements protect the water quality of the Washougal River and serve the projected 20-year growth of the area \$2,070,000

NEW SECTION. Sec. 2. For any project on the proposed public works board recommended project list in section 1 of this act that replaces a water line over a creek, and where the project need and timeline are being determined by a

state agency and the city within its boundaries, the jurisdiction may be reimbursed for expenses incurred prior to the execution of the loan agreement.

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

Passed by the House March 4, 2006.

Passed by the Senate February 28, 2006.

Approved by the Governor March 28, 2006.

Filed in Office of Secretary of State March 28, 2006.

AUTHENTICATION

I, K. Kyle Thiessen, Code Reviser of the State of Washington, certify that, with the exception of such corrections as I have made in accordance with the powers vested in me by RCW 44.20.060, the laws published in this volume are a true and correct reproduction of the copies of the enrolled laws of the 2006 session (59th Legislature), chapters 1 through 273, as certified and transmitted to the Statute Law Committee by the Secretary of State under RCW 44.20.020.

IN TESTIMONY WHEREOF, I have hereunto set my hand at Olympia, Washington, this 7th day of April, 2006.



K. KYLE THIESSEN
Code Reviser