

EIGHTY SEVENTH DAY

MORNING SESSION

Senate Chamber, Olympia, Wednesday, April 6, 2011

The Senate was called to order at 10:00 a.m. by President Owen. The Secretary called the roll and announced to the President that all Senators were present.

The Sergeant at Arms Color Guard consisting of Pages Katherine Hill and Mariel Frank, presented the Colors. Reverend Kojo Kakihara of the Tacoma Buddhist Temple offered the prayer.

MOTION

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

MOTION

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

MESSAGE FROM THE HOUSE

April 5, 2011

MR. PRESIDENT:

The House has passed:

SENATE BILL NO. 5011,
 SENATE BILL NO. 5033,
 SUBSTITUTE SENATE BILL NO. 5168,
 SENATE BILL NO. 5172,
 SUBSTITUTE SENATE BILL NO. 5386,
 SENATE BILL NO. 5463,
 SENATE BILL NO. 5633.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

April 5, 2011

MR. PRESIDENT:

The House has passed:

ENGROSSED SUBSTITUTE SENATE BILL NO. 5020,
 ENGROSSED SUBSTITUTE SENATE BILL NO. 5068,
 ENGROSSED SUBSTITUTE SENATE BILL NO. 5105,
 SENATE BILL NO. 5117,
 SUBSTITUTE SENATE BILL NO. 5546,
 ENGROSSED SUBSTITUTE SENATE BILL NO. 5585,
 SENATE BILL NO. 5589,
 SUBSTITUTE SENATE BILL NO. 5635,
 SUBSTITUTE SENATE BILL NO. 5664,
 SUBSTITUTE SENATE BILL NO. 5797,
 SUBSTITUTE SENATE BILL NO. 5800.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

April 5, 2011

MR. PRESIDENT:

The House has passed:

SUBSTITUTE HOUSE BILL NO. 1312.

and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

April 5, 2011

MR. PRESIDENT:

The House has passed:

SUBSTITUTE HOUSE BILL NO. 1632,
 HOUSE BILL 2019.

and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

April 5, 2011

MR. PRESIDENT:

The House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 1495 and passed the bill as amended by the Senate.

and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

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

INTRODUCTION AND FIRST READING

SB 5918 by Senators Delvin and King

AN ACT Relating to equity and fairness through the creation and regulation of electronic scratch ticket machines for nontribal gambling establishments; amending RCW 67.70.040, 67.70.330, and 9.46.291; adding a new chapter to Title 67 RCW; and providing an effective date.

Referred to Committee on Labor, Commerce & Consumer Protection.

SB 5919 by Senators Murray and Zarelli

AN ACT Relating to education funding; amending RCW 28A.150.198, 28A.150.200, 28A.150.220, 28A.150.260, 28A.150.315, 28A.160.150, 28A.160.192, 28A.400.201, 28A.400.205, 28B.50.465, and 28A.405.415; reenacting and amending RCW 28A.290.010 and 28A.505.220; creating a new section; repealing 2010 c 236 s 1 (uncodified); providing effective dates; and declaring an emergency.

Referred to Committee on Ways & Means.

SB 5920 by Senators Murray and Zarelli

AN ACT Relating to annual increase amounts in the public employees' retirement system plan 1 and the teachers' retirement system plan 1; amending RCW 41.32.483, 41.32.489, 41.40.183, 41.40.197, and 41.45.150; creating a new section; declaring an emergency; and providing an effective date.

Referred to Committee on Ways & Means.

MOTION

On motion of Senator Eide, all measures listed on the Introduction and First Reading report were referred to the committees as designated.

MOTION

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

MOTION

Senator Roach moved adoption of the following resolution:

SENATE RESOLUTION 8644

By Senators Roach, Benton, Nelson, Chase, and Prentice

WHEREAS, Autism is a developmental disability that typically appears during the first two years of life and continues through the individual's lifespan; and

WHEREAS, Autism is the fastest growing developmental disability, affecting 1 million to 1.5 million Americans, 1 in 110 babies born; and

WHEREAS, 1 in 70 boys are affected, as opposed to 1 in 375 girls; and

WHEREAS, Many children are not diagnosed until after 3 years of age, often because of lack of recognition of autism characteristics by general practitioners; and

WHEREAS, There are many different characteristics in individuals with autism - delayed or deficient communication, decreased or unresponsive social interaction, unusual reaction to normal stimuli, a lack of spontaneous or imaginative play, and behavioral challenges; and

WHEREAS, There is no known cause and no known cure, however with aggressive and continuous therapy, some individuals can learn to acclimate to their environment and mask symptoms of their disability; and

WHEREAS, All individuals with autism should be included and regarded as valuable members of our community; and

WHEREAS, Autism can create significant stress on the families of those affected by autism; and

WHEREAS, Families, caregivers, advocates, and organizations, such as the Autism Society of Washington, Northwest Autism Center, Families for Effective Autism Treatment, Autism Awareness of Washington, and the Arc of Washington State, are striving to bring about positive changes for children and adults with autism; and

WHEREAS, Through research, training, public services, support groups, advocacy, and increased awareness, we will be more understanding, inclusive, and better equipped to support the growing number of individuals with autism and their families;

NOW, THEREFORE, BE IT RESOLVED, That the Washington State Senate honor and support individuals with autism

and acknowledge the tremendous courage that they and their families put forth every day; and

BE IT FURTHER RESOLVED, That a copy of this resolution be immediately transmitted by the Secretary of the Senate to the Honorable Christine Gregoire.

Senators Roach, Prentice, Pflug, Rockefeller, McAuliffe, Becker and Kohl-Welles spoke in favor of adoption of the resolution.

The President declared the question before the Senate to be the adoption of Senate Resolution No. 8644.

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

INTRODUCTION OF SPECIAL GUESTS

The President welcomed and introduced representatives of the Autism Society of Washington who were seated in the gallery.

MOTION

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

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1663, by House Committee on Higher Education (originally sponsored by Representatives Parker, Ormsby, Probst, Billig, Schmick, Fagan, Angel and Ahern)

Removing the requirement that institutions of higher education purchase from correctional industries.

The measure was read the second time.

MOTION

Senator Tom moved that the following committee striking amendment by the Committee on Higher Education & Workforce Development be adopted:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 28B.10.029 and 2010 c 61 s 1 are each amended to read as follows:

(1)(a) An institution of higher education may exercise independently those powers otherwise granted to the director of general administration in chapter 43.19 RCW in connection with the purchase and disposition of all material, supplies, services, and equipment needed for the support, maintenance, and use of the respective institution of higher education.

(b) Property disposition policies followed by institutions of higher education shall be consistent with policies followed by the department of general administration.

(c) Purchasing policies and procedures followed by institutions of higher education shall be in compliance with chapters 39.19, 39.29, and 43.03 RCW, and RCW 43.19.1901, 43.19.1906, 43.19.1911, 43.19.1917, 43.19.1937, ((43.19.534,)) 43.19.685, 43.19.700 through 43.19.704, and 43.19.560 through 43.19.637.

(d) Purchases under chapter 39.29, 43.19, or 43.105 RCW by institutions of higher education may be made by using contracts for materials, supplies, services, or equipment negotiated or entered into by, for, or through group purchasing organizations.

(e) The community and technical colleges shall comply with RCW 43.19.450.

EIGHTY SEVENTH DAY, APRIL 6, 2011

2011 REGULAR SESSION

(f) Except for the University of Washington, institutions of higher education shall comply with RCW 43.41.310, 43.41.290, and 43.41.350.

(g) If an institution of higher education can satisfactorily demonstrate to the director of the office of financial management that the cost of compliance is greater than the value of benefits from any of the following statutes, then it shall be exempt from them: RCW 43.19.685, (~~43.19.534~~) and 43.19.637.

(h) Any institution of higher education that chooses to exercise independent purchasing authority for a commodity or group of commodities shall notify the director of general administration. Thereafter the director of general administration shall not be required to provide those services for that institution for the duration of the general administration contract term for that commodity or group of commodities.

(2) The council of presidents and the state board for community and technical colleges shall convene its correctional industries business development advisory committee, and work collaboratively with correctional industries, to:

(a) Reaffirm purchasing criteria and ensure that quality, service, and timely delivery result in the best value for expenditure of state dollars;

(b) Update the approved list of correctional industries products from which higher education shall purchase; and

(c) Develop recommendations on ways to continue to build correctional industries' business with institutions of higher education.

(3) Higher education and correctional industries shall develop a plan to build higher education business with correctional industries to increase higher education purchases of correctional industries products, based upon the criteria established in subsection (2) of this section. The plan shall include the correctional industries' production and sales goals for higher education and an approved list of products from which higher education institutions shall purchase, based on the criteria established in subsection (2) of this section. Higher education and correctional industries shall report to the legislature regarding the plan and its implementation no later than January 30, 2005.

(4)(a) Institutions of higher education shall set as a target to contract, beginning not later than June 30, 2006, to purchase one percent of the total goods and services required by the institutions each year produced or provided in whole or in part from class II inmate work programs operated by the department of corrections. Institutions of higher education shall set as a target to contract, beginning not later than June 30, 2008, to purchase two percent of the total goods and services required by the institutions each year produced or provided in whole or in part from class II inmate work programs operated by the department of corrections.

(b) Institutions of higher education shall endeavor to assure the department of corrections has notifications of bid opportunities with the goal of meeting or exceeding the purchasing target in (a) of this subsection.

(5) An institution of higher education may exercise independently those powers otherwise granted to the public printer in chapter 43.78 RCW in connection with the production or purchase of any printing and binding needed by the respective institution of higher education. Purchasing policies and procedures followed by institutions of higher education shall be in compliance with chapter 39.19 RCW. Any institution of higher education that chooses to exercise independent printing production or purchasing authority shall notify the public printer. Thereafter the public printer shall not be required to provide those services for that institution.

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."

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

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Higher Education & Workforce Development to Substitute House Bill No. 1663.

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

MOTION

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

On page 1, line 2 of the title, after "education;" strike the remainder of the title and insert "amending RCW 28B.10.029; and declaring an emergency."

MOTION

On motion of Senator Tom, the rules were suspended, Substitute House Bill No. 1663 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Tom spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1663 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1663 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 44; Nays, 5; Absent, 0; Excused, 0.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Brown, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, Morton, Murray, Nelson, Parlette, Pflug, Pridemore, Ranker, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

Voting nay: Senators Carrell, Hargrove, McAuliffe, Prentice and Regala

SUBSTITUTE HOUSE BILL NO. 1663 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 1477, by Representatives Schmick, Sells, Springer, Haler, Roberts and Kenney

Authorizing the board of trustees at Eastern Washington University to offer educational specialist degrees.

The measure was read the second time.

MOTION

On motion of Senator Tom, the rules were suspended, House Bill No. 1477 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Tom spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 1477.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 1477 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

HOUSE BILL NO. 1477, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1886, by House Committee on Local Government (originally sponsored by Representatives Takko, Angel, Bailey and Tharinger)

Implementing recommendations of the Ruckelshaus Center process.

The measure was read the second time.

MOTION

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

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. (1) The purpose of this act is to establish the voluntary stewardship program as recommended in the report submitted by the William D. Ruckelshaus Center to the legislature as required by chapter 353, Laws of 2007 and chapter 203, Laws of 2010.

(2) It is the intent of this act to:

(a) Promote plans to protect and enhance critical areas within the area where agricultural activities are conducted, while maintaining and improving the long-term viability of agriculture in the state of Washington and reducing the conversion of farmland to other uses;

(b) Focus and maximize voluntary incentive programs to encourage good riparian and ecosystem stewardship as an alternative to historic approaches used to protect critical areas;

(c) Rely upon RCW 36.70A.060 for the protection of critical areas for those counties that do not choose to participate in this program;

(d) Leverage existing resources by relying upon existing work and plans in counties and local watersheds, as well as existing state and federal programs to the maximum extent practicable to achieve program goals;

(e) Encourage and foster a spirit of cooperation and partnership among county, tribal, environmental, and agricultural interests to better assure the program success;

(f) Improve compliance with other laws designed to protect water quality and fish habitat; and

(g) Rely upon voluntary stewardship practices as the primary method of protecting critical areas and not require the cessation of agricultural activities.

NEW SECTION. Sec. 2. The definitions in this section apply to sections 1 through 15 of this act and RCW 36.70A.130 and 36.70A.280 unless the context clearly requires otherwise.

(1) "Agricultural activities" means all agricultural uses and practices as defined in RCW 90.58.065.

(2) "Commission" means the state conservation commission as defined in RCW 89.08.030.

(3) "Director" means the executive director of the state conservation commission.

(4) "Enhance" or "enhancement" means to improve the processes, structure, and functions existing, as of the effective date of this section, of ecosystems and habitats associated with critical areas.

(5) "Participating watershed" means a watershed identified by a county under section 4(1) of this act to participate in the program.

(6) "Priority watershed" means a geographic area nominated by the county and designated by the commission.

(7) "Program" means the voluntary stewardship program established in section 3 of this act.

(8) "Protect" or "protecting" means to prevent the degradation of functions and values existing as of the effective date of this section.

(9) "Receipt of funding" means the date a county takes legislative action accepting any funds as required in section 5(1) of this act to implement the program.

(10) "Statewide advisory committee" means the statewide advisory committee created in section 11 of this act.

(11) "Technical panel" means the directors or director designees of the following agencies: The department of fish and wildlife; the department of agriculture; the department of ecology; and the commission.

(12) "Watershed" means a water resource inventory area, salmon recovery planning area, or a subbasin as determined by a county.

(13) "Watershed group" means an entity designated by a county under the provisions of section 5 of this act.

(14) "Work plan" means a watershed work plan developed under the provisions of section 6 of this act.

NEW SECTION. Sec. 3. (1) The voluntary stewardship program is established to be administered by the commission. The program shall be designed to protect and enhance critical areas on lands used for agricultural activities through voluntary actions by agricultural operators.

(2) In administering the program, the commission must:

(a) Establish policies and procedures for implementing the program;

(b) Administer funding for counties to implement the program including, but not limited to, funding to develop strategies and incentive programs and to establish local guidelines for watershed stewardship programs;

(c) Administer the program's technical assistance funds and coordinate among state agencies and other entities for the implementation of the program;

(d) Establish a technical panel;

(e) In conjunction with the technical panel, review and evaluate: (i) Work plans submitted for approval under section 6(2)(a) of this act; and (ii) reports submitted under section 6(2)(b) of this act;

(f) Review and evaluate the program's success and effectiveness and make appropriate changes to policies and procedures for implementing the program, in consultation with the statewide advisory committee and other affected agencies;

EIGHTY SEVENTH DAY, APRIL 6, 2011

2011 REGULAR SESSION

(g) Designate priority watersheds based upon the recommendation of the statewide advisory committee. The commission and the statewide advisory committee may only consider watersheds nominated by counties under section 4 of this act. When designating priority watersheds, the commission and the statewide advisory committee shall consider the statewide significance of the criteria listed in section 4(3) of this act;

(h) Provide administrative support for the program's statewide advisory committee in its work. The administrative support must be in collaboration with the department of ecology and other agencies involved in the program;

(i) Maintain a web site about the program that includes times, locations, and agenda information for meetings of the statewide advisory committee;

(j) Report to the legislature on the general status of program implementation by December 1, 2013, and December 1, 2015;

(k) In conjunction with the statewide advisory committee, conduct a review of the program beginning in 2017 and every five years thereafter, and report its findings to the legislature by December 1st; and

(l) Report to the appropriate committees of the legislature in the format provided in RCW 43.01.036.

(3) The department shall assist counties participating in the program to develop plans and development regulations under section 9(1) of this act.

(4) The commission, department, department of agriculture, department of fish and wildlife, department of ecology, and other state agencies as directed by the governor shall:

(a) Cooperate and collaborate to implement the program; and

(b) Develop materials to assist local watershed groups in development of work plans.

(5) State agencies conducting new monitoring to implement the program in a watershed must focus on the goals and benchmarks of the work plan.

NEW SECTION. Sec. 4. (1)(a) As an alternative to protecting critical areas in areas used for agricultural activities through development regulations adopted under RCW 36.70A.060, the legislative authority of a county may elect to protect such critical areas through the program.

(b) In order to participate in the program, within six months after the effective date of this section, the legislative authority of a county must adopt an ordinance or resolution that:

(i) Elects to have the county participate in the program;

(ii) Identifies the watersheds that will participate in the program; and

(iii) Based on the criteria in subsection (4) of this section, nominates watersheds for consideration by the commission as state priority watersheds.

(2) Before adopting the ordinance or resolution under subsection (1) of this section, the county must (a) confer with tribes, and environmental and agricultural interests; and (b) provide notice following the public participation and notice provisions of RCW 36.70A.035 to property owners and other affected and interested individuals, tribes, government agencies, businesses, school districts, and organizations.

(3) In identifying watersheds to participate in the program, a county must consider:

(a) The role of farming within the watershed, including the number and acreage of farms, the economic value of crops and livestock, and the risk of the conversion of farmland;

(b) The overall likelihood of completing a successful program in the watershed; and

(c) Existing watershed programs, including those of other jurisdictions in which the watershed has territory.

(4) In identifying priority watersheds, a county must consider the following:

(a) The role of farming within the watershed, including the number and acreage of farms, the economic value of crops and livestock, and the risk of the conversion of farmland;

(b) The importance of salmonid resources in the watershed;

(c) An evaluation of the biological diversity of wildlife species and their habitats in the geographic region including their significance and vulnerability;

(d) The presence of leadership within the watershed that is representative and inclusive of the interests in the watershed;

(e) Integration of regional watershed strategies, including the availability of a data and scientific review structure related to all types of critical areas;

(f) The presence of a local watershed group that is willing and capable of overseeing a successful program, and that has the operational structures to administer the program effectively, including professional technical assistance staff, and monitoring and adaptive management structures; and

(g) The overall likelihood of completing a successful program in the watershed.

(5) Except as otherwise provided in subsection (9) of this section, beginning with the effective date of the ordinance or resolution adopted under subsection (1) of this section, the program applies to all unincorporated property upon which agricultural activities occur within a participating watershed.

(6)(a) Except as otherwise provided in (b) of this subsection, within two years after the effective date of this section, a county must review and, if necessary, revise development regulations adopted under this chapter to protect critical areas as they specifically apply to agricultural activities:

(i) If the county has not elected to participate in the program, for all unincorporated areas; or

(ii) If the county has elected to participate in the program, for any watershed not participating in the program.

(b) A county that between July 1, 2003, and June 30, 2007, in accordance with RCW 36.70A.130 completed the review of its development regulations as required by RCW 36.70A.130 to protect critical areas as they specifically apply to agricultural activities is not required to review and revise its development regulations until required by RCW 36.70A.130.

(c) After the review and amendment required under (a) of this subsection, RCW 36.70A.130 applies to the subsequent review and amendment of development regulations adopted under this chapter to protect critical areas as they specifically apply to agricultural activities.

(7)(a) A county that has made the election under subsection (1) of this section may withdraw a participating watershed from the program by adopting an ordinance or resolution withdrawing the watershed from the program. A county may withdraw a watershed from the program at the end of three years, five years, or eight years after receipt of funding, or any time after ten years from receipt of funding.

(b) Within eighteen months after withdrawing a participating watershed from the program, the county must review and, if necessary, revise its development regulations that protect critical areas in that watershed as they specifically apply to agricultural activities. The development regulations must protect the critical area functions and values as they existed on the effective date of this section. RCW 36.70A.130 applies to the subsequent review and amendment of development regulations adopted under this chapter to protect critical areas as they specifically apply to agricultural activities.

(8) A county that has made the election under subsection (1) of this section is eligible for a share of the funding made available to

implement the program, subject to funding availability from the state.

(9) A county that has made the election under subsection (1) of this section is not required to implement the program in a participating watershed until adequate funding for the program in that watershed is provided to the county.

NEW SECTION. Sec. 5. (1) When the commission makes funds available to a county that has made the election provided in section 4(1) of this act, the county must within sixty days:

(a) Acknowledge the receipt of funds; and

(b) Designate a watershed group and an entity to administer funds for each watershed for which funding has been provided.

(2) A county must confer with tribes and interested stakeholders before designating or establishing a watershed group.

(3) The watershed group must include broad representation of key watershed stakeholders and, at a minimum, representatives of agricultural and environmental groups and tribes that agree to participate. The county should encourage existing lead entities, watershed planning units, or other integrating organizations to serve as the watershed group.

(4) The county may designate itself, a tribe, or another entity to coordinate the local watershed group.

NEW SECTION. Sec. 6. (1) A watershed group designated by a county under section 5 of this act must develop a work plan to protect critical areas while maintaining the viability of agriculture in the watershed. The work plan must include goals and benchmarks for the protection and enhancement of critical areas. In developing and implementing the work plan, the watershed group must:

(a) Review and incorporate applicable water quality, watershed management, farmland protection, and species recovery data and plans;

(b) Seek input from tribes, agencies, and stakeholders;

(c) Develop goals for participation by agricultural operators conducting commercial and noncommercial agricultural activities in the watershed necessary to meet the protection and enhancement benchmarks of the work plan;

(d) Ensure outreach and technical assistance is provided to agricultural operators in the watershed;

(e) Create measurable benchmarks that, within ten years after the receipt of funding, are designed to result in (i) the protection of critical area functions and values and (ii) the enhancement of critical area functions and values through voluntary, incentive-based measures;

(f) Designate the entity or entities that will provide technical assistance;

(g) Work with the entity providing technical assistance to ensure that individual stewardship plans contribute to the goals and benchmarks of the work plan;

(h) Incorporate into the work plan any existing development regulations relied upon to achieve the goals and benchmarks for protection;

(i) Establish baseline monitoring for: (i) Participation activities and implementation of the voluntary stewardship plans and projects; (ii) stewardship activities; and (iii) the effects on critical areas and agriculture relevant to the protection and enhancement benchmarks developed for the watershed;

(j) Conduct periodic evaluations, institute adaptive management, and provide a written report of the status of plans and accomplishments to the county and to the commission within sixty days after the end of each biennium;

(k) Assist state agencies in their monitoring programs; and

(l) Satisfy any other reporting requirements of the program.

(2)(a) The watershed group shall develop and submit the work plan to the director for approval as provided in section 7 of this act.

(b)(i) Not later than five years after the receipt of funding for a participating watershed, the watershed group must report to the

director and the county on whether it has met the work plan's protection and enhancement goals and benchmarks.

(ii) If the watershed group determines the protection goals and benchmarks have been met, and the director concurs under section 8 of this act, the watershed group shall continue to implement the work plan.

(iii) If the watershed group determines the protection goals and benchmarks have not been met, it must propose and submit to the director an adaptive management plan to achieve the goals and benchmarks that were not met. If the director does not approve the adaptive management plan under section 8 of this act, the watershed is subject to section 9 of this act.

(iv) If the watershed group determines the enhancement goals and benchmarks have not been met, the watershed group must determine what additional voluntary actions are needed to meet the benchmarks, identify the funding necessary to implement these actions, and implement these actions when funding is provided.

(c)(i) Not later than ten years after receipt of funding for a participating watershed, and every five years thereafter, the watershed group must report to the director and the county on whether it has met the protection and enhancement goals and benchmarks of the work plan.

(ii) If the watershed group determines the protection goals and benchmarks have been met, and the director concurs under section 8 of this act, the watershed group shall continue to implement the work plan.

(iii) If the watershed group determines the protection goals and benchmarks have not been met, the watershed is subject to section 9 of this act.

(iv) If the watershed group determines the enhancement goals and benchmarks have not been met, the watershed group must determine what additional voluntary actions are needed to meet the benchmarks, identify the funding necessary to implement these actions, and implement these actions when funding is provided.

(3) Following approval of a work plan, a county or watershed group may request a state or federal agency to focus existing enforcement authority in that participating watershed, if the action will facilitate progress toward achieving work plan protection goals and benchmarks.

(4) The commission may provide priority funding to any watershed designated under the provisions of section 3(2)(g) of this act. The director, in consultation with the statewide advisory committee, shall work with the watershed group to develop an accelerated implementation schedule for watersheds that receive priority funding.

(5) Commercial and noncommercial agricultural operators participating in the program are eligible to receive funding and assistance under watershed programs.

NEW SECTION. Sec. 7. (1) Upon receipt of a work plan submitted to the director under section 6(2)(a) of this act, the director must submit the work plan to the technical panel for review.

(2) The technical panel shall review the work plan and report to the director within forty-five days after the director receives the work plan. The technical panel shall assess whether at the end of ten years after receipt of funding, the work plan, in conjunction with other existing plans and regulations, will protect critical areas while maintaining and enhancing the viability of agriculture in the watershed.

(3)(a) If the technical panel determines the proposed work plan will protect critical areas while maintaining and enhancing the viability of agriculture in the watershed:

(i) It must recommend approval of the work plan; and

(ii) The director must approve the work plan.

(b) If the technical panel determines the proposed work plan will not protect critical areas while maintaining and enhancing the viability of agriculture in the watershed:

EIGHTY SEVENTH DAY, APRIL 6, 2011

2011 REGULAR SESSION

(i) It must identify the reasons for its determination; and

(ii) The director must advise the watershed group of the reasons for disapproval.

(4) The watershed group may modify and resubmit its work plan for review and approval consistent with this section.

(5) If the director does not approve a work plan submitted under this section within two years and nine months after receipt of funding, the director shall submit the work plan to the statewide advisory committee for resolution. If the statewide advisory committee recommends approval, the director must approve the work plan.

(6) If the director does not approve a work plan for a watershed within three years after receipt of funding, the provisions of section 9(2) of this act apply to the watershed.

NEW SECTION. Sec. 8. (1) Upon receipt of a report by a watershed group under section 6(2)(b) of this act that the work plan goals and benchmarks have been met, the director must consult with the statewide advisory committee. If the director concurs with the watershed group report, the watershed group shall continue to implement the work plan. If the director does not concur with the watershed group report, the director shall consult with the statewide advisory committee following the procedures in subsection (2) of this section.

(2) If either the director, following receipt of a report under subsection (1) of this section, or the watershed group, in the report submitted to the director under section 6(2)(b) of this act, concludes that the work plan goals and benchmarks for protection have not been met, the director must consult with the statewide advisory committee for a recommendation on how to proceed. If the director, acting upon recommendation from the statewide advisory committee, determines that the watershed is likely to meet the goals and benchmarks with an additional six months of planning and implementation time, the director must grant an extension. If the director, acting upon a recommendation from the statewide advisory committee, determines that the watershed is unlikely to meet the goals and benchmarks within six months, the watershed is subject to section 9 of this act.

(3) A watershed that fails to meet its goals and benchmarks for protection within the six-month time extension under subsection (2) of this section is subject to section 9 of this act.

NEW SECTION. Sec. 9. (1) Within eighteen months after one of the events in subsection (2) of this section, a county must:

(a) Develop, adopt, and implement a watershed work plan approved by the department that protects critical areas in areas used for agricultural activities while maintaining the viability of agriculture in the watershed. The department shall consult with the departments of agriculture, ecology, and fish and wildlife and the commission, and other relevant state agencies before approving or disapproving the proposed work plan. The appeal of the department's decision under this subsection is subject to appeal under RCW 36.70A.280;

(b) Adopt development regulations previously adopted under this chapter by another local government for the purpose of protecting critical areas in areas used for agricultural activities. Regulations adopted under this subsection (1)(b) must be from a region with similar agricultural activities, geography, and geology and must: (i) Be from Clallam, Clark, King, or Whatcom counties; or (ii) have been upheld by a growth management hearings board or court after July 1, 2011, where the board or court determined that the provisions adequately protected critical areas functions and values in areas used for agricultural activities;

(c) Adopt development regulations certified by the department as protective of critical areas in areas used for agricultural activities as required by this chapter. The county may submit existing or amended regulations for certification. The department must make

its decision on whether to certify the development regulations within ninety days after the county submits its request. If the department denies the certification, the county shall take an action under (a), (b), or (d) of this subsection. The department must consult with the departments of agriculture, ecology, and fish and wildlife and the commission before making a certification under this section. The appeal of the department's decision under this subsection (1)(c) is subject to appeal under RCW 36.70A.280; or

(d) Review and, if necessary, revise development regulations adopted under this chapter to protect critical areas as they relate to agricultural activities.

(2) A participating watershed is subject to this section if:

(a) The work plan is not approved by the director as provided in section 7 of this act;

(b) The work plan's goals and benchmarks for protection have not been met as provided in section 6 of this act;

(c) The commission has determined under section 10 of this act that the county, department, commission, or departments of agriculture, ecology, or fish and wildlife have not received adequate funding to implement a program in the watershed; or

(d) The commission has determined under section 10 of this act that the watershed has not received adequate funding to implement the program.

(3) The department shall adopt rules to implement subsection (1)(a) and (c) of this section.

NEW SECTION. Sec. 10. (1) By July 31, 2015, the commission must:

(a) In consultation with each county that has elected under section 4 of this act to participate in the program, determine which participating watersheds received adequate funding to establish and implement the program in a participating watershed by July 1, 2015; and

(b) In consultation with other state agencies, for each participating watershed determine whether state agencies required to take action under the provisions of sections 1 through 15 of this act have received adequate funding to support the program by July 1, 2015.

(2) By July 31, 2017, and every two years thereafter, in consultation with each county that has elected under section 4 of this act to participate in the program and other state agencies, the commission shall determine for each participating watershed whether adequate funding to implement the program was provided during the preceding biennium as provided in subsection (1) of this section.

(3) If the commission determines under subsection (1) or (2) of this section that a participating watershed has not received adequate funding, the watershed is subject to the provisions of section 9 of this act.

(4) In consultation with the statewide advisory committee and other state agencies, not later than August 31, 2015, and each August 31st every two years thereafter, the commission shall report to the legislature and each county that has elected under section 4 of this act to participate in the program on the participating watersheds that have received adequate funding to establish and implement the program.

NEW SECTION. Sec. 11. (1)(a) From the nominations made under (b) of this subsection, the commission shall appoint a statewide advisory committee, consisting of: Two persons representing county government, two persons representing agricultural organizations, and two persons representing environmental organizations. The commission, in conjunction with the governor's office, shall also invite participation by two representatives of tribal governments.

(b) Organizations representing county, agricultural, and environmental organizations shall submit nominations of their

representatives to the commission within ninety days of the effective date of this section. Members of the statewide advisory committee shall serve two-year terms except that for the first year, one representative from each of the sectors shall be appointed to the statewide advisory committee for a term of one year. Members may be reappointed by the commission for additional two-year terms and replacement members shall be appointed in accordance with the process for selection of the initial members of the statewide advisory committee.

(c) Upon notification of the commission by an appointed member, the appointed member may designate a person to serve as an alternate.

(d) The executive director of the commission shall serve as a nonvoting chair of the statewide advisory committee.

(e) Members of the statewide advisory committee shall serve without compensation and, unless serving as a state officer or employee, are not eligible for reimbursement for subsistence, lodging, and travel expenses under RCW 43.03.050 and 43.03.060.

(2) The role of the statewide advisory committee is to advise the commission and other agencies involved in development and operation of the program.

NEW SECTION. Sec. 12. (1) Agricultural operators implementing an individual stewardship plan consistent with a work plan are presumed to be working toward the protection and enhancement of critical areas.

(2) If the watershed group determines that additional or different practices are needed to achieve the work plan's goals and benchmarks, the agricultural operator may not be required to implement those practices but may choose to implement the revised practices on a voluntary basis and is eligible for funding to revise the practices.

NEW SECTION. Sec. 13. In developing stewardship practices to implement the work plan, to the maximum extent practical the watershed group should:

(1) Avoid management practices that may have unintended adverse consequences for other habitats, species, and critical areas functions and values; and

(2) Administer the program in a manner that allows participants to be eligible for public or private environmental protection and enhancement incentives while protecting and enhancing critical area functions and values.

NEW SECTION. Sec. 14. An agricultural operator participating in the program may withdraw from the program and is not required to continue voluntary measures after the expiration of an applicable contract. The watershed group must account for any loss of protection resulting from withdrawals when establishing goals and benchmarks for protection and a work plan under section 6 of this act.

NEW SECTION. Sec. 15. Nothing in sections 1 through 14 of this act may be construed to:

(1) Interfere with or supplant the ability of any agricultural operator to work cooperatively with a conservation district or participate in state or federal conservation programs;

(2) Require an agricultural operator to discontinue agricultural activities legally existing before the effective date of this section;

(3) Prohibit the voluntary sale or leasing of land for conservation purposes, either in fee or as an easement;

(4) Grant counties or state agencies additional authority to regulate critical areas on lands used for agricultural activities; and

(5) Limit the authority of a state agency, local government, or landowner to carry out its obligations under any other federal, state, or local law.

Sec. 16. RCW 36.70A.130 and 2010 c 216 s 1 and 2010 c 211 s 2 are each reenacted and amended to read as follows:

(1)(a) Each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation by

the county or city that adopted them. Except as otherwise provided, a county or city shall take legislative action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure the plan and regulations comply with the requirements of this chapter according to the deadlines in subsections (4) and (5) of this section.

(b) Except as otherwise provided, a county or city not planning under RCW 36.70A.040 shall take action to review and, if needed, revise its policies and development regulations regarding critical areas and natural resource lands adopted according to this chapter to ensure these policies and regulations comply with the requirements of this chapter according to the deadlines in subsections (4) and (5) of this section. Legislative action means the adoption of a resolution or ordinance following notice and a public hearing indicating at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefor.

(c) The review and evaluation required by this subsection may be combined with the review required by subsection (3) of this section. The review and evaluation required by this subsection shall include, but is not limited to, consideration of critical area ordinances and, if planning under RCW 36.70A.040, an analysis of the population allocated to a city or county from the most recent ten-year population forecast by the office of financial management.

(d) Any amendment of or revision to a comprehensive land use plan shall conform to this chapter. Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan.

(2)(a) Each county and city shall establish and broadly disseminate to the public a public participation program consistent with RCW 36.70A.035 and 36.70A.140 that identifies procedures and schedules whereby updates, proposed amendments, or revisions of the comprehensive plan are considered by the governing body of the county or city no more frequently than once every year. "Updates" means to review and revise, if needed, according to subsection (1) of this section, and the deadlines in subsections (4) and (5) of this section or in accordance with the provisions of subsection (6) of this section. Amendments may be considered more frequently than once per year under the following circumstances:

(i) The initial adoption of a subarea plan. Subarea plans adopted under this subsection (2)(a)(i) must clarify, supplement, or implement jurisdiction-wide comprehensive plan policies, and may only be adopted if the cumulative impacts of the proposed plan are addressed by appropriate environmental review under chapter 43.21C RCW;

(ii) The development of an initial subarea plan for economic development located outside of the one hundred year floodplain in a county that has completed a state-funded pilot project that is based on watershed characterization and local habitat assessment;

(iii) The adoption or amendment of a shoreline master program under the procedures set forth in chapter 90.58 RCW;

(iv) The amendment of the capital facilities element of a comprehensive plan that occurs concurrently with the adoption or amendment of a county or city budget; or

(v) The adoption of comprehensive plan amendments necessary to enact a planned action under RCW 43.21C.031(2), provided that amendments are considered in accordance with the public participation program established by the county or city under this subsection (2)(a) and all persons who have requested notice of a comprehensive plan update are given notice of the amendments and an opportunity to comment.

(b) Except as otherwise provided in (a) of this subsection, all proposals shall be considered by the governing body concurrently so the cumulative effect of the various proposals can be ascertained. However, after appropriate public participation a county or city may

EIGHTY SEVENTH DAY, APRIL 6, 2011

2011 REGULAR SESSION

adopt amendments or revisions to its comprehensive plan that conform with this chapter whenever an emergency exists or to resolve an appeal of a comprehensive plan filed with the growth management hearings board or with the court.

(3)(a) Each county that designates urban growth areas under RCW 36.70A.110 shall review, at least every ten years, its designated urban growth area or areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area. In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas.

(b) The county comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period. The review required by this subsection may be combined with the review and evaluation required by RCW 36.70A.215.

(4) Except as provided in subsection (6) of this section, counties and cities shall take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter as follows:

(a) On or before December 1, 2004, for Clallam, Clark, Jefferson, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties and the cities within those counties;

(b) On or before December 1, 2005, for Cowlitz, Island, Lewis, Mason, San Juan, Skagit, and Skamania counties and the cities within those counties;

(c) On or before December 1, 2006, for Benton, Chelan, Douglas, Grant, Kittitas, Spokane, and Yakima counties and the cities within those counties; and

(d) On or before December 1, 2007, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.

(5) Except as otherwise provided in subsections (6) and (8) of this section, following the review of comprehensive plans and development regulations required by subsection (4) of this section, counties and cities shall take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter as follows:

(a) On or before December 1, 2014, and every seven years thereafter, for Clallam, Clark, Jefferson, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties and the cities within those counties;

(b) On or before December 1, 2015, and every seven years thereafter, for Cowlitz, Island, Lewis, Mason, San Juan, Skagit, and Skamania counties and the cities within those counties;

(c) On or before December 1, 2016, and every seven years thereafter, for Benton, Chelan, Douglas, Grant, Kittitas, Spokane, and Yakima counties and the cities within those counties; and

(d) On or before December 1, 2017, and every seven years thereafter, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.

(6)(a) Nothing in this section precludes a county or city from conducting the review and evaluation required by this section before the deadlines established in subsections (4) and (5) of this section.

Counties and cities may begin this process early and may be eligible for grants from the department, subject to available funding, if they elect to do so.

(b) A county that is subject to a deadline established in subsection (4)(b) through (d) of this section and meets the following criteria may comply with the requirements of this section at any time within the thirty-six months following the deadline established in subsection (4) of this section: The county has a population of less than fifty thousand and has had its population increase by no more than seventeen percent in the ten years preceding the deadline established in subsection (4) of this section as of that date.

(c) A city that is subject to a deadline established in subsection (4)(b) through (d) of this section and meets the following criteria may comply with the requirements of this section at any time within the thirty-six months following the deadline established in subsection (4) of this section: The city has a population of no more than five thousand and has had its population increase by the greater of either no more than one hundred persons or no more than seventeen percent in the ten years preceding the deadline established in subsection (4) of this section as of that date.

(d) A county or city that is subject to a deadline established in subsection (4)(d) of this section and that meets the criteria established in subsection (6)(b) or (c) of this section may comply with the requirements of subsection (4)(d) of this section at any time within the thirty-six months after the extension provided in subsection (6)(b) or (c) of this section.

(e) State agencies are encouraged to provide technical assistance to the counties and cities in the review of critical area ordinances, comprehensive plans, and development regulations.

(7)(a) The requirements imposed on counties and cities under this section shall be considered "requirements of this chapter" under the terms of RCW 36.70A.040(1). Only those counties and cities that meet the following criteria may receive grants, loans, pledges, or financial guarantees under chapter 43.155 or 70.146 RCW:

(i) Complying with the deadlines in this section;

(ii) Demonstrating substantial progress towards compliance with the schedules in this section for development regulations that protect critical areas; or

(iii) Complying with the extension provisions of subsection (6)(b), (c), or (d) of this section.

(b) A county or city that is fewer than twelve months out of compliance with the schedules in this section for development regulations that protect critical areas is making substantial progress towards compliance. Only those counties and cities in compliance with the schedules in this section may receive preference for grants or loans subject to the provisions of RCW 43.17.250.

(8)(a) Except as otherwise provided in (c) of this subsection, if a participating watershed is achieving benchmarks and goals for the protection of critical areas functions and values, the county is not required to update development regulations to protect critical areas as they specifically apply to agricultural activities in that watershed.

(b) A county that has made the election under section 4(1) of this act may only adopt or amend development regulations to protect critical areas as they specifically apply to agricultural activities in a participating watershed if:

(i) A work plan has been approved for that watershed in accordance with section 7 of this act;

(ii) The local watershed group for that watershed has requested the county to adopt or amend development regulations as part of a work plan developed under section 6 of this act;

(iii) The adoption or amendment of the development regulations is necessary to enable the county to respond to an order of the growth management hearings board or court;

(iv) The adoption or amendment of development regulations is necessary to address a threat to human health or safety; or

(v) Three or more years have elapsed since the receipt of funding.

(c) Beginning ten years from the date of receipt of funding, a county that has made the election under section 4(1) of this act must review and, if necessary, revise development regulations to protect critical areas as they specifically apply to agricultural activities in a participating watershed in accordance with the review and revision requirements and timeline in subsection (5) of this section. This subsection (8)(c) does not apply to a participating watershed that has determined under section 6(2)(c)(ii) of this act that the watershed's goals and benchmarks for protection have been met.

Sec. 17. RCW 36.70A.280 and 2010 c 211 s 7 are each amended to read as follows:

(1) The growth management hearings board shall hear and determine only those petitions alleging either:

(a) That, except as provided otherwise by this subsection, a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW. Nothing in this subsection authorizes the board to hear petitions alleging noncompliance with RCW 36.70A.5801; ((or))

(b) That the twenty-year growth management planning population projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted;

(c) That the approval of a work plan adopted under section 9(1)(a) of this act is not in compliance with the requirements of the program established under section 4 of this act;

(d) That regulations adopted under section 9(1)(b) of this act are not regionally applicable and cannot be adopted, wholly or partially, by another jurisdiction; or

(e) That a department certification under section 9(1)(c) of this act is erroneous.

(2) A petition may be filed only by: (a) The state, or a county or city that plans under this chapter; (b) a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested; (c) a person who is certified by the governor within sixty days of filing the request with the board; or (d) a person qualified pursuant to RCW 34.05.530.

(3) For purposes of this section "person" means any individual, partnership, corporation, association, state agency, governmental subdivision or unit thereof, or public or private organization or entity of any character.

(4) To establish participation standing under subsection (2)(b) of this section, a person must show that his or her participation before the county or city was reasonably related to the person's issue as presented to the board.

(5) When considering a possible adjustment to a growth management planning population projection prepared by the office of financial management, the board shall consider the implications of any such adjustment to the population forecast for the entire state.

The rationale for any adjustment that is adopted by the board must be documented and filed with the office of financial management within ten working days after adoption.

If adjusted by the board, a county growth management planning population projection shall only be used for the planning purposes set forth in this chapter and shall be known as the "board adjusted population projection." None of these changes shall affect the official state and county population forecasts prepared by the office of financial management, which shall continue to be used for state budget and planning purposes.

NEW SECTION. Sec. 18. Sections 1 through 15 of this act are each added to chapter 36.70A RCW under the subchapter heading "voluntary stewardship program."

NEW SECTION. Sec. 19. A new section is added to chapter 43.21C RCW to read as follows:

(1) Decisions made under section 6 of this act pertaining to work plans, as defined in section 2 of this act, are not subject to the requirements of RCW 43.21C.030(2)(c).

(2) Decisions made by a county under section 4 of this act on whether to participate in the voluntary stewardship program established by section 3 of this act are not subject to the requirements of RCW 43.21C.030(2)(c).

NEW SECTION. Sec. 20. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 21. 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."

Senators Hatfield and Pridemore spoke in favor of adoption of the committee striking amendment.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means to Engrossed Substitute House Bill No. 1886.

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

MOTION

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

On page 1, line 3 of the title, after "2007;" strike the remainder of the title and insert "amending RCW 36.70A.280; reenacting and amending RCW 36.70A.130; adding new sections to chapter 36.70A RCW; adding a new section to chapter 43.21C RCW; and creating a new section."

MOTION

On motion of Senator Hatfield, the rules were suspended, Engrossed Substitute House Bill No. 1886 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Hatfield, Parlette and Haugen spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 1886 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 1886 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 1; Absent, 0; Excused, 0.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Erickson, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray,

EIGHTY SEVENTH DAY, APRIL 6, 2011

2011 REGULAR SESSION

Nelson, Parlette, Pflug, Prentice, Pridemore, Ranker, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

Voting nay: Senator Regala

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1886 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1309, by House Committee on Judiciary (originally sponsored by Representatives Roberts, Appleton, Rodne, Springer, Hasegawa, Ryu, Eddy, Green, Kagi and Kelley)

Concerning reserve accounts and studies for condominium and homeowners' associations.

The measure was read the second time.

MOTION

Senator Hobbs moved that the following committee striking amendment by the Committee on Financial Institutions, Housing & Insurance be adopted:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 64.34.020 and 2008 c 115 s 8 are each amended to read as follows:

In the declaration and bylaws, unless specifically provided otherwise or the context requires otherwise, and in this chapter:

(1) "Affiliate" means any person who controls, is controlled by, or is under common control with the referenced person. A person "controls" another person if the person: (a) Is a general partner, officer, director, or employer of the referenced person; (b) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the referenced person; (c) controls in any manner the election of a majority of the directors of the referenced person; or (d) has contributed more than twenty percent of the capital of the referenced person. A person "is controlled by" another person if the other person: (i) Is a general partner, officer, director, or employer of the person; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the person; (iii) controls in any manner the election of a majority of the directors of the person; or (iv) has contributed more than twenty percent of the capital of the person. Control does not exist if the powers described in this subsection are held solely as security for an obligation and are not exercised.

(2) "Allocated interests" means the undivided interest in the common elements, the common expense liability, and votes in the association allocated to each unit.

(3) "Assessment" means all sums chargeable by the association against a unit including, without limitation: (a) Regular and special assessments for common expenses, charges, and fines imposed by the association; (b) interest and late charges on any delinquent account; and (c) costs of collection, including reasonable attorneys' fees, incurred by the association in connection with the collection of a delinquent owner's account.

(4) "Association" or "unit owners' association" means the unit owners' association organized under RCW 64.34.300.

(5) "Board of directors" means the body, regardless of name, with primary authority to manage the affairs of the association.

(6) "Common elements" means all portions of a condominium other than the units.

(7) "Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves.

(8) "Common expense liability" means the liability for common expenses allocated to each unit pursuant to RCW 64.34.224.

(9) "Condominium" means real property, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real property is not a condominium unless the undivided interests in the common elements are vested in the unit owners, and unless a declaration and a survey map and plans have been recorded pursuant to this chapter.

(10) "Contribution rate" means, in a reserve study as described in RCW 64.34.380, the amount contributed to the reserve account so that the association will have cash reserves to pay major maintenance, repair, or replacement costs without the need of a special assessment.

(11) "Conversion condominium" means a condominium (a) that at any time before creation of the condominium was lawfully occupied wholly or partially by a tenant or subtenant for residential purposes pursuant to a rental agreement, oral or written, express or implied, for which the tenant or subtenant had not received the notice described in (b) of this subsection; or (b) that, at any time within twelve months before the conveyance of, or acceptance of an agreement to convey, any unit therein other than to a declarant or any affiliate of a declarant, was lawfully occupied wholly or partially by a residential tenant of a declarant or an affiliate of a declarant and such tenant was not notified in writing, prior to lawfully occupying a unit or executing a rental agreement, whichever event first occurs, that the unit was part of a condominium and subject to sale. "Conversion condominium" shall not include a condominium in which, before July 1, 1990, any unit therein had been conveyed or been made subject to an agreement to convey to any transferee other than a declarant or an affiliate of a declarant.

(12) "Conveyance" means any transfer of the ownership of a unit, including a transfer by deed or by real estate contract and, with respect to a unit in a leasehold condominium, a transfer by lease or assignment thereof, but shall not include a transfer solely for security.

(13) "Dealer" means a person who, together with such person's affiliates, owns or has a right to acquire either six or more units in a condominium or fifty percent or more of the units in a condominium containing more than two units.

(14) "Declarant" means:

(a) Any person who executes as declarant a declaration as defined in subsection (16) of this section; or

(b) Any person who reserves any special declarant right in the declaration; or

(c) Any person who exercises special declarant rights or to whom special declarant rights are transferred; or

(d) Any person who is the owner of a fee interest in the real property which is subjected to the declaration at the time of the recording of an instrument pursuant to RCW 64.34.316 and who directly or through one or more affiliates is materially involved in the construction, marketing, or sale of units in the condominium created by the recording of the instrument.

(15) "Declarant control" means the right of the declarant or persons designated by the declarant to appoint and remove officers and members of the board of directors, or to veto or approve a

proposed action of the board or association, pursuant to RCW 64.34.308 ~~((4)-(5))~~ (5) or (6).

(16) "Declaration" means the document, however denominated, that creates a condominium by setting forth the information required by RCW 64.34.216 and any amendments to that document.

(17) "Development rights" means any right or combination of rights reserved by a declarant in the declaration to: (a) Add real property or improvements to a condominium; (b) create units, common elements, or limited common elements within real property included or added to a condominium; (c) subdivide units or convert units into common elements; (d) withdraw real property from a condominium; or (e) reallocate limited common elements with respect to units that have not been conveyed by the declarant.

(18) "Dispose" or "disposition" means a voluntary transfer or conveyance to a purchaser or lessee of any legal or equitable interest in a unit, but does not include the transfer or release of a security interest.

(19) "Effective age" means the difference between the estimated useful life and remaining useful life.

(20) "Eligible mortgagee" means the holder of a mortgage on a unit that has filed with the secretary of the association a written request that it be given copies of notices of any action by the association that requires the consent of mortgagees.

(21) "Foreclosure" means a forfeiture or judicial or nonjudicial foreclosure of a mortgage or a deed in lieu thereof.

(22) "Fully funded balance" means the current value of the deteriorated portion, not the total replacement value, of all the reserve components. The fully funded balance for each reserve component is calculated by multiplying the current replacement cost of that reserve component by its effective age, then dividing the result by that reserve component's useful life. The sum total of all reserve components' fully funded balances is the association's fully funded balance.

(23) "Identifying number" means the designation of each unit in a condominium.

(24) "Leasehold condominium" means a condominium in which all or a portion of the real property is subject to a lease, the expiration or termination of which will terminate the condominium or reduce its size.

(25) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of RCW 64.34.204 (2) or (4) for the exclusive use of one or more but fewer than all of the units.

(26) "Master association" means an organization described in RCW 64.34.276, whether or not it is also an association described in RCW 64.34.300.

(27) "Mortgage" means a mortgage, deed of trust or real estate contract.

(28) "Person" means a natural person, corporation, partnership, limited partnership, trust, governmental subdivision or agency, or other legal entity.

(29) "Purchaser" means any person, other than a declarant or a dealer, who by means of a disposition acquires a legal or equitable interest in a unit other than (a) a leasehold interest, including renewal options, of less than twenty years at the time of creation of the unit, or (b) as security for an obligation.

(30) "Real property" means any fee, leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements thereon and easements, rights and interests appurtenant thereto which by custom, usage, or law pass with a conveyance of land although not described in the contract of sale or instrument of conveyance. "Real property" includes parcels, with or without upper or lower boundaries, and spaces that may be filled with air or water.

(31) "Remaining useful life" means the estimated time, in years, ~~((that a reserve component can be expected to continue to serve))~~

before a reserve component will require major maintenance, repair, or replacement to perform its intended function.

(32) "Replacement cost" means the current cost of replacing, repairing, or restoring a reserve component to its original functional condition.

(33) "Residential purposes" means use for dwelling or recreational purposes, or both.

(34) "Reserve component((s))" means a common element((s)) whose cost of maintenance, repair, or replacement is infrequent, significant, and impractical to include in an annual budget.

(35) "Reserve study professional" means an independent person who is suitably qualified by knowledge, skill, experience, training, or education to prepare a reserve study in accordance with RCW 64.34.380 and 64.34.382.

(36) "Special declarant rights" means rights reserved for the benefit of a declarant to: (a) Complete improvements indicated on survey maps and plans filed with the declaration under RCW 64.34.232; (b) exercise any development right under RCW 64.34.236; (c) maintain sales offices, management offices, signs advertising the condominium, and models under RCW 64.34.256; (d) use easements through the common elements for the purpose of making improvements within the condominium or within real property which may be added to the condominium under RCW 64.34.260; (e) make the condominium part of a larger condominium or a development under RCW 64.34.280; (f) make the condominium subject to a master association under RCW 64.34.276; or (g) appoint or remove any officer of the association or any master association or any member of the board of directors, or to veto or approve a proposed action of the board or association, during any period of declarant control under RCW 64.34.308~~((4))~~ (5).

(37) "Timeshare" shall have the meaning specified in the timeshare act, RCW 64.36.010(11).

(38) "Unit" means a physical portion of the condominium designated for separate ownership, the boundaries of which are described pursuant to RCW 64.34.216(1)(d). "Separate ownership" includes leasing a unit in a leasehold condominium under a lease that expires contemporaneously with any lease, the expiration or termination of which will remove the unit from the condominium.

(39) "Unit owner" means a declarant or other person who owns a unit or leases a unit in a leasehold condominium under a lease that expires simultaneously with any lease, the expiration or termination of which will remove the unit from the condominium, but does not include a person who has an interest in a unit solely as security for an obligation. "Unit owner" means the vendee, not the vendor, of a unit under a real estate contract.

(40) "Useful life" means the estimated time, ~~((#))~~ between years, that ~~((a reserve component can be expected to serve its intended function))~~ major maintenance, repair, or replacement is estimated to occur.

(41) "Baseline funding plan" means establishing a reserve funding goal of maintaining a reserve account balance above zero dollars throughout the thirty-year study period described under RCW 64.34.380.

(42) "Full funding plan" means setting a reserve funding goal of achieving one hundred percent fully funded reserves by the end of the thirty-year study period described under RCW 64.34.380, in which the reserve account balance equals the sum of the deteriorated portion of all reserve components.

(43) "Significant assets" means that the current total cost of major maintenance, repair, and replacement of the reserve components is fifty percent or more of the gross budget of the association, excluding reserve account funds.

Sec. 2. RCW 64.34.308 and 1992 c 220 s 15 are each amended to read as follows:

EIGHTY SEVENTH DAY, APRIL 6, 2011

2011 REGULAR SESSION

(1) Except as provided in the declaration, the bylaws, subsection (2) of this section, or other provisions of this chapter, the board of directors shall act in all instances on behalf of the association. In the performance of their duties, the officers and members of the board of directors are required to exercise: (a) If appointed by the declarant, the care required of fiduciaries of the unit owners; or (b) if elected by the unit owners, ordinary and reasonable care.

(2) The board of directors shall not act on behalf of the association to amend the declaration in any manner that requires the vote or approval of the unit owners pursuant to RCW 64.34.264, to terminate the condominium pursuant to RCW 64.34.268, or to elect members of the board of directors or determine the qualifications, powers, and duties, or terms of office of members of the board of directors pursuant to subsection ~~((6))~~ (7) of this section; but the board of directors may fill vacancies in its membership for the unexpired portion of any term.

(3) Within thirty days after adoption of any proposed budget for the condominium, the board of directors shall provide a summary of the budget to all the unit owners and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the owners of units to which a majority of the votes in the association are allocated or any larger percentage specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the unit owners shall be continued until such time as the unit owners ratify a subsequent budget proposed by the board of directors.

(4) As part of the summary of the budget provided to all unit owners, the board of directors shall disclose to the unit owners:

(a) The current amount of regular assessments budgeted for contribution to the reserve account, the recommended contribution rate from the reserve study, and the funding plan upon which the recommended contribution rate is based;

(b) If additional regular or special assessments are scheduled to be imposed, the date the assessments are due, the amount of the assessments per each unit per month or year, and the purpose of the assessments;

(c) Based upon the most recent reserve study and other information, whether currently projected reserve account balances will be sufficient at the end of each year to meet the association's obligation for major maintenance, repair, or replacement of reserve components during the next thirty years;

(d) If reserve account balances are not projected to be sufficient, what additional assessments may be necessary to ensure that sufficient reserve account funds will be available each year during the next thirty years, the approximate dates assessments may be due, and the amount of the assessments per unit per month or year;

(e) The estimated amount recommended in the reserve account at the end of the current fiscal year based on the most recent reserve study, the projected reserve account cash balance at the end of the current fiscal year, and the percent funded at the date of the latest reserve study;

(f) The estimated amount recommended in the reserve account based upon the most recent reserve study at the end of each of the next five budget years, the projected reserve account cash balance in each of those years, and the projected percent funded for each of those years; and

(g) If the funding plan approved by the association is implemented, the projected reserve account cash balance in each of the next five budget years and the percent funded for each of those years.

(5)(a) Subject to subsection ~~((5))~~ (6) of this section, the declaration may provide for a period of declarant control of the

association, during which period a declarant, or persons designated by the declarant, may: (i) Appoint and remove the officers and members of the board of directors; or (ii) veto or approve a proposed action of the board or association. A declarant's failure to veto or approve such proposed action in writing within thirty days after receipt of written notice of the proposed action shall be deemed approval by the declarant.

(b) Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of: (i) Sixty days after conveyance of seventy-five percent of the units which may be created to unit owners other than a declarant; (ii) two years after the last conveyance or transfer of record of a unit except as security for a debt; (iii) two years after any development right to add new units was last exercised; or (iv) the date on which the declarant records an amendment to the declaration pursuant to which the declarant voluntarily surrenders the right to further appoint and remove officers and members of the board of directors. A declarant may voluntarily surrender the right to appoint and remove officers and members of the board of directors before termination of that period pursuant to (i), (ii), and (iii) of this subsection ~~((4))~~ (5)(b), but in that event the declarant may require, for the duration of the period of declarant control, that specified actions of the association or board of directors, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

~~((5))~~ (6) Not later than sixty days after conveyance of twenty-five percent of the units which may be created to unit owners other than a declarant, at least one member and not less than twenty-five percent of the members of the board of directors must be elected by unit owners other than the declarant. Not later than sixty days after conveyance of fifty percent of the units which may be created to unit owners other than a declarant, not less than thirty-three and one-third percent of the members of the board of directors must be elected by unit owners other than the declarant.

~~((6))~~ (7) Within thirty days after the termination of any period of declarant control, the unit owners shall elect a board of directors of at least three members, at least a majority of whom must be unit owners. The number of directors need not exceed the number of units then in the condominium. The board of directors shall elect the officers. Such members of the board of directors and officers shall take office upon election.

~~((7))~~ (8) Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a two-thirds vote of the voting power in the association present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the board of directors with or without cause, other than a member appointed by the declarant. The declarant may not remove any member of the board of directors elected by the unit owners. Prior to the termination of the period of declarant control, the unit owners, other than the declarant, may remove by a two-thirds vote, any director elected by the unit owners.

Sec. 3. RCW 64.34.380 and 2008 c 115 s 1 are each amended to read as follows:

(1) An association is encouraged to establish a reserve account with a financial institution to fund major maintenance, repair, and replacement of common elements, including limited common elements that will require major maintenance, repair, or replacement within thirty years. ~~((A reserve account shall be established in the name of the association.))~~ If the association establishes a reserve account, the account must be in the name of the association. The board of directors is responsible for administering the reserve account.

(2) Unless doing so would impose an unreasonable hardship, an association with significant assets shall prepare and update a reserve study, in accordance with the association's governing documents

and RCW 64.34.224(1). The initial reserve study must be based upon a visual site inspection conducted by a reserve study professional.

(3) Unless doing so would impose an unreasonable hardship, the association shall update the reserve study annually. At least every three years, an updated reserve study must be prepared and based upon a visual site inspection conducted by a reserve study professional.

(4) This section and RCW 64.34.382 through ~~((64.34.390))~~ 64.34.392 apply to condominiums governed by chapter 64.32 RCW or this chapter and intended in whole or in part for residential purposes. These sections do not apply to condominiums consisting solely of units that are restricted in the declaration to nonresidential use. An association's governing documents may contain stricter requirements.

Sec. 4. RCW 64.34.382 and 2008 c 115 s 2 are each amended to read as follows:

(1) A reserve study as described in RCW 64.34.380 is supplemental to the association's operating and maintenance budget. In preparing a reserve study, the association shall estimate the anticipated major maintenance, repair, and replacement costs, whose infrequent and significant nature make them impractical to be included in an annual budget.

(2) A reserve study ~~((shall))~~ must include:

(a) A reserve component list, including roofing, painting, paving, decks, siding, plumbing, windows, and any other reserve component that would cost more than one percent of the annual budget for major maintenance, repair, or replacement. If one of these reserve components is not included in the reserve study, the study should provide commentary explaining the basis for its exclusion. The study must also include quantities and estimates for the useful life of each reserve component, remaining useful life of each reserve component, and current repair and replacement cost for each component;

(b) The date of the study and a statement that the study meets the requirements of this section;

(c) The following level of reserve study performed:

(i) Level I: Full reserve study funding analysis and plan;

(ii) Level II: Update with visual site inspection; or

(iii) Level III: Update with no visual site inspection;

(d) The association's reserve account balance;

(e) The percentage of the fully funded balance that the reserve account is funded;

(f) Special assessments already implemented or planned;

(g) Interest and inflation assumptions;

(h) Current reserve account contribution rate;

(i) A recommended reserve account contribution rate, a contribution rate for a full funding plan to achieve one hundred percent fully funded reserves by the end of the thirty-year study period, a baseline funding plan to maintain the reserve balance above zero throughout the thirty-year study period without special assessments, and a contribution rate recommended by a reserve study professional;

(j) A projected reserve account balance for thirty years and a funding plan to pay for projected costs from those reserves without reliance on future unplanned special assessments; and

(k) A statement on whether the reserve study was prepared with the assistance of a reserve study professional.

(3) A reserve study shall include the following disclosure:

"This reserve study should be reviewed carefully. It may not include all common and limited common element components that will require major maintenance, repair, or replacement in future years, and may not include regular contributions to a reserve account for the cost of

such maintenance, repair, or replacement. The failure to include a component in a reserve study, or to provide contributions to a reserve account for a component, may, under some circumstances, require you to pay on demand as a special assessment your share of common expenses for the cost of major maintenance, repair, or replacement of a reserve component."

Sec. 5. RCW 64.34.384 and 2008 c 115 s 3 are each amended to read as follows:

An association may withdraw funds from its reserve account to pay for unforeseen or unbudgeted costs that are unrelated to maintenance, repair, or replacement of the reserve components. The board of directors shall record any such withdrawal in the minute books of the association, cause notice of any such withdrawal to be hand delivered or sent prepaid by first-class United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner, and adopt a repayment schedule not to exceed twenty-four months unless it determines that repayment within twenty-four months would impose an unreasonable burden on the unit owners. Payment for major maintenance, repair, or replacement of the reserve components out of cycle with the reserve study projections or not included in the reserve study may be made from the reserve account without meeting the notification or repayment requirements under this section.

Sec. 6. RCW 64.34.010 and 2008 c 115 s 7 and 2008 c 114 s 1 are each reenacted and amended to read as follows:

(1) This chapter applies to all condominiums created within this state after July 1, 1990. RCW 64.34.040 (separate titles and taxation), RCW 64.34.050 (applicability of local ordinances, regulations, and building codes), RCW 64.34.060 (condemnation), RCW 64.34.208 (construction and validity of declaration and bylaws), RCW 64.34.268 (1) through (7) and (10) (termination of condominium), RCW 64.34.212 (description of units), RCW 64.34.304(1) (a) through (f) and (k) through ~~((#))~~ (l) (powers of unit owners' association), RCW 64.34.308(1) (board of directors and officers), RCW 64.34.340 (voting—proxies), RCW 64.34.344 (tort and contract liability), RCW 64.34.354 (notification on sale of unit), RCW 64.34.360(3) (common expenses—assessments), RCW 64.34.364 (lien for assessments), RCW 64.34.372 (association records), RCW 64.34.425 (resales of units), RCW 64.34.455 (effect of violation on rights of action; attorney's fees), RCW 64.34.380 through ~~((34.34.390))~~ 64.34.392 (reserve studies and accounts), and RCW 64.34.020 (definitions) to the extent necessary in construing any of those sections, apply to all condominiums created in this state before July 1, 1990; but those sections apply only with respect to events and circumstances occurring after July 1, 1990, and do not invalidate or supersede existing, inconsistent provisions of the declaration, bylaws, or survey maps or plans of those condominiums.

(2) The provisions of chapter 64.32 RCW do not apply to condominiums created after July 1, 1990, and do not invalidate any amendment to the declaration, bylaws, and survey maps and plans of any condominium created before July 1, 1990, if the amendment would be permitted by this chapter. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by chapter 64.32 RCW. If the amendment grants to any person any rights, powers, or privileges permitted by this chapter which are not otherwise provided for in the declaration or chapter 64.32 RCW, all correlative obligations, liabilities, and restrictions in this chapter also apply to that person.

(3) This chapter does not apply to condominiums or units located outside this state.

EIGHTY SEVENTH DAY, APRIL 6, 2011

2011 REGULAR SESSION

(4) RCW 64.34.400 (applicability—waiver), RCW 64.34.405 (liability for public offering statement requirements), RCW 64.34.410 (public offering statement—general provisions), RCW 64.34.415 (public offering statement—conversion condominiums), RCW 64.34.420 (purchaser's right to cancel), RCW 64.34.430 (escrow of deposits), RCW 64.34.440 (conversion condominiums—notice—tenants(~~(relocation assistance)~~—relocation assistance), and RCW 64.34.455 (effect of violations on rights of action—attorney's fees) apply with respect to all sales of units pursuant to purchase agreements entered into after July 1, 1990, in condominiums created before July 1, 1990, in which as of July 1, 1990, the declarant or an affiliate of the declarant owns or had the right to create at least ten units constituting at least twenty percent of the units in the condominium.

Sec. 7. RCW 64.38.010 and 1995 c 283 s 2 are each amended to read as follows:

For purposes of this chapter:

(1) "Homeowners' association" or "association" means a corporation, unincorporated association, or other legal entity, each member of which is an owner of residential real property located within the association's jurisdiction, as described in the governing documents, and by virtue of membership or ownership of property is obligated to pay real property taxes, insurance premiums, maintenance costs, or for improvement of real property other than that which is owned by the member. "Homeowners' association" does not mean an association created under chapter 64.32 or 64.34 RCW.

(2) "Governing documents" means the articles of incorporation, bylaws, plat, declaration of covenants, conditions, and restrictions, rules and regulations of the association, or other written instrument by which the association has the authority to exercise any of the powers provided for in this chapter or to manage, maintain, or otherwise affect the property under its jurisdiction.

(3) "Board of directors" or "board" means the body, regardless of name, with primary authority to manage the affairs of the association.

(4) "Common areas" means property owned, or otherwise maintained, repaired or administered by the association.

(5) "Common expense" means the costs incurred by the association to exercise any of the powers provided for in this chapter.

(6) "Residential real property" means any real property, the use of which is limited by law, covenant or otherwise to primarily residential or recreational purposes.

(7) "Assessment" means all sums chargeable to an owner by an association in accordance with RCW 64.38.020.

(8) "Baseline funding plan" means establishing a reserve funding goal of maintaining a reserve account balance above zero dollars throughout the thirty-year study period described under section 9 of this act.

(9) "Contribution rate" means, in a reserve study as described in RCW 64.34.380, the amount contributed to the reserve account so that the association will have cash reserves to pay major maintenance, repair, or replacement costs without the need of a special assessment.

(10) "Effective age" means the difference between the estimated useful life and remaining useful life.

(11) "Full funding plan" means setting a reserve funding goal of achieving one hundred percent fully funded reserves by the end of the thirty-year study period described under section 9 of this act, in which the reserve account balance equals the sum of the deteriorated portion of all reserve components.

(12) "Fully funded balance" means the current value of the deteriorated portion, not the total replacement value, of all the reserve components. The fully funded balance for each reserve

component is calculated by multiplying the current replacement cost of the reserve component by its effective age, then dividing the result by the reserve component's useful life. The sum total of all reserve components' fully funded balances is the association's fully funded balance.

(13) "Lot" means a physical portion of the real property located within an association's jurisdiction designated for separate ownership.

(14) "Owner" means the owner of a lot, but does not include a person who has an interest in a lot solely as security for an obligation. "Owner" also means the vendee, not the vendor, of a lot under a real estate contract.

(15) "Remaining useful life" means the estimated time, in years, before a reserve component will require major maintenance, repair, or replacement to perform its intended function.

(16) "Replacement cost" means the current cost of replacing, repairing, or restoring a reserve component to its original functional condition.

(17) "Reserve component" means a common element whose cost of maintenance, repair, or replacement is infrequent, significant, and impractical to include in an annual budget.

(18) "Reserve study professional" means an independent person who is suitably qualified by knowledge, skill, experience, training, or education to prepare a reserve study in accordance with RCW 64.34.380 and 64.34.382.

(19) "Significant assets" means that the current replacement value of the major reserve components is seventy-five percent or more of the gross budget of the association, excluding the association's reserve account funds.

(20) "Useful life" means the estimated time, between years, that major maintenance, repair, or replacement is estimated to occur.

Sec. 8. RCW 64.38.025 and 1995 c 283 s 5 are each amended to read as follows:

(1) Except as provided in the association's governing documents or this chapter, the board of directors shall act in all instances on behalf of the association. In the performance of their duties, the officers and members of the board of directors shall exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 24.03 RCW.

(2) The board of directors shall not act on behalf of the association to amend the articles of incorporation, to take any action that requires the vote or approval of the owners, to terminate the association, to elect members of the board of directors, or to determine the qualifications, powers, and duties, or terms of office of members of the board of directors; but the board of directors may fill vacancies in its membership of the unexpired portion of any term.

(3) Within thirty days after adoption by the board of directors of any proposed regular or special budget of the association, the board shall set a date for a meeting of the owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the owners of a majority of the votes in the association are allocated or any larger percentage specified in the governing documents reject the budget, in person or by proxy, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the owners shall be continued until such time as the owners ratify a subsequent budget proposed by the board of directors.

(4) As part of the summary of the budget provided to all owners, the board of directors shall disclose to the owners:

(a) The current amount of regular assessments budgeted for contribution to the reserve account, the recommended contribution rate from the reserve study, and the funding plan upon which the recommended contribution rate is based;

(b) If additional regular or special assessments are scheduled to be imposed, the date the assessments are due, the amount of the assessments per each owner per month or year, and the purpose of the assessments;

(c) Based upon the most recent reserve study and other information, whether currently projected reserve account balances will be sufficient at the end of each year to meet the association's obligation for major maintenance, repair, or replacement of reserve components during the next thirty years;

(d) If reserve account balances are not projected to be sufficient, what additional assessments may be necessary to ensure that sufficient reserve account funds will be available each year during the next thirty years, the approximate dates assessments may be due, and the amount of the assessments per owner per month or year;

(e) The estimated amount recommended in the reserve account at the end of the current fiscal year based on the most recent reserve study, the projected reserve account cash balance at the end of the current fiscal year, and the percent funded at the date of the latest reserve study;

(f) The estimated amount recommended in the reserve account based upon the most recent reserve study at the end of each of the next five budget years, the projected reserve account cash balance in each of those years, and the projected percent funded for each of those years; and

(g) If the funding plan approved by the association is implemented, the projected reserve account cash balance in each of the next five budget years and the percent funded for each of those years.

(5) The owners by a majority vote of the voting power in the association present, in person or by proxy, and entitled to vote at any meeting of the owners at which a quorum is present, may remove any member of the board of directors with or without cause.

NEW SECTION. Sec. 9. A new section is added to chapter 64.38 RCW to read as follows:

(1) An association is encouraged to establish a reserve account with a financial institution to fund major maintenance, repair, and replacement of common elements, including limited common elements that will require major maintenance, repair, or replacement within thirty years. If the association establishes a reserve account, the account must be in the name of the association. The board of directors is responsible for administering the reserve account.

(2) Unless doing so would impose an unreasonable hardship, an association with significant assets shall prepare and update a reserve study, in accordance with the association's governing documents and this chapter. The initial reserve study must be based upon a visual site inspection conducted by a reserve study professional.

(3) Unless doing so would impose an unreasonable hardship, the association shall update the reserve study annually. At least every three years, an updated reserve study must be prepared and based upon a visual site inspection conducted by a reserve study professional.

(4) The decisions relating to the preparation and updating of a reserve study must be made by the board of directors in the exercise of the reasonable discretion of the board. The decisions must include whether a reserve study will be prepared or updated, and whether the assistance of a reserve study professional will be utilized.

NEW SECTION. Sec. 10. A new section is added to chapter 64.38 RCW to read as follows:

(1) A reserve study as described in section 9 of this act is supplemental to the association's operating and maintenance budget. In preparing a reserve study, the association shall estimate the anticipated major maintenance, repair, and replacement costs, whose infrequent and significant nature make them impractical to be included in an annual budget.

(2) A reserve study must include:

(a) A reserve component list, including any reserve component that would cost more than one percent of the annual budget of the association, not including the reserve account, for major maintenance, repair, or replacement. If one of these reserve components is not included in the reserve study, the study should provide commentary explaining the basis for its exclusion. The study must also include quantities and estimates for the useful life of each reserve component, remaining useful life of each reserve component, and current major maintenance, repair, or replacement cost for each reserve component;

(b) The date of the study, and a statement that the study meets the requirements of this section;

(c) The following level of reserve study performed:

(i) Level I: Full reserve study funding analysis and plan;

(ii) Level II: Update with visual site inspection; or

(iii) Level III: Update with no visual site inspection;

(d) The association's reserve account balance;

(e) The percentage of the fully funded balance that the reserve account is funded;

(f) Special assessments already implemented or planned;

(g) Interest and inflation assumptions;

(h) Current reserve account contribution rates for a full funding plan and baseline funding plan;

(i) A recommended reserve account contribution rate, a contribution rate for a full funding plan to achieve one hundred percent fully funded reserves by the end of the thirty-year study period, a baseline funding plan to maintain the reserve balance above zero throughout the thirty-year study period without special assessments, and a contribution rate recommended by the reserve study professional;

(j) A projected reserve account balance for thirty years and a funding plan to pay for projected costs from that reserve account balance without reliance on future unplanned special assessments; and

(k) A statement on whether the reserve study was prepared with the assistance of a reserve study professional.

(3) A reserve study must also include the following disclosure: "This reserve study should be reviewed carefully. It may not include all common and limited common element components that will require major maintenance, repair, or replacement in future years, and may not include regular contributions to a reserve account for the cost of such maintenance, repair, or replacement. The failure to include a component in a reserve study, or to provide contributions to a reserve account for a component, may, under some circumstances, require you to pay on demand as a special assessment your share of common expenses for the cost of major maintenance, repair, or replacement of a reserve component."

NEW SECTION. Sec. 11. A new section is added to chapter 64.38 RCW to read as follows:

An association may withdraw funds from its reserve account to pay for unforeseen or unbudgeted costs that are unrelated to maintenance, repair, or replacement of the reserve components. The board of directors shall record any such withdrawal in the minute books of the association, cause notice of any such withdrawal to be hand delivered or sent prepaid by first-class United States mail to the mailing address of each owner or to any other mailing address designated in writing by the owner, and adopt a repayment schedule not to exceed twenty-four months unless it determines that repayment within twenty-four months would impose an unreasonable burden on the owners. Payment for major maintenance, repair, or replacement of the reserve components out of cycle with the reserve study projections or not included in the reserve study may be made from the reserve account without meeting the notification or repayment requirements under this section.

EIGHTY SEVENTH DAY, APRIL 6, 2011

2011 REGULAR SESSION

NEW SECTION. Sec. 12. A new section is added to chapter 64.38 RCW to read as follows:

MOTION

(1) When more than three years have passed since the date of the last reserve study prepared by a reserve study professional, the owners to which at least thirty-five percent of the votes are allocated may demand, in writing, to the association that the cost of a reserve study be included in the next budget and that the study be prepared by the end of that budget year. The written demand must refer to this section. The board of directors shall, upon receipt of the written demand, provide the owners who make the demand reasonable assurance that the board will include a reserve study in the next budget and, if the budget is not rejected by a majority of the owners, will arrange for the completion of a reserve study.

On motion of Senator Hobbs, the rules were suspended, Engrossed Substitute House Bill No. 1309 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Hobbs spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 1309 as amended by the Senate.

ROLL CALL

(2) If a written demand under this section is made and a reserve study is not timely prepared, a court may order specific performance and award reasonable attorneys' fees to the prevailing party in any legal action brought to enforce this section. An association may assert unreasonable hardship as an affirmative defense in any action brought against it under this section. Without limiting this affirmative defense, an unreasonable hardship exists where the cost of preparing a reserve study would exceed five percent of the association's annual budget.

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 1309 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 1; Absent, 0; Excused, 0.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

Voting nay: Senator Honeyford

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1309 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

(3) An owner's duty to pay for common expenses is not excused because of the association's failure to comply with this section or this chapter. A budget ratified by the owners is not invalidated because of the association's failure to comply with this section or this chapter.

NEW SECTION. Sec. 13. A new section is added to chapter 64.38 RCW to read as follows:

Monetary damages or any other liability may not be awarded against or imposed upon the association, the officers or board of directors of the association, or those persons who may have provided advice or assistance to the association or its officers or directors, for failure to: Establish a reserve account; have a current reserve study prepared or updated in accordance with the requirements of this chapter; or make the reserve disclosures in accordance with this chapter.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1899, by House Committee on State Government & Tribal Affairs (originally sponsored by Representatives Miloscia, Overstreet, Hurst, Taylor, Hunt, Armstrong, McCoy and Condotta)

Changing penalty amounts for public records violations.

The measure was read the second time.

NEW SECTION. Sec. 14. A new section is added to chapter 64.38 RCW to read as follows:

An association is not required to follow the reserve study requirements under RCW 64.38.025 and sections 9 through 13 of this act if the cost of the reserve study exceeds five percent of the association's annual budget, the association does not have significant assets, or there are ten or fewer homes in the association.

MOTION

NEW SECTION. Sec. 15. This act takes effect January 1, 2012."

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

Senator Pridemore moved that the following committee striking amendment by the Committee on Government Operations, Tribal Relations & Elections be adopted:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 42.56.550 and 2005 c 483 s 5 and 2005 c 274 s 288 are each reenacted and amended to read as follows:

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Financial Institutions, Housing & Insurance to Engrossed Substitute House Bill No. 1309.

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

MOTION

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

On page 1, line 2 of the title, after "associations;" strike the remainder of the title and insert "amending RCW 64.34.020, 64.34.308, 64.34.380, 64.34.382, 64.34.384, 64.38.010, and 64.38.025; reenacting and amending RCW 64.34.010; adding new sections to chapter 64.38 RCW; and providing an effective date."

(1) Upon the motion of any person having been denied an opportunity to inspect or copy a public record by an agency, the superior court in the county in which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific public record or class of records. The burden of proof shall be on the agency to establish that refusal to permit public inspection and copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records.

(2) Upon the motion of any person who believes that an agency has not made a reasonable estimate of the time that the agency requires to respond to a public record request, the superior court in the county in which a record is maintained may require the

responsible agency to show that the estimate it provided is reasonable. The burden of proof shall be on the agency to show that the estimate it provided is reasonable.

(3) Judicial review of all agency actions taken or challenged under RCW 42.56.030 through 42.56.520 shall be de novo. Courts shall take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others. Courts may examine any record in camera in any proceeding brought under this section. The court may conduct a hearing based solely on affidavits.

(4) Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. In addition, it shall be within the discretion of the court whether to make any monetary award to such person ((and)) or to make a monetary award in any amount ((not less than five dollars and not to exceed)) up to one hundred dollars for each day that he or she was denied the right to inspect or copy said public record.

(5) For actions under this section against counties, the venue provisions of RCW 36.01.050 apply.

(6) Actions under this section must be filed within one year of the agency's claim of exemption or the last production of a record on a partial or installment basis."

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

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Government Operations, Tribal Relations & Elections to Substitute House Bill No. 1899.

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

MOTION

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

On page 1, line 1 of the title, after "violations;" strike the remainder of the title and insert "reenacting and amending RCW 42.56.550; and prescribing penalties."

MOTION

On motion of Senator Pridemore, the rules were suspended, Substitute House Bill No. 1899 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Pridemore spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1899 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1899 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King,

Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

SUBSTITUTE HOUSE BILL NO. 1899 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

PERSONAL PRIVILEGE

Senator Honeyford: "Thank you Mr. President. Well, today is Tartan Day in honor of our Scottish ancestry and wanted to just talk a little bit, briefly about the Scottish impact on the U. S. and our state. A little known fact here in the Senate chamber and of course we can't leave out Ralph Monro, former Secretary of State, we had George Sellar, Bob McGloughlin, Dan McDonald, Senators Fraser, Pflug, Stevens, Kohl-Welles and myself. There are probably others that I missed because I haven't updated this list for awhile. Anyway, at noon today they will be displaying the Scottish flag on the capitol steps out here and the bag pipes will be playing. Thank you Mr. President."

REPLY BY THE PRESIDENT

President Owen: "Senator Honeyford, we will be looking forward to you and your kilt this afternoon."

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1311, by House Committee on Health Care & Wellness (originally sponsored by Representatives Cody, Jinkins, Bailey, Green, Clibborn, Appleton, Moeller, Frockt, Seaquist and Dickerson)

Improving health care in the state using evidence-based care.

The measure was read the second time.

MOTION

Senator Keiser moved that the following committee striking amendment by the Committee on Health & Long-Term Care be adopted:

Strike everything after the enacting clause and insert the following:

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

(a) Efforts are needed across the health care system to improve the quality and cost-effectiveness of health care services provided in Washington state and to improve care outcomes for patients.

(b) Some health care services currently provided in Washington state present significant safety, efficacy, or cost-effectiveness concerns. Substantial variation in practice patterns or high utilization trends can be indicators of poor quality and potential waste in the health care system, without producing better care outcomes for patients.

(c) State purchased health care programs should partner with private health carriers, third-party purchasers, and health care providers in shared efforts to improve quality, health outcomes, and cost-effectiveness of care.

(2) The legislature declares that collaboration among state purchased health care programs, private health carriers, third-party purchasers, and health care providers to identify appropriate strategies that will increase the effectiveness of health care delivered in Washington state is in the best interest of the public. The legislature therefore intends to exempt from state antitrust laws, and

EIGHTY SEVENTH DAY, APRIL 6, 2011

2011 REGULAR SESSION

to provide immunity from federal antitrust laws through the state action doctrine, for activities undertaken pursuant to efforts designed and implemented under this act that might otherwise be constrained by such laws. The legislature does not intend and does not authorize any person or entity to engage in activities or to conspire to engage in activities that would constitute per se violations of state and federal antitrust laws including, but not limited to, agreements among competing health care providers or health carriers as to the price or specific level of reimbursement for health care services.

(3) The legislature intends that the Robert Bree collaborative established in section 3 of this act provide a mechanism through which public and private health care purchasers, health carriers, and providers can work together to identify effective means to improve quality health outcomes and cost-effectiveness of care. It is not the intent of the legislature to mandate payment or coverage decisions by private health care purchasers or carriers.

Sec. 2. RCW 70.250.010 and 2009 c 258 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) "Advanced diagnostic imaging services" means magnetic resonance imaging services, computed tomography services, positron emission tomography services, cardiac nuclear medicine services, and similar new imaging services.

(2) "Authority" means the Washington state health care authority.

(3) "Collaborative" means the Robert Bree collaborative established in section 3 of this act.

~~(4) "Payor" means ((public purchasers and)) carriers licensed under chapters 48.21, 48.41, 48.44, 48.46, and 48.62 RCW.~~

~~((4) "Public purchaser" means the department of social and health services, the department of health, the department of labor and industries, the authority, and the Washington state health insurance pool))~~ (5) "Self-funded health plan" means an employer-sponsored health plan or Taft-Hartley plan that is not provided through a fully insured health carrier.

~~((5))~~ (6) "State purchased health care" has the same meaning as in RCW 41.05.011.

NEW SECTION. Sec. 3. A new section is added to chapter 70.250 RCW to read as follows:

(1) Consistent with the authority granted in RCW 41.05.013, the authority shall convene a collaborative, to be known as the Robert Bree collaborative. The collaborative shall identify health care services for which there are substantial variation in practice patterns or high utilization trends in Washington state, without producing better care outcomes for patients, that are indicators of poor quality and potential waste in the health care system. On an annual basis, the collaborative shall identify up to three health care services it will address.

(2) For each health care service identified, the collaborative shall:

(a) Analyze and identify evidence-based best practice approaches to improve quality and reduce variation in use of the service, including identification of guidelines or protocols applicable to the health care service. In evaluating guidelines, the collaborative should identify the highest quality guidelines based upon the most rigorous and transparent methods for identification, rating, and translation of evidence into practice recommendations.

(b) Identify data collection and reporting necessary to develop baseline health service utilization rates and to measure the impact of strategies adopted under this section. Methods for data collection and reporting should strive to minimize cost and administrative effort related to data collection and reporting wherever possible,

including the use of existing data resources and nonfee-based tools for reporting.

(c) Identify strategies to increase use of the evidence-based best practice approaches identified under (a) of this subsection in both state purchased and privately purchased health care plans. Strategies considered should include, but are not limited to: Identifying goals for appropriate utilization rates and reduction in practice variation among providers; peer-to-peer consultation or second opinions; provider feedback reports; use of patient decision aids; incentives for appropriate use of health care services; centers of excellence or other provider qualification standards; quality improvement systems; and service utilization and outcomes reporting, including public reporting. In developing strategies, the collaborative should strongly consider related efforts of organizations such as the Puget Sound health alliance, the Washington state hospital association, the national quality forum, the joint commission on accreditation of health care organizations, the national committee for quality assurance, the foundation for health care quality, and, where appropriate, more focused quality improvement efforts, such as the Washington state perinatal advisory committee and the Washington state surgical care and outcomes assessment program. The collaborative shall provide an opportunity for public comment on the strategies chosen before finalizing their recommendations.

(3) If the collaborative chooses a health care service for which there is substantial variation in practice patterns or a high or low utilization trend in Washington state, and a lack of evidence-based best practice approaches, it should consider strategies that will promote improved care outcomes, such as patient decision aids, provider feedback reports, centers of excellence or other provider qualification standards, and research to improve care quality and outcomes.

(4) The governor shall appoint twenty members of the collaborative, who must include:

(a) Two members, selected from health carriers or third-party administrators that have the most fully insured and self-funded covered lives in Washington state. The count of total covered lives includes enrollment in all companies included in their holding company system. Each health carrier or third-party administrator is entitled to no more than a single position on the collaborative to represent all entities under common ownership or control;

(b) One member, selected from the health maintenance organization having the most fully insured and self-insured covered lives in Washington state. The count of total lives includes enrollment in all companies included in its holding company system. Each health maintenance organization is entitled to no more than a single position on the collaborative to represent all entities under common ownership or control;

(c) One member, chosen from among three nominees submitted by the association of Washington health plans, representing national health carriers that operate in multiple states outside of the Pacific Northwest;

(d) Four physicians, selected from lists of nominees submitted by the Washington state medical association, as follows:

(i) Two physicians, one of whom must be a practicing primary care physician, representing large multispecialty clinics with fifty or more physicians, selected from a list of five nominees. The primary care physician must be either a family physician, an internal medicine physician, or a general pediatrician; and

(ii) Two physicians, one of whom must be a practicing primary care physician, representing clinics with less than fifty physicians, selected from a list of five nominees. The primary care physician must be either a family physician, an internal medicine physician, or a general pediatrician;

(e) One osteopathic physician, selected from a list of five nominees submitted by the Washington state osteopathic medical association;

(f) Two physicians representing the largest hospital-based physician systems in the state, selected from a list of five nominees submitted jointly by the Washington state medical association and the Washington state hospital association;

(g) Three members representing hospital systems, at least one of whom is responsible for quality, submitted from a list of six nominees from the Washington state hospital association;

(h) Three members, representing self-funded purchasers of health care services for employees;

(i) Two members, representing state purchased health care programs; and

(j) One member, representing the Puget Sound health alliance.

(5) The governor shall appoint the chair of the collaborative.

(6) The collaborative shall add members to its membership or establish clinical committees for each therapy under review by the collaborative for the purpose of acquiring clinical expertise needed to accomplish its responsibilities under this section and RCW 70.250.010 and 70.250.030. Membership of clinical committees should reflect clinical expertise in the area of health care services being addressed by the collaborative, including clinicians involved in related quality improvement or comparative effectiveness efforts, as well as nonphysician practitioners.

(7) Permanent and ad hoc members of the collaborative or any of its committees may not have personal financial conflicts of interest that could substantially influence or bias their participation. If a collaborative or committee member has a personal financial conflict of interest with respect to a particular health care service being addressed by the collaborative, he or she shall disclose such an interest. The collaborative must determine whether the member should be recused from any deliberations or decisions related to that service.

(8) A person serving on the collaborative or any of its clinical committees shall be immune from civil liability, whether direct or derivative, for any decisions made in good faith while pursuing activities associated with the work of collaborative or any of its clinical committees.

(9) The guidelines or protocols identified under this section shall not be construed to establish the standard of care or duty of care owed by health care providers in any cause of action occurring as a result of health care.

(10) The collaborative shall actively solicit federal or private funds and in-kind contributions necessary to complete its work in a timely fashion. The collaborative shall not accept private funds if receipt of such funding could present a potential conflict of interest or bias in the collaborative's deliberations. Available state funds may be used to support the work of the collaborative when the collaborative has selected a health care service that is a high utilization or high-cost service in state purchased health care programs or the health care service is undergoing evaluation in one or more state purchased health care programs and coordination will reduce duplication of efforts. The collaborative shall not begin the work described in this section unless sufficient funds are received from private or federal resources, or available state funds.

(11) No member of the collaborative or its committees may be compensated for his or her service.

(12) The proceedings of the collaborative shall be open to the public and notice of meetings shall be provided at least twenty days prior to a meeting.

(13) The collaborative shall report to the administrator of the authority regarding the health services areas it has chosen and strategies proposed. The administrator shall review the strategies recommended in the report, giving strong consideration to the direction provided in section 1 of this act and this section. The

administrator's review shall describe the outcomes of the review and any decisions related to adoption of the recommended strategies by state purchased health care programs. Following the administrator's review, the collaborative shall report to the legislature and the governor regarding chosen health services, proposed strategies, the results of the administrator's review, and available information related to the impact of strategies adopted in the previous three years on the cost and quality of care provided in Washington state. The initial report must be submitted by November 15, 2011, with annual reports thereafter.

Sec. 4. RCW 70.250.030 and 2009 c 258 s 3 are each amended to read as follows:

(1) No later than September 1, 2009, all state purchased health care programs shall, except for state purchased health care services that are purchased from or through health carriers as defined in RCW 48.43.005, implement evidence-based best practice guidelines or protocols applicable to advanced diagnostic imaging services, and the decision support tools to implement the guidelines or protocols, identified under (~~RCW 70.250.020~~) section 3 of this act.

(2) By January 1, 2012, and every January 1st thereafter, all state purchased health care programs must implement the evidence-based best practice guidelines or protocols and strategies identified under section 3 of this act, after the administrator, in consultation with participating agencies, has affirmatively reviewed and endorsed the recommendations. This requirement applies to health carriers, as defined in RCW 48.43.005 and to entities acting as third-party administrators that contract with state purchased health care programs to provide or administer health benefits for enrollees of those programs. If the collaborative fails to reach consensus within the time frames identified in this section and section 3 of this act, state purchased health care programs may pursue implementation of evidence-based strategies on their own initiative.

NEW SECTION. **Sec. 5.** RCW 70.250.020 (Work group--Members--Duties--Report--Expiration of work group) and 2009 c 258 s 2 are each repealed."

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

MOTION

Senator Carrell moved that the following amendment by Senators Carrell and Keiser to the committee striking amendment be adopted:

On page 5, line 30 of the committee amendment, after "nonphysician practitioners." Insert "Each clinical committee shall include at least two members of the specialty or subspecialty society most experienced with the health service identified for review."

Senators Carrell and Keiser spoke in favor of adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Carrell and Keiser on page 5, line 30 to the committee striking amendment to Engrossed Substitute House Bill No. 1311.

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

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Health & Long-Term Care as amended to Engrossed Substitute House Bill No. 1311.

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

EIGHTY SEVENTH DAY, APRIL 6, 2011

2011 REGULAR SESSION

MOTION

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

On page 1, line 3 of the title, after "state;" strike the remainder of the title and insert "amending RCW 70.250.010 and 70.250.030; adding a new section to chapter 70.250 RCW; creating a new section; and repealing RCW 70.250.020."

MOTION

On motion of Senator Keiser, the rules were suspended, Engrossed Substitute House Bill No. 1311 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Keiser spoke in favor of passage of the bill.

POINT OF INQUIRY

Senator Becker: "Will Senator Keiser yield to a question? Is the purpose of the collaborative to make decisions about covering specific health care services, therapies and technologies?"

Senator Keiser: "No. The new advisory committee's role is one of exploring best physicians' practices regarding approach, technique and best outcomes. This is distinctly different from discussion regarding what health care services therapies, pharmaceuticals or technologies might be covered. This advisory collaborative is to focus on discussion of best physician practices with the goal to voluntarily ignore outcomes more broadly and shall not include any discussions of coverage for specific services for private payers."

Senator Becker spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 1311 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 1311 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 38; Nays, 11; Absent, 0; Excused, 0.

Voting yea: Senators Becker, Brown, Carrell, Chase, Conway, Eide, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Rockefeller, Shin, Tom, White and Zarelli

Voting nay: Senators Baumgartner, Baxter, Benton, Delvin, Ericksen, Holmquist Newbry, Roach, Schoesler, Sheldon, Stevens and Swecker

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1311 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1169, by House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Haigh, Chandler, Blake, Kristiansen, Taylor, Rivers, Finn and Shea)

Regarding noxious weed lists.

The measure was read the second time.

MOTION

On motion of Senator Hatfield, the rules were suspended, Substitute House Bill No. 1169 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Hatfield and Honeyford spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1169.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1169 and the bill passed the Senate by the following vote: Yeas, 45; Nays, 3; Absent, 1; Excused, 0.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Parlette, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, White and Zarelli

Voting nay: Senators Nelson, Pflug and Prentice

Absent: Senator Tom

SUBSTITUTE HOUSE BILL NO. 1169, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

At 11:15 a.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

AFTERNOON SESSION

The Senate was called to order at 4:02 p.m. by President Owen.

SECOND READING
CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Tom moved that Gubernatorial Appointment No. 9134, Suzan Delbene, as Director of the Department of Revenue, be confirmed.

Senator Tom spoke in favor of the motion.

APPOINTMENT OF SUZAN DELBENE

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9134, Suzan Delbene as Director of the Department of Revenue.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9134, Suzan Delbene as Director of the Department of Revenue and the appointment was

confirmed by the following vote: Yeas, 48; Nays, 0; Absent, 1; Excused, 0.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Parlette, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

Absent: Senator Pflug

Gubernatorial Appointment No. 9134, Suzan Delbene, having received the constitutional majority was declared confirmed as Director of the Department of Revenue.

SECOND READING

SENATE BILL NO. 5119, by Senators Pridemore and Kline

Canceling the 2012 presidential primary.

The measure was read the second time.

MOTION

Senator Fain moved that the following amendment by Senators Fain and Kastama be adopted:

On page 2, line 17, after "2012" insert the following:

"unless the major political parties agree to use only the results of the presidential primary election for allocation of no less than fifty percent of their delegates to the national nominating convention. The major political parties must agree to allocate their delegates in proportion to the votes each of the parties' candidates receive. The parties must notify the secretary of state of the parties' decisions regarding allocation of their delegates by September first of the year before the year in which the presidential nominee is selected." Senators Fain, Roach and Kastama spoke in favor of adoption of the amendment.

Senators Pridemore, Murray and Sheldon spoke against adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Fain and Kastama on page 2, line 17 to Senate Bill No. 5119.

The motion by Senator Fain failed and the amendment was not adopted by voice vote.

MOTION

On motion of Senator Pridemore, the rules were suspended, Senate Bill No. 5119 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Pridemore spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Senate Bill No. 5119.

ROLL CALL

The Secretary called the roll on the final passage of Senate Bill No. 5119 and the bill passed the Senate by the following vote: Yeas, 34; Nays, 15; Absent, 0; Excused, 0.

Voting yea: Senators Becker, Brown, Chase, Conway, Eide, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hobbs, Honeyford, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow,

McAuliffe, Murray, Nelson, Prentice, Pridemore, Ranker, Regala, Rockefeller, Schoesler, Sheldon, Shin, Swecker, Tom, White and Zarelli

Voting nay: Senators Baumgartner, Baxter, Benton, Carrell, Delvin, Ericksen, Fain, Hill, Holmquist Newbry, Kastama, Morton, Parlette, Pflug, Roach and Stevens

SENATE BILL NO. 5119, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

On motion of Senator Eide, Senate Bill No. 5119 was immediately transmitted to the House of Representatives.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1194, by House Committee on Public Safety & Emergency Preparedness (originally sponsored by Representatives Kelley and Ladenburg)

Continuing to determine bail for the release of a person arrested and detained for a felony offense on an individualized basis by a judicial officer. Revised for 1st Substitute: Concerning bail for the release of a person arrested and detained for a class A or B felony offense.

The measure was read the second time.

PARLIAMENTARY INQUIRY

Senator Kline: "I believe that there should be an amendment other than a striking amendment along with the two amendments that have been distributed to the members of the body. I'm wondering if we should first have that other amendment distributed?"

REPLY BY THE PRESIDENT

President Owen: "Senator Kline, we show the committee striking amendment and two amendments to the striking amendment. We show no amendment specifically to the bill itself."

MOTION

On motion of Senator Eide, further consideration of Substitute House Bill No. 1194 was deferred and the bill held its place on the second reading calendar.

SECOND READING

HOUSE BILL NO. 1432, by Representatives Rodne, Kelley, Shea, Green, Van De Wege, Ahern and Orwall

Permitting private employers to exercise a voluntary veterans' preference in employment.

The measure was read the second time.

MOTION

On motion of Senator Conway, the rules were suspended, House Bill No. 1432 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

EIGHTY SEVENTH DAY, APRIL 6, 2011

2011 REGULAR SESSION

Senators Conway, Holmquist Newbry and Benton spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 1432.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 1432 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

HOUSE BILL NO. 1432, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1567, by House Committee on Public Safety & Emergency Preparedness (originally sponsored by Representatives Ross, Hurst, Upthegrove, Kelley and Moscoso)

Requiring background investigations for peace officers and reserve officers as a condition of employment.

The measure was read the second time.

MOTION

Senator Regala moved that the following committee striking amendment by the Committee on Human Services & Corrections be adopted:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 43.101.080 and 2008 c 69 s 3 are each amended to read as follows:

The commission shall have all of the following powers:

- (1) To meet at such times and places as it may deem proper;
- (2) To adopt any rules and regulations as it may deem necessary;
- (3) To contract for services as it deems necessary in order to carry out its duties and responsibilities;
- (4) To cooperate with and secure the cooperation of any department, agency, or instrumentality in state, county, and city government, and other commissions affected by or concerned with the business of the commission;
- (5) To do any and all things necessary or convenient to enable it fully and adequately to perform its duties and to exercise the power granted to it;
- (6) To select and employ an executive director, and to empower him or her to perform such duties and responsibilities as it may deem necessary;
- (7) To assume legal, fiscal, and program responsibility for all training conducted by the commission;
- (8) To establish, by rule and regulation, standards for the training of criminal justice personnel where such standards are not prescribed by statute;

(9) To own, establish, and operate, or to contract with other qualified institutions or organizations for the operation of, training and education programs for criminal justice personnel and to purchase, lease, or otherwise acquire, subject to the approval of the department of general administration, a training facility or facilities necessary to the conducting of such programs;

(10) To establish, by rule and regulation, minimum curriculum standards for all training programs conducted for employed criminal justice personnel;

(11) To review and approve or reject standards for instructors of training programs for criminal justice personnel, and to employ personnel on a temporary basis as instructors without any loss of employee benefits to those instructors;

(12) To direct the development of alternative, innovate, and interdisciplinary training techniques;

(13) To review and approve or reject training programs conducted for criminal justice personnel and rules establishing and prescribing minimum training and education standards recommended by the training standards and education boards;

(14) To allocate financial resources among training and education programs conducted by the commission;

(15) To allocate training facility space among training and education programs conducted by the commission;

(16) To issue diplomas certifying satisfactory completion of any training or education program conducted or approved by the commission to any person so completing such a program;

(17) To provide for the employment of such personnel as may be practical to serve as temporary replacements for any person engaged in a basic training program as defined by the commission;

(18) To establish rules and regulations recommended by the training standards and education boards prescribing minimum standards relating to physical, mental and moral fitness which shall govern the recruitment of criminal justice personnel where such standards are not prescribed by statute or constitutional provision;

(19) To require ((that each applicant that has been offered a conditional offer of employment as a fully commissioned peace officer or a fully commissioned reserve officer take and successfully pass a psychological examination)) county, city, or state law enforcement agencies that make a conditional offer of employment to an applicant as a fully commissioned peace officer or a reserve officer to administer a background investigation including a check of criminal history, a psychological examination, and a polygraph test or similar assessment ((procedure as administered by county, city, or state law enforcement agencies as a condition of employment as a peace officer)) to each applicant, the results of which shall be used by the employer to determine the applicant's suitability for employment as a fully commissioned peace officer or a reserve officer. The background investigation, psychological examination, and the polygraph examination shall be administered in accordance with the requirements of RCW 43.101.095(2). The employing county, city, or state law enforcement agency may require that each peace officer or reserve officer who is required to take a psychological examination and a polygraph or similar test pay a portion of the testing fee based on the actual cost of the test or four hundred dollars, whichever is less. County, city, and state law enforcement agencies may establish a payment plan if they determine that the peace officer or reserve officer does not readily have the means to pay for his or her portion of the testing fee;

(20) To promote positive relationships between law enforcement and the citizens of the state of Washington by allowing commissioners and staff to participate in the "chief for a day program." The executive director shall designate staff who may participate. In furtherance of this purpose, the commission may accept grants of funds and gifts and may use its public facilities for such purpose. At all times, the participation of commissioners and

staff shall comply with chapter 42.52 RCW and chapter 292-110 WAC.

All rules and regulations adopted by the commission shall be adopted and administered pursuant to the administrative procedure act, chapter 34.05 RCW, and the open public meetings act, chapter 42.30 RCW.

Sec. 2. RCW 43.101.095 and 2009 c 139 s 1 are each amended to read as follows:

(1) As a condition of continuing employment as peace officers, all Washington peace officers: (a) Shall timely obtain certification as peace officers, or timely obtain certification or exemption therefrom, by meeting all requirements of RCW 43.101.200, as that section is administered under the rules of the commission, as well by meeting any additional requirements under this chapter; and (b) shall maintain the basic certification as peace officers under this chapter.

(2)(a) As a condition of continuing employment for any applicant (~~that~~) who has been offered a conditional offer of employment as a fully commissioned peace officer or a reserve officer after July 24, 2005, including any person whose certification has lapsed as a result of a break of more than twenty-four consecutive months in the officer's service as a fully commissioned peace officer or reserve officer, the applicant shall (~~successfully pass~~) submit to a background investigation including a check of criminal history, a psychological examination, and a polygraph or similar (~~test~~) assessment as administered by the county, city, or state law enforcement agency (~~that complies with the following requirements:~~

~~—(i) The psychological examination shall be administered by a psychiatrist licensed in the state of Washington pursuant to chapter 18.71 RCW or a psychologist licensed in the state of Washington pursuant to chapter 18.83 RCW in compliance with standards established in rules of the commission.~~

~~—(ii)), the results of which shall be used to determine the applicant's suitability for employment as a fully commissioned peace officer or a reserve officer.~~

(i) The background investigation including a check of criminal history shall be administered by the county, city, or state law enforcement agency that made the conditional offer of employment in compliance with standards established in the rules of the commission.

(ii) The psychological examination shall be administered by a psychiatrist licensed in the state of Washington pursuant to chapter 18.71 RCW or a psychologist licensed in the state of Washington pursuant to chapter 18.83 RCW, in compliance with standards established in rules of the commission.

(iii) The polygraph (~~examination or similar assessment~~) test shall be administered by an experienced polygrapher who is a graduate of a polygraph school accredited by the American polygraph association and in compliance with standards established in rules of the commission.

(iv) Any other test or assessment to be administered as part of the background investigation shall be administered in compliance with standards established in rules of the commission.

(b) The employing county, city, or state law enforcement agency may require that each peace officer or reserve officer who is required to take a psychological examination and a polygraph or similar test pay a portion of the testing fee based on the actual cost of the test or four hundred dollars, whichever is less. County, city, and state law enforcement agencies may establish a payment plan if they determine that the peace officer or reserve officer does not readily have the means to pay for his or her portion of the testing fee.

(3) The commission shall certify peace officers who have satisfied, or have been exempted by statute or by rule from, the basic training requirements of RCW 43.101.200 on or before January 1,

2002. Thereafter, the commission may revoke certification pursuant to this chapter.

(4) The commission shall allow a peace officer to retain status as a certified peace officer as long as the officer: (a) Timely meets the basic law enforcement training requirements, or is exempted therefrom, in whole or in part, under RCW 43.101.200 or under rule of the commission; (b) meets or is exempted from any other requirements under this chapter as administered under the rules adopted by the commission; (c) is not denied certification by the commission under this chapter; and (d) has not had certification revoked by the commission.

(5) As a prerequisite to certification, as well as a prerequisite to pursuit of a hearing under RCW 43.101.155, a peace officer must, on a form devised or adopted by the commission, authorize the release to the commission of his or her personnel files, termination papers, criminal investigation files, or other files, papers, or information that are directly related to a certification matter or decertification matter before the commission.

(6) The commission is authorized to receive criminal history record information that includes nonconviction data for any purpose associated with employment by the commission or peace officer certification under this chapter. Dissemination or use of nonconviction data for purposes other than that authorized in this section is prohibited.

(7) For a national criminal history records check, the commission shall require fingerprints be submitted and searched through the Washington state patrol identification and criminal history section. The Washington state patrol shall forward the fingerprints to the federal bureau of investigation.

Sec. 3. RCW 43.101.105 and 2005 c 434 s 3 are each amended to read as follows:

(1) Upon request by a peace officer's employer or on its own initiative, the commission may deny or revoke certification of any peace officer, after written notice and hearing, if a hearing is timely requested by the peace officer under RCW 43.101.155, based upon a finding of one or more of the following conditions:

(a) The peace officer has failed to timely meet all requirements for obtaining a certificate of basic law enforcement training, a certificate of basic law enforcement training equivalency, or a certificate of exemption from the training;

(b) The peace officer has knowingly falsified or omitted material information on an application for training or certification to the commission;

(c) The peace officer has been convicted at any time of a felony offense under the laws of this state or has been convicted of a federal or out-of-state offense comparable to a felony under the laws of this state; except that if a certified peace officer was convicted of a felony before being employed as a peace officer, and the circumstances of the prior felony conviction were fully disclosed to his or her employer before being hired, the commission may revoke certification only with the agreement of the employing law enforcement agency;

(d) The peace officer has been discharged for disqualifying misconduct, the discharge is final, and some or all of the acts or omissions forming the basis for the discharge proceedings occurred on or after January 1, 2002;

(e) The peace officer's certificate was previously issued by administrative error on the part of the commission; or

(f) The peace officer has interfered with an investigation or action for denial or revocation of certificate by: (i) Knowingly making a materially false statement to the commission; or (ii) in any matter under investigation by or otherwise before the commission, tampering with evidence or tampering with or intimidating any witness.

(2) After July 24, 2005, the commission shall deny certification to any applicant (~~that~~) who has lost his or her certification as a

EIGHTY SEVENTH DAY, APRIL 6, 2011

2011 REGULAR SESSION

result of a break in service of more than twenty-four consecutive months if that applicant failed to ~~((successfully pass the psychological examination and the polygraph test or similar assessment procedure required in))~~ comply with the requirements set forth in RCW 43.101.080(19) and 43.101.095(2)((as administered by county, city, or state law enforcement agencies))."

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

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Human Services & Corrections to Substitute House Bill No. 1567.

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

MOTION

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

On page 1, line 2 of the title, after "officers;" strike the remainder of the title and insert "and amending RCW 43.101.080, 43.101.095, and 43.101.105."

MOTION

On motion of Senator Regala, the rules were suspended, Substitute House Bill No. 1567 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Regala spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1567 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1567 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

SUBSTITUTE HOUSE BILL NO. 1567 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1634, by House Committee on General Government Appropriations & Oversight (originally sponsored by Representatives Takko, Angel, Morris and Armstrong)

Regarding underground utilities. Revised for 2nd Substitute: Concerning underground utilities.

The measure was read the second time.

MOTION

Senator Rockefeller moved that the following committee striking amendment by the Committee on Environment, Water & Energy be not adopted:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 19.122.010 and 1984 c 144 s 1 are each amended to read as follows:

((It is the intent of the legislature in enacting this chapter to assign responsibilities for locating and keeping accurate records of utility locations, protecting and repairing damage to existing underground facilities, and protecting the public health and safety from interruption in utility services caused by damage to existing underground utility facilities.)) In this chapter, the underground utility damage prevention act, the legislature intends to:

(1) Protect public health and safety and prevent disruption of vital utility services by establishing a comprehensive damage prevention program;

(2) Establish authority to enforce the act; and

(3) Assign responsibilities for locating underground facilities, for providing accurate location records, and for repairing damage.

Sec. 2. RCW 19.122.020 and 2007 c 142 s 9 are each amended to read as follows:

~~((Unless the context clearly requires otherwise,))~~ The definitions in this section apply throughout this chapter(=:)) unless the context clearly requires otherwise.

(1) "Business day" means any day other than Saturday, Sunday, or a legal local, state, or federal holiday.

(2) "Damage" includes the substantial weakening of structural or lateral support of an underground facility, penetration, impairment, or destruction of any underground protective coating, housing, or other protective device, or the severance, partial or complete, of any underground facility to the extent that the project owner or the affected utility owner determines that repairs are required.

(3) "Emergency" means any condition constituting a clear and present danger to life or property, or a customer service outage.

(4) "Excavation" and "excavate" means any operation including the installation of signs, except for installation of official traffic signs, in which earth, rock, or other material on or below the ground is moved or otherwise displaced by any means~~((except the tilling of soil less than twelve inches in depth for agricultural purposes, or road and ditch maintenance that does not change the original road grade or ditch flowline)).~~

(5) "Excavation confirmation code" means a code or ticket issued by the one-number locator service for the site where an excavation is planned. The code must be accompanied by the date and time it was issued.

(6) "Excavator" means any person who engages directly in excavation.

(7) "Gas" means natural gas, flammable gas, or toxic or corrosive gas.

(8) "Hazardous liquid" means:

(a) Petroleum, petroleum products, or anhydrous ammonia as those terms are defined in 49 C.F.R. Part 195 as in effect on March 1, 1998; ~~((and))~~

(b) Carbon dioxide~~((The utilities and transportation commission may by rule incorporate by reference)); and~~

(c) Other substances designated as hazardous by the secretary of transportation and incorporated by reference by the commission by rule.

(9) ("Identified facility" means any underground facility which is indicated in the project plans as being located within the area of

proposed excavation.

((10)) "Identified but unlocatable underground facility" means an underground facility which has been identified but cannot be located with reasonable accuracy.

((11)) (10) "Locatable underground facility" means an underground facility which can be field-marked with reasonable accuracy.

((12)) (11) "Marking" means the use of stakes, paint, or other clearly identifiable materials to show the field location of underground facilities, in accordance with the current color code standard of the American public works association. Markings shall include identification letters indicating the specific type of the underground facility.

((13)) (12) "Notice" or "notify" means contact in person or by telephone or other electronic methods that results in the receipt of a valid excavation confirmation code.

((14)) (13) "One-number locator service" means a service through which a person can notify utilities and request field-marking of underground facilities.

~~((15)) "Operator" means the individual conducting the excavation.~~

((16)) (14) "Person" means an individual, partnership, franchise holder, association, corporation, a state, a city, a county, or any subdivision or instrumentality of a state, and its employees, agents, or legal representatives.

((17)) (15) "Pipeline" or "pipeline system" means all or parts of a pipeline facility through which hazardous liquid or gas moves in transportation, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping or compressor units, metering and delivery stations and fabricated assemblies therein, and breakout tanks. "Pipeline" or "pipeline system" does not include process or transfer pipelines.

((18)) (16) "Pipeline company" means a person or entity constructing, owning, or operating a pipeline for transporting hazardous liquid or gas. A pipeline company does not include: (a) Distribution systems owned and operated under franchise for the sale, delivery, or distribution of natural gas at retail; or (b) excavation contractors or other contractors that contract with a pipeline company.

((19)) (17) "Reasonable accuracy" means location within twenty-four inches of the outside dimensions of both sides of an underground facility.

((20)) (18) "Transfer pipeline" means a buried or aboveground pipeline used to carry hazardous liquid between a tank vessel or transmission pipeline and the first valve inside secondary containment at the facility provided that any discharge on the facility side of that first valve will not directly impact waters of the state. A transfer pipeline includes valves, and other appurtenances connected to the pipeline, pumping units, and fabricated assemblies associated with pumping units. A transfer pipeline does not include process pipelines, pipelines carrying ballast or bilge water, transmission pipelines, or tank vessel or storage tanks.

((21)) (19) "Transmission pipeline" means a pipeline that transports hazardous liquid or gas within a storage field, or transports hazardous liquid or gas from an interstate pipeline or storage facility to a distribution main or a large volume hazardous liquid or gas user, or operates at a hoop stress of twenty percent or more of the specified minimum yield strength.

((22)) (20) "Underground facility" means any item buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, cablevision, electric energy, petroleum products, gas, gaseous vapors, hazardous liquids, or other substances and including but not limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, and those parts of poles or

anchors below ground. This definition does not include pipelines as defined in subsection ~~((47))~~ (15) of this section, but does include distribution systems owned and operated under franchise for the sale, delivery, or distribution of natural gas at retail.

(21) "Bar hole" means a hole made in the soil or pavement with a bar for the specific purpose of testing the subsurface atmosphere with a combustible gas indicator.

(22) "Commission" means the utilities and transportation commission.

(23) "Easement" or "utility easement" means a right held by a facility operator to enter or cross with in-place assets, property owned by another for the purpose of providing utility service, or maintaining assets that provide utility service.

(24) "End user" means any utility customer or consumer of utility services or commodities provided by a facility operator.

(25) "Equipment operator" means the individual conducting the excavation.

(26) "Facility operator" means any person who owns underground facilities or is in the business of supplying any utility service or commodity for compensation. "Facility operator" does not include a utility customer who owns a service lateral that terminates at a facility operator's main utility line.

(27) "Large project" means a project that exceeds seven hundred linear feet.

(28) "Service lateral" means an underground water, storm water, or sewer facility located in a public right-of-way or utility easement that connects an end user's building or property to a facility operator's underground facility, and terminates beyond the public right-of-way or utility easement.

(29) "Unlocatable underground facility" means, subject to the provisions of RCW 19.122.030, an underground facility that cannot be field-marked with reasonable accuracy using best available information to designate the location of underground facilities. "Unlocatable underground facility" includes, but is not limited to, service laterals, storm drains, and nonconductive and nonmetallic underground facilities that do not contain trace wires.

Sec. 3. RCW 19.122.027 and 2005 c 448 s 2 are each amended to read as follows:

(1) The ~~((utilities and transportation commission shall cause to be established))~~ commission must establish a single statewide toll-free telephone number to be used for referring excavators to the appropriate one-number locator service.

(2) The ~~((utilities and transportation))~~ commission, in consultation with the Washington utilities coordinating council, ~~((shall))~~ must establish minimum standards and best management practices for one-number locator services.

(3) One-number locator services ~~((shall))~~ must be operated by nongovernmental agencies.

(4) All facility operators within a one-number locator service area must subscribe to the service.

(5) Failure to subscribe to the one-number locator service constitutes willful intent to avoid compliance with this chapter.

Sec. 4. RCW 19.122.030 and 2000 c 191 s 17 are each amended to read as follows:

(1)(a) Unless exempted under section 5 of this act, before commencing any excavation, ~~((excluding agriculture tilling less than twelve inches in depth, the excavator shall))~~ an excavator must mark the boundary of the excavation area with white paint applied on the ground of the worksite, then provide notice of the scheduled commencement of excavation to all ~~((owners of underground facilities))~~ facility operators through a one-number locator service.

(b) If boundary marking required by (a) of this subsection is infeasible, an excavator must communicate directly with affected facility operators to ensure that the boundary of the excavation area is accurately identified.

EIGHTY SEVENTH DAY, APRIL 6, 2011

2011 REGULAR SESSION

(2) ((All owners of underground facilities within a one-number locator service area shall subscribe to the service. One-number locator service rates for cable television companies will be based on the amount of their underground facilities. If no one-number locator service is available, notice shall be provided individually to those owners of underground facilities known to or suspected of having underground facilities within the area of proposed excavation. The notice shall be communicated to the owners of underground facilities)) An excavator must provide the notice required by subsection (1) of this section to a one-number locator service not less than two business days ((or) and not more than ten business days before the scheduled date for commencement of excavation, unless otherwise agreed ((by the parties)) to by the excavator and facility operators. If an excavator intends to work at multiple sites or at a large project, the excavator must take reasonable steps to confer with facility operators to enable them to locate underground facilities reasonably in advance of the start of excavation for each phase of the work.

(3) Upon receipt of the notice provided for in ~~((this section, the owner of the underground facility shall))~~ subsection (1) of this section, a facility operator must, with respect to:

(a) The operator's locatable underground facilities, provide the excavator with reasonably accurate information ((as to its locatable underground facilities by surface marking the location of the facilities. If there are)) by surface-marking their location;

(b) The operator's unlocatable or identified but unlocatable underground facilities, ((the owner of such facilities shall)) provide the excavator with ((the best)) available information as to their ((locations. The owner of the underground facility providing the information shall respond)) location; and

(c) Service laterals, designate their presence or location, if the service laterals:

(i) Connect end users to the facility operator's main utility line; and

(ii) Are within a public right-of-way or utility easement and the boundary of the excavation area identified under subsection (1) of this section.

(4)(a) A facility operator must provide information to an excavator pursuant to subsection (3) of this section no later than two business days after the receipt of the notice or before the excavation time, at the option of the ((owner)) facility operator, unless otherwise agreed by the parties. ((Excavators shall not excavate until all known facilities have been marked. Once marked by the owner of the underground facility, the excavator is responsible for maintaining the markings. Excavators shall have the right to receive compensation from the owner of the underground facility for costs incurred if the owner of the underground facility does not locate its facilities in accordance with this section.

~~(4) The owner of the underground facility shall have)~~

(b) A facility operator may comply with subsection (3)(b) and (c) of this section in a manner that includes, but is not limited to, any one of the following methods:

(i) Placing within a proposed excavation area a triangular green mark at the main utility line pointing at an address in question, indicating the presence of an unlocatable or identified but unlocatable underground facility, including a service lateral;

(ii) Arranging to meet an excavator at a worksite to provide available information about the location of service laterals; or

(iii) Providing available information through other means if agreeable to both the excavator and facility operator.

(c) A facility operator's good faith attempt to designate the presence or location of a service lateral using available information:

(i) Is deemed to comply with the requirements of this section; and

(ii) Does not constitute any assertion of ownership or operation

of the service lateral by the facility operator.

(d) An end user is responsible for determining the location of service laterals on their property or service laterals that they own. Nothing in this section may be interpreted to require an end user to subscribe to a one-number locator service or to locate a service lateral within a right-of-way or easement.

(5) An excavator must not excavate until all known facility operators have marked or provided information regarding underground facilities as provided in this section.

(6)(a) Once marked by a facility operator, an excavator is responsible for maintaining the accuracy of the facility operator's markings of underground utilities for the lesser of:

(i) Forty-five calendar days from the date that the excavator provided notice to the one-number locator service pursuant to subsection (1) of this section; or

(ii) The duration of the project.

(b) An excavator that makes repeated requests for location of underground utilities due to its failure to maintain the accuracy of a facility operator's markings of underground facilities as required by this subsection (6) may be charged for services provided.

(c) A facility operator's markings of underground utilities expire forty-five calendar days from the date that the excavator provided notice to the one-number locator service pursuant to subsection (1) of this section. For excavation occurring after that date, an excavator must provide additional notice to a one-number locator service pursuant to subsection (1) of this section.

(7) An excavator has the right to receive compensation from a facility operator for costs incurred if the facility operator does not locate its underground facilities in accordance with the requirements specified in this section.

(8) A facility operator has the right to receive compensation for costs incurred in responding to excavation notices given less than two business days prior to the excavation from the excavator.

~~((5) An owner of underground facilities is not required to indicate the presence of existing service laterals or appurtenances if the presence of existing service laterals or appurtenances on the site of the construction project can be determined from the presence of other visible facilities, such as buildings, manholes, or meter and junction boxes on or adjacent to the construction site.~~

(6)) (9) Emergency excavations are exempt from the time requirements for notification provided in this section. With respect to creating bar holes twelve inches or more in depth during emergency leak investigations, excavators must take reasonable measures to eliminate electrical arc hazards.

~~((7) If the excavator, while performing the contract,)) (10) If an excavator discovers underground facilities ((which)) that are not identified, the excavator ((shall)) must cease excavating in the vicinity of the ((facility)) underground facilities and immediately notify the ((owner or)) facility operator ((of such facilities,)) or the one-number locator service. If an excavator discovers identified but unlocatable underground facilities, the excavator must notify the facility operator. Upon notification by the one-number locator service or an excavator, a facility operator must allow for location of the uncovered portion of an underground facility identified by the excavator, and may accept location information from the excavator for marking of the underground facility.~~

NEW SECTION. Sec. 5. A new section is added to chapter 19.122 RCW to read as follows:

(1) The requirements specified in RCW 19.122.030 do not apply to any of the following described activities:

(a) An excavation of less than twelve inches in depth on private noncommercial property, if the excavation is performed by the person or an employee of the person who owns or occupies the property on which the excavation is being performed;

(b) The tilling of soil less than twenty inches in depth for agricultural purposes;

(c) Road maintenance activities involving excavation less than six inches in depth below the original road grade and ditch maintenance activities involving excavation less than six inches in depth below the original ditch flowline or alteration of the original ditch horizontal alignment;

(d) The creation of bar holes with hand-operated equipment during emergency leak investigations;

(e) The creation of bar holes less than twelve inches in depth; or

(f) Construction, operation, or maintenance activities by an irrigation district on rights-of-way, easements, or facilities owned by the federal bureau of reclamation in federal reclamation projects.

(2) Any activity described under subsection (1) of this section is subject to the requirements specified in RCW 19.122.050.

Sec. 6. RCW 19.122.033 and 2000 c 191 s 18 are each amended to read as follows:

(1) Before commencing any excavation, (~~excluding agricultural tilling less than twelve inches in depth,~~) an excavator (~~shall~~) must notify pipeline companies of the scheduled commencement of excavation through a one-number locator service in the same manner as is required for notifying (~~owners of underground facilities~~) facility operators of excavation work under RCW 19.122.030. Pipeline companies (~~shall~~) have the same rights and responsibilities as (~~owners of underground facilities~~) facility operators under RCW 19.122.030 regarding excavation work. Excavators have the same rights and responsibilities under this section as they have under RCW 19.122.030.

(2) Project owners, excavators, and pipeline companies have the same rights and responsibilities relating to excavation near pipelines that they have for excavation near underground facilities as provided in RCW 19.122.040.

(3) The state or any of its political subdivisions undertaking or permitting construction or excavation activity under chapter 19.27 RCW within one hundred feet, or greater distance if defined by local ordinance, of a right-of-way or easement that contains a transmission pipeline must:

(a) Notify the transmission pipeline company of the proposed construction activity before such a permit is approved; or

(b) Require consultation between the person proposing the construction activity and the transmission pipeline company as a condition of receiving the permit.

Sec. 7. RCW 19.122.035 and 2000 c 191 s 19 are each amended to read as follows:

(1) After a pipeline company has been notified by an excavator pursuant to RCW 19.122.033 that excavation work will uncover any portion of the pipeline, the pipeline company shall ensure that the pipeline section in the vicinity of the excavation is examined for damage prior to being reburied.

(2) Immediately upon receiving information of third-party damage to a hazardous liquid pipeline, the company that operates the pipeline shall terminate the flow of hazardous liquid in that pipeline until it has visually inspected the pipeline. After visual inspection, the (~~operator of the hazardous liquid~~) pipeline company shall determine whether the damaged pipeline section should be replaced or repaired, or whether it is safe to resume pipeline operation. Immediately upon receiving information of third-party damage to a gas pipeline, the (~~company that operates the~~) pipeline company shall conduct a visual inspection of the pipeline to determine whether the flow of gas through that pipeline should be terminated, and whether the damaged pipeline should be replaced or repaired. A record of the pipeline company's inspection report and test results shall be provided to the (~~utilities and transportation~~) commission consistent with reporting requirements under 49 C.F.R. 195 Subpart B.

(3) Pipeline companies shall immediately notify local first responders and the department of any reportable release of a hazardous liquid from a pipeline. Pipeline companies shall immediately notify local first responders and the commission of any blowing gas leak from a gas pipeline that has ignited or represents a probable hazard to persons or property. Pipeline companies shall take all appropriate steps to ensure the public safety in the event of a release of hazardous liquid or gas under this subsection.

(4) No damaged pipeline may be buried until it is repaired or relocated. The pipeline company shall arrange for repairs or relocation of a damaged pipeline as soon as is practical or may permit the excavator to do necessary repairs or relocation at a mutually acceptable price.

Sec. 8. RCW 19.122.040 and 1984 c 144 s 4 are each amended to read as follows:

(1) Project owners shall indicate in bid or contract documents the existence of underground facilities known by the project owner to be located within the proposed area of excavation. The following (~~shall be~~) are deemed changed or differing site conditions:

(a) An underground facility not identified as required by this chapter or other provision of law; (~~and~~) or

(b) An underground facility not located, as required by this chapter or other provision of law, by the project owner, facility operator, or excavator if the project owner or excavator is also a (~~utility~~) facility operator.

(2) An excavator shall use reasonable care to avoid damaging underground facilities. An excavator (~~shall~~) must:

(a) Determine the precise location of underground facilities which have been marked;

(b) Plan the excavation to avoid damage to or minimize interference with underground facilities in and near the excavation area; and

(c) Provide such support for underground facilities in and near the construction area, including during backfill operations, as may be reasonably necessary for the protection of such facilities.

(3) If an underground facility is damaged and such damage is the consequence of the failure to fulfill an obligation under this chapter, the party failing to perform that obligation (~~shall be~~) is liable for any damages. Any clause in an excavation contract which attempts to allocate liability, or requires indemnification to shift the economic consequences of liability, different from the provisions of this chapter is against public policy and unenforceable. Nothing in this chapter prevents the parties to an excavation contract from contracting with respect to the allocation of risk for changed or differing site conditions.

(4) In any action brought under this section, the prevailing party is entitled to reasonable attorneys' fees.

Sec. 9. RCW 19.122.050 and 1984 c 144 s 5 are each amended to read as follows:

(1) An excavator who, in the course of excavation, contacts or damages an underground facility shall notify the (~~utility owning or operating such~~) facility operator and the one-number locator service, and report the damage as required under section 20 of this act. If the damage causes an emergency condition, the excavator causing the damage shall also alert the appropriate local public safety agencies and take all appropriate steps to ensure the public safety. No damaged underground facility may be buried until it is repaired or relocated.

(2) (~~The owner of the underground facilities damaged~~) A facility operator notified in accordance with subsection (1) of this section shall arrange for repairs or relocation as soon as is practical or may permit the excavator to do necessary repairs or relocation at a mutually acceptable price.

Sec. 10. RCW 19.122.055 and 2005 c 448 s 3 are each amended to read as follows:

EIGHTY SEVENTH DAY, APRIL 6, 2011

2011 REGULAR SESSION

(1)(a) Any excavator who fails to notify the one-number locator service and causes damage to a hazardous liquid or gas pipeline is subject to a civil penalty of not more than ten thousand dollars for each violation.

(b) The civil penalty in this subsection may also be imposed on any excavator who violates RCW 19.122.090.

(2) All civil penalties recovered under this section ~~((shall))~~ must be deposited into the ~~((pipeline safety))~~ damage prevention account created in ~~((RCW 81.88.050))~~ section 12 of this act.

Sec. 11. RCW 19.122.070 and 2005 c 448 s 4 are each amended to read as follows:

(1) Any person who violates any provision of this chapter not amounting to a violation of RCW 19.122.055~~((, and which violation results in damage to underground facilities,))~~ is subject to a civil penalty of not more than one thousand dollars for ~~((each violation. All penalties recovered in such actions shall be deposited in the general fund))~~ an initial violation, and not more than five thousand dollars for each subsequent violation within a three-year period. All penalties recovered in such actions must be used for education and training of excavators and facility operators regarding best practices and compliance with this chapter. All penalties recovered in such actions must be deposited in the damage prevention account created in section 12 of this act.

(2) Any excavator who willfully or maliciously damages a field-marked underground facility ~~((shall be))~~ is liable for treble the costs incurred in repairing or relocating the facility. In those cases in which an excavator fails to notify known underground facility ~~((owners))~~ operators or the one-number locator service, any damage to the underground facility ~~((shall be))~~ is deemed willful and malicious and ~~((shall be))~~ is subject to treble damages for costs incurred in repairing or relocating the facility.

(3) This chapter does not affect any civil remedies for personal injury or for property damage, including that to underground facilities, nor does this chapter create any new civil remedies for such damage.

NEW SECTION. Sec. 12. A new section is added to chapter 19.122 RCW to read as follows:

The damage prevention account is created in the custody of the state treasurer. All receipts from moneys directed by law or the commission to be deposited to the account must be deposited in the account. Expenditures from the account may be used only for purposes designated in section 13 of this act. Only the commission or the commission's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW.

NEW SECTION. Sec. 13. A new section is added to chapter 19.122 RCW to read as follows:

The commission may use money deposited in the damage prevention account created in section 12 of this act to:

(1) Develop and disseminate educational programming designed to improve worker and public safety relating to excavation and underground facilities; and

(2) Provide grants to persons who have developed educational programming that the commission and the safety committee created pursuant to section 18 of this act deem appropriate for improving worker and public safety relating to excavation and underground facilities.

Sec. 14. RCW 19.122.075 and 2000 c 191 s 23 are each amended to read as follows:

Any person who willfully damages or removes a permanent marking used to identify an underground facility or pipeline, or a temporary marking prior to its intended use, is subject to a civil penalty of not more than one thousand dollars for ~~((each act))~~ an initial violation, and not more than five thousand dollars for each subsequent violation within a three-year period.

Sec. 15. RCW 19.122.080 and 1984 c 144 s 8 are each amended to read as follows:

The notification and marking provisions of this chapter may be waived for one or more designated persons by ~~((an underground))~~ a facility ~~((owner))~~ operator with respect to all or part of that ~~((underground))~~ facility ~~((owner's))~~ operator's own underground facilities.

Sec. 16. RCW 19.122.100 and 2005 c 448 s 6 are each amended to read as follows:

If charged with a violation of RCW 19.122.090, an equipment operator ~~((will be))~~ is deemed to have established an affirmative defense to such charges if:

(1) The equipment operator was provided a valid excavation confirmation code;

(2) The excavation was performed in an emergency situation;

(3) The equipment operator was provided a false confirmation code by an identifiable third party; or

(4) Notice of the excavation was not required under this chapter.

Sec. 17. RCW 19.122.110 and 2005 c 448 s 7 are each amended to read as follows:

Any person who intentionally provides an equipment operator with a false excavation confirmation code is guilty of a misdemeanor.

NEW SECTION. Sec. 18. A new section is added to chapter 19.122 RCW to read as follows:

(1) The commission must contract with a statewide, nonprofit entity whose purpose is to reduce damages to underground and above ground facilities, promote safe excavation practices, and review complaints of alleged violations of this chapter. The contract does not obligate funding by the commission for activities performed by the nonprofit entity or the safety committee under this section, and therefore is exempt under RCW 39.29.040(1) from the requirements of chapter 39.29 RCW.

(2) The contracting entity must create a safety committee to:

(a) Advise the commission and other state agencies, the legislature, and local government agencies and officials on best practices and training to prevent damage to underground utilities, and policies to enhance worker and public safety and protection of underground facilities; and

(b) Review complaints alleging violations of this chapter involving practices related to underground facilities.

(3) The safety committee consists of thirteen members, who must be nominated by represented groups and appointed by the contracting entity to staggered three-year terms. The safety committee must include representatives of:

(a) Local governments;

(b) An investor-owned natural gas utility subject to regulation under Titles 80 and 81 RCW;

(c) Contractors;

(d) Excavators;

(e) An investor-owned electric utility subject to regulation under Title 80 RCW;

(f) A consumer-owned utility;

(g) A pipeline company;

(h) The insurance industry;

(i) The commission; and

(j) A telecommunications company.

(4) The safety committee must meet at least once every three months.

(5) The safety committee may review complaints of alleged violations of this chapter involving practices related to underground facilities. Any person may bring a complaint to the safety committee regarding an alleged violation.

(6) To review complaints of alleged violations, the safety committee must appoint at least three and no more than five members as a review committee. The review committee must

represent a balance of excavators, facility operators, and the insurance industry, and must include at least one representative of a pipeline company or natural gas distribution company.

(7) Before reviewing a complaint alleging a violation of this chapter, the review committee must notify the person making the complaint and the alleged violator of its review and the opportunity to participate.

(8) The safety committee may provide written notification to the commission, with supporting documentation, that a person has likely committed a violation of this chapter, and recommend remedial action that may include a penalty amount, training, or education to improve public safety, or some combination of penalty, training, and education.

(9) This section expires December 31, 2020.

NEW SECTION. Sec. 19. A new section is added to chapter 19.122 RCW to read as follows:

(1) The commission may enforce the civil penalties authorized in RCW 19.122.070 or 19.122.075 when it receives written notification from the safety committee created under section 18 of this act indicating that a violation of this chapter has likely been committed by a person subject to regulation by the commission, or involving the underground facilities of such a person.

(2) If the commission receives written notification from the safety committee pursuant to section 18 of this act that a violation of this chapter has likely been committed by a person who is not subject to regulation by the commission, and in which the underground facility involved is also not subject to regulation by the commission, the commission may refer the matter to the attorney general for enforcement of a civil penalty under RCW 19.122.070 or 19.122.075. The commission must provide funding for such enforcement. However, any costs and fees recovered by the attorney general pursuant to subsection (3) of this section must be deposited by the commission in the fund that paid those costs and fees.

(3) In a matter referred to it by the commission pursuant to subsection (2) of this section, the attorney general may bring an action to enforce the penalties authorized in RCW 19.122.070 or 19.122.075. In any action brought under this subsection, the court may award the state all costs of investigation and trial, including a reasonable attorneys' fee fixed by the court.

(4) This section expires December 31, 2020.

NEW SECTION. Sec. 20. A new section is added to chapter 19.122 RCW to read as follows:

(1) Facility operators and excavators who observe or cause damage to an underground facility must report the event to the commission.

(2)(a) Facility operators and excavators who observe or cause damage must report whenever the event results in scrapes, gouges, cracks, dents, or other visible damage to a utility, pipeline, or cable casing or other external protection of any underground facility.

(b) A nonpipeline facility operator conducting excavations, or a subcontractor conducting excavations on the facility operator's behalf, that strikes the facility operator's own underground facilities is not required to report that damage event to the commission.

(3) Reports must be made to the commission's office of pipeline safety within forty-five days of the event, or sooner if required by law using the commission's virtual private damage information reporting tool (DIRT) report form or other similar form if it reports:

(a) The name of the person submitting the report and whether the person is an excavator, a representative of a one-number locator service, or a facility operator;

(b) The date and time of the damage event;

(c) The address where the damage occurred;

(d) The type of right-of-way, where the damage occurred, including but not limited to city street, state highway, or private easement;

(e) The type of underground facility damaged, including but not limited to pipes, transmission pipelines, distribution lines, sewers, conduits, cables, valves, lines, wires, manholes, attachments, or parts of poles or anchors below ground;

(f) The type of utility service or commodity the underground facility stores or conveys, including but not limited to electronic, telephonic or telegraphic communications, water, sewage, cablevision, electric energy, petroleum products, gas, gaseous vapors, hazardous liquids, or other substances;

(g) The type of excavator, including but not limited to contractors or facility operators;

(h) The excavation equipment used, including but not limited to augers, bulldozers, backhoes, or hand tools;

(i) The type of work being performed, including but not limited to drainage, grading, or landscaping;

(j) Whether a one-number locator service was notified before excavation commenced, and, if so, the excavation confirmation code provided by the one-number locator service;

(k) The person who located the underground facility, and their employer;

(l) Whether underground facility marks were visible in the proposed excavation area before excavation commenced;

(m) Whether underground facilities were marked correctly;

(n) Whether an excavator experienced interruption of work as a result of the damage;

(o) A description of the damage; and

(p) Whether the damage caused an interruption of underground facility service.

(4) The commission must use reported data to evaluate the effectiveness of the damage prevention program.

NEW SECTION. Sec. 21. A new section is added to chapter 19.122 RCW to read as follows:

(1) The commission may investigate and enforce violations of RCW 19.122.055, 19.122.075, and 19.122.090 relating to pipeline facilities without initial referral to the safety committee created under section 18 of this act.

(2) If the commission's investigation of notifications received pursuant to section 19 of this act or subsection (1) of this section substantiates violations of this chapter, the commission may impose penalties authorized by RCW 19.122.055, 19.122.070, 19.122.075, and 19.122.090, and require training, education, or any combination of these remedies.

(3) With respect to referrals from the safety committee, the commission must consider any recommendation by the committee regarding enforcement and remedial actions involving an alleged violator.

(4) In an action to impose penalties initiated by the commission under subsection (1) or (2) of this section, the penalty is due and payable when the person incurring the penalty receives a notice of penalty in writing from the commission describing the violation and advising the person that the penalty is due. The person incurring the penalty has fifteen days from the date it receives the notice of penalty to file with the commission a request for mitigation or a request for a hearing, and the commission must include this time limit information in the notice of penalty. After receiving a timely request for mitigation or hearing, the commission must suspend collection of the penalty until it issues a final order concerning the penalty or mitigation of that penalty. A person aggrieved by the commission's final order may seek judicial review, subject to provisions of the administrative procedure act, chapter 34.05 RCW.

(5) If a penalty imposed by the commission is not paid, the attorney general may, on the commission's behalf, file a civil action in superior court to collect the penalty.

(6) This section expires December 31, 2020.

NEW SECTION. Sec. 22. A new section is added to chapter 19.122 RCW to read as follows:

EIGHTY SEVENTH DAY, APRIL 6, 2011

2011 REGULAR SESSION

All penalties collected pursuant to section 21 of this act must be deposited in the damage prevention account created in section 12 of this act.

NEW SECTION. Sec. 23. RCW 19.122.060 (Exemption from notice and marking requirements for property owners) and 1984 c 144 s 6 are each repealed.

NEW SECTION. Sec. 24. A new section is added to chapter 19.122 RCW to read as follows:

Nothing in this act may be construed to classify a consumer-owned utility, as defined in RCW 19.27A.140, to be under the authority of the commission.

NEW SECTION. Sec. 25. A new section is added to chapter 19.122 RCW to read as follows:

This act may be known and cited as the underground utility damage prevention act.

NEW SECTION. Sec. 26. This act takes effect January 1, 2013."

On page 1, line 1 of the title, after "utilities;" strike the remainder of the title and insert "amending RCW 19.122.010, 19.122.020, 19.122.027, 19.122.030, 19.122.033, 19.122.035, 19.122.040, 19.122.050, 19.122.055, 19.122.070, 19.122.075, 19.122.080, 19.122.100, and 19.122.110; adding new sections to chapter 19.122 RCW; repealing RCW 19.122.060; prescribing penalties; providing an effective date; and providing expiration dates."

The President declared the question before the Senate to be the motion by Senator Rockefeller to not adopt the committee striking amendment by the Committee on Environment, Water & Energy to Engrossed Second Substitute House Bill No. 1634.

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

MOTION

Senator Rockefeller moved that the following striking amendment by Senators Rockefeller, Nelson and Honeyford be adopted:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 19.122.010 and 1984 c 144 s 1 are each amended to read as follows:

(It is the intent of the legislature in enacting this chapter to assign responsibilities for locating and keeping accurate records of utility locations, protecting and repairing damage to existing underground facilities, and protecting the public health and safety from interruption in utility services caused by damage to existing underground utility facilities.) In this chapter, the underground utility damage prevention act, the legislature intends to protect public health and safety and prevent disruption of vital utility services through a comprehensive damage prevention program that includes:

(1) Assigning responsibility for providing notice of proposed excavation, locating and marking underground utilities, and reporting and repairing damage;

(2) Setting safeguards for construction and excavation near hazardous liquid and gas pipelines;

(3) Improving worker and public knowledge of safe practices;

(4) Collecting and analyzing damage data;

(5) Reviewing alleged violations; and

(6) Enforcing this chapter.

Sec. 2. RCW 19.122.020 and 2007 c 142 s 9 are each amended to read as follows:

(Unless the context clearly requires otherwise,) The definitions in this section apply throughout this chapter(;) unless the context clearly requires otherwise.

(1) "Business day" means any day other than Saturday, Sunday, or a legal local, state, or federal holiday.

(2) "Damage" includes the substantial weakening of structural or lateral support of an underground facility, penetration, impairment, or destruction of any underground protective coating, housing, or other protective device, or the severance, partial or complete, of any underground facility to the extent that the project owner or the affected ~~(utility owner)~~ facility operator determines that repairs are required.

(3) "Emergency" means any condition constituting a clear and present danger to life or property, or a customer service outage.

(4) "Excavation" and "excavate" means any operation, including the installation of signs, in which earth, rock, or other material on or below the ground is moved or otherwise displaced by any means ~~(except the tilling of soil less than twelve inches in depth for agricultural purposes, or road and ditch maintenance that does not change the original road grade or ditch flowline).~~

(5) "Excavation confirmation code" means a code or ticket issued by ~~(the)~~ a one-number locator service for the site where an excavation is planned. The code must be accompanied by the date and time it was issued.

(6) "Excavator" means any person who engages directly in excavation.

(7) "Gas" means natural gas, flammable gas, or toxic or corrosive gas.

(8) "Hazardous liquid" means:

(a) Petroleum, petroleum products, or anhydrous ammonia as those terms are defined in 49 C.F.R. Part 195 as in effect on March 1, 1998; ~~(and)~~

(b) Carbon dioxide ~~(The utilities and transportation commission may by rule incorporate by reference); and~~

(c) Other substances designated as hazardous by the secretary of transportation and incorporated by reference by the commission by rule.

(9) ("Identified facility" means any underground facility which is indicated in the project plans as being located within the area of proposed excavation.

~~((10))~~ "Identified but unlocatable underground facility" means an underground facility which has been identified but cannot be located with reasonable accuracy.

~~((11))~~ (10) "Locatable underground facility" means an underground facility which can be ~~(field marked)~~ marked with reasonable accuracy.

~~((12))~~ (11) "Marking" means the use of stakes, paint, or other clearly identifiable materials to show the field location of underground facilities, in accordance with the current color code standard of the American public works association. Markings shall include identification letters indicating the specific type of the underground facility.

~~((13))~~ (12) "Notice" or "notify" means contact in person or by telephone or other electronic method ~~(s that), and, with respect to contact of a one-number locator service, also results in the receipt of a valid excavation confirmation code.~~

~~((14))~~ (13) "One-number locator service" means a service through which a person can notify ~~(utilities)~~ facility operators and request ~~(field marking)~~ marking of underground facilities.

~~((15))~~ "Operator" means the individual conducting the excavation.

~~((16))~~ (14) "Person" means an individual, partnership, franchise holder, association, corporation, ~~((a))~~ the state, a city, a county, a town, or any subdivision or instrumentality of ~~((a))~~ the state, including any unit of local government, and its employees, agents, or legal representatives.

~~((17))~~ (15) "Pipeline" or "pipeline system" means all or parts of a pipeline facility through which hazardous liquid or gas moves in

transportation, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping or compressor units, metering and delivery stations and fabricated assemblies therein, and breakout tanks. "Pipeline" or "pipeline system" does not include process or transfer pipelines.

~~((148))~~ (16) "Pipeline company" means a person or entity constructing, owning, or operating a pipeline for transporting hazardous liquid or gas. ~~((A))~~ "Pipeline company" does not include:

(a) Distribution systems owned and operated under franchise for the sale, delivery, or distribution of natural gas at retail; or

(b) Excavation contractors or other contractors that contract with a pipeline company.

~~((149))~~ (17) "Reasonable accuracy" means location within twenty-four inches of the outside dimensions of both sides of an underground facility.

~~((20))~~ (18) "Transfer pipeline" means a buried or aboveground pipeline used to carry hazardous liquid between a tank vessel or transmission pipeline and the first valve inside secondary containment at ~~((the))~~ a facility, provided that any discharge on the facility side of ~~((that))~~ the first valve will not directly impact waters of the state. ~~((A))~~ "Transfer pipeline" includes valves~~(s)~~ and other appurtenances connected to the pipeline, pumping units, and fabricated assemblies associated with pumping units. ~~((A))~~ "Transfer pipeline" does not include process pipelines, pipelines carrying ballast or bilge water, transmission pipelines, or tank vessel or storage tanks.

~~((21))~~ (19) "Transmission pipeline" means a pipeline that transports hazardous liquid or gas within a storage field, or transports hazardous liquid or gas from an interstate pipeline or storage facility to a distribution main or a large volume hazardous liquid or gas user, or operates at a hoop stress of twenty percent or more of the specified minimum yield strength.

~~((22))~~ (20) "Underground facility" means any item buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, cablevision, electric energy, petroleum products, gas, gaseous vapors, hazardous liquids, or other substances and including but not limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, and those parts of poles or anchors that are below ground. This definition does not include pipelines as defined in subsection ~~((47))~~ (15) of this section, but does include distribution systems owned and operated under franchise for the sale, delivery, or distribution of natural gas at retail.

(21) "Bar hole" means a hole made in the soil or pavement with a hand-operated bar for the specific purpose of testing the subsurface atmosphere with a combustible gas indicator.

(22) "Commission" means the utilities and transportation commission.

(23) "End user" means any utility customer or consumer of utility services or commodities provided by a facility operator.

(24) "Equipment operator" means an individual conducting an excavation.

(25) "Facility operator" means any person who owns an underground facility or is in the business of supplying any utility service or commodity for compensation. "Facility operator" does not include a utility customer who owns a service lateral that terminates at a facility operator's main utility line.

(26) "Large project" means a project that exceeds seven hundred linear feet.

(27) "Service lateral" means an underground water, storm water, or sewer facility located in a public right-of-way or utility easement that connects an end user's building or property to a facility operator's underground facility, and terminates beyond the public right-of-way or utility easement.

(28) "Unlocatable underground facility" means, subject to the provisions of RCW 19.122.030, an underground facility that cannot be marked with reasonable accuracy using available information to designate the location of an underground facility. "Unlocatable underground facility" includes, but is not limited to, service laterals, storm drains, and nonconductive and nonmetallic underground facilities that do not contain trace wires.

(29) "Utility easement" means a right held by a facility operator to install, maintain, and access an underground facility or pipeline.

Sec. 3. RCW 19.122.027 and 2005 c 448 s 2 are each amended to read as follows:

(1) The ~~((utilities and transportation commission shall cause to be established))~~ commission must establish a single statewide toll-free telephone number to be used for referring excavators to the appropriate one-number locator service.

(2) The ~~((utilities and transportation))~~ commission, in consultation with the Washington utilities coordinating council, ~~((shall))~~ must establish minimum standards and best management practices for one-number locator services.

(3) One-number locator services ~~((shall))~~ must be operated by nongovernmental agencies.

(4) All facility operators within a one-number locator service area must subscribe to the service.

(5) Failure to subscribe to a one-number locator service constitutes willful intent to avoid compliance with this chapter.

Sec. 4. RCW 19.122.030 and 2000 c 191 s 17 are each amended to read as follows:

(1)(a) Unless exempted under section 5 of this act, before commencing any excavation, ~~((excluding agriculture tilling less than twelve inches in depth, the excavator shall))~~ an excavator must mark the boundary of the excavation area with white paint applied on the ground of the worksite, then provide notice of the scheduled commencement of excavation to all ~~((owners of underground facilities))~~ facility operators through a one-number locator service.

(b) If boundary marking required by (a) of this subsection is infeasible, an excavator must communicate directly with affected facility operators to ensure that the boundary of the excavation area is accurately identified.

(2) ((All owners of underground facilities within a one-number locator service area shall subscribe to the service. One-number locator service rates for cable television companies will be based on the amount of their underground facilities. If no one-number locator service is available, notice shall be provided individually to those owners of underground facilities known to or suspected of having underground facilities within the area of proposed excavation. The notice shall be communicated to the owners of underground facilities)) An excavator must provide the notice required by subsection (1) of this section to a one-number locator service not less than two business days ((or) and not more than ten business days before the scheduled date for commencement of excavation, unless otherwise agreed ((by the parties)) by the excavator and facility operators. If an excavator intends to work at multiple sites or at a large project, the excavator must take reasonable steps to confer with facility operators to enable them to locate underground facilities reasonably in advance of the start of excavation for each phase of the work.

(3) Upon receipt of the notice provided for in ~~((this section, the owner of the underground facility shall))~~ subsection (1) of this section, a facility operator must, with respect to:

(a) The facility operator's locatable underground facilities, provide the excavator with reasonably accurate information ~~((as to its locatable underground facilities by surface marking the location of the facilities. If there are))~~ by marking their location;

(b) The facility operator's unlocatable or identified but unlocatable underground facilities, ~~((the owner of such facilities shall))~~ provide the excavator with ~~((the best))~~ available information

EIGHTY SEVENTH DAY, APRIL 6, 2011

2011 REGULAR SESSION

as to their ~~((locations. The owner of the underground facility providing the information shall respond))~~ location; and

(c) Service laterals, designate their presence or location, if the service laterals:

(i) Connect end users to the facility operator's main utility line; and

(ii) Are within a public right-of-way or utility easement and the boundary of the excavation area identified under subsection (1) of this section.

~~(4)(a) A facility operator must provide information to an excavator pursuant to subsection (3) of this section no later than two business days after the receipt of the notice ((or before the excavation time)) provided for in subsection (1) of this section or before excavation commences, at the option of the ((owner)) facility operator, unless otherwise agreed by the parties. ((Excavators shall not excavate until all known facilities have been marked. Once marked by the owner of the underground facility, the excavator is responsible for maintaining the markings. Excavators shall have the right to receive compensation from the owner of the underground facility for costs incurred if the owner of the underground facility does not locate its facilities in accordance with this section.~~

~~((4) The owner of the underground facility shall have))~~

(b) A facility operator complying with subsection (3)(b) and (c) of this section may do so in a manner that includes any of the following methods:

(i) Placing within a proposed excavation area a triangular mark at the main utility line pointing at the building, structure, or property in question, indicating the presence of an unlocatable or identified but unlocatable underground facility, including a service lateral;

(ii) Arranging to meet an excavator at a worksite to provide available information about the location of service laterals; or

(iii) Providing copies of the best reasonably available records by electronic message, mail, facsimile, or other delivery method.

(c) A facility operator's good faith attempt to comply with subsection (3)(b) and (c) of this section:

(i) Constitutes full compliance with the requirements of this section, and no person may be found liable for damages or injuries that may result from such compliance, apart from liability for arranging for repairs or relocation as provided in RCW 19.122.050(2); and

(ii) Does not constitute any assertion of ownership or operation of a service lateral by the facility operator.

(d) An end user is responsible for determining the location of a service lateral on their property or a service lateral that they own. Nothing in this section may be interpreted to require an end user to subscribe to a one-number locator service or to locate a service lateral within a right-of-way or utility easement.

(5) An excavator must not excavate until all known facility operators have marked or provided information regarding underground facilities as provided in this section.

(6)(a) Once marked by a facility operator, an excavator is responsible for maintaining the accuracy of the facility operator's markings of underground facilities for the lesser of:

(i) Forty-five calendar days from the date that the excavator provided notice to a one-number locator service pursuant to subsection (1) of this section; or

(ii) The duration of the project.

(b) An excavator that makes repeated requests for location of underground facilities due to its failure to maintain the accuracy of a facility operator's markings as required by this subsection (6) may be charged by the facility operator for services provided.

(c) A facility operator's markings of underground utilities expire forty-five calendar days from the date that the excavator provided notice to a one-number locator service pursuant to subsection (1) of

this section. For excavation occurring after that date, an excavator must provide additional notice to a one-number locator service pursuant to subsection (1) of this section.

(7) An excavator has the right to receive reasonable compensation from a facility operator for costs incurred by the excavator if the facility operator does not locate its underground facilities in accordance with the requirements specified in this section.

~~(8) A facility operator has the right to receive ((compensation for costs incurred in responding to excavation notices given less than two business days prior to the excavation from the excavator)) reasonable compensation from an excavator for costs incurred by the facility operator if the excavator does not comply with the requirements specified in this section.~~

~~((5) An owner of underground facilities is not required to indicate the presence of existing service laterals or appurtenances if the presence of existing service laterals or appurtenances on the site of the construction project can be determined from the presence of other visible facilities, such as buildings, manholes, or meter and junction boxes on or adjacent to the construction site.~~

(6) Emergency excavations are exempt from the time requirements for notification provided in this section.

~~(7) If the excavator, while performing the contract,) (9) A facility operator is not required to comply with subsection (4) of this section with respect to service laterals conveying only water if their presence can be determined from other visible water facilities, such as water meters, water valve covers, and junction boxes in or adjacent to the boundary of an excavation area identified under subsection (1) of this section.~~

~~((10) If an excavator discovers underground facilities ((which)) that are not identified, the excavator ((shall)) must cease excavating in the vicinity of the ((facility)) underground facilities and immediately notify the ((owner or)) facility operator ((of such facilities,)) or ((the)) a one-number locator service. If an excavator discovers identified but unlocatable underground facilities, the excavator must notify the facility operator. Upon notification by a one-number locator service or an excavator, a facility operator must allow for location of the uncovered portion of an underground facility identified by the excavator, and may accept location information from the excavator for marking of the underground facility.~~

NEW SECTION. Sec. 5. A new section is added to chapter 19.122 RCW to read as follows:

(1) The requirements specified in RCW 19.122.030 do not apply to any of the following activities:

(a) An emergency excavation, but only with respect to boundary marking and notice requirements specified in RCW 19.122.030 (1) and (2), and provided that the excavator provides notice to a one-number locator service at the earliest practicable opportunity;

(b) An excavation of less than twelve inches in depth on private noncommercial property, if the excavation is performed by the person or an employee of the person who owns or occupies the property on which the excavation is being performed;

(c) The tilling of soil for agricultural purposes less than:

(i) Twelve inches in depth within a utility easement; and

(ii) Twenty inches in depth outside of a utility easement;

(d) The replacement of an official traffic sign installed prior to January 1, 2013, no deeper than the depth at which it was installed;

(e) Road maintenance activities involving excavation less than six inches in depth below the original road grade and ditch maintenance activities involving excavation less than six inches in depth below the original ditch flowline, or alteration of the original ditch horizontal alignment;

(f) The creation of bar holes less than twelve inches in depth, or of any depth during emergency leak investigations, provided that the

excavator takes reasonable measures to eliminate electrical arc hazards; or

(g) Construction, operation, or maintenance activities by an irrigation district on rights-of-way, easements, or facilities owned by the federal bureau of reclamation in federal reclamation projects.

(2) Any activity described in subsection (1) of this section is subject to the requirements specified in RCW 19.122.050.

Sec. 6. RCW 19.122.033 and 2000 c 191 s 18 are each amended to read as follows:

(1) Before commencing any excavation, (~~(excluding agricultural tilling less than twelve inches in depth,)~~) an excavator (~~(shall)~~ must) notify pipeline companies of the scheduled commencement of excavation through a one-number locator service in the same manner as (~~(is)~~) required for notifying (~~(owners of underground facilities)~~) facility operators of excavation (~~(work)~~) under RCW 19.122.030. Pipeline companies (~~(shall)~~) have the same rights and responsibilities as (~~(owners of underground facilities)~~) facility operators under RCW 19.122.030 regarding excavation (~~(work)~~). Excavators have the same rights and responsibilities under this section as they have under RCW 19.122.030.

(2) Project owners, excavators, and pipeline companies have the same rights and responsibilities relating to excavation near pipelines that they have for excavation near underground facilities as provided in RCW 19.122.040.

(3) The state, and any subdivision or instrumentality of the state, including any unit of local government, must, when planning construction or excavation within one hundred feet, or greater distance if required by local ordinance, of a right-of-way or utility easement containing a transmission pipeline, notify the pipeline company of the scheduled commencement of work.

(4) Any unit of local government that issues permits under codes adopted pursuant to chapter 19.27 RCW must, when permitting construction or excavation within one hundred feet, or greater distance if required by local ordinance, of a right-of-way or utility easement containing a transmission pipeline:

(a) Notify the pipeline company of the permitted activity when it issues the permit; or

(b) Require, as a condition of issuing the permit, that the applicant consult with the pipeline company.

(5) The commission must assist local governments in obtaining hazardous liquid and gas pipeline location information and maps, as provided in RCW 81.88.080.

Sec. 7. RCW 19.122.035 and 2000 c 191 s 19 are each amended to read as follows:

(1) After a pipeline company has been notified by an excavator pursuant to RCW 19.122.033 that excavation (~~(work)~~) will uncover any portion of the pipeline company's pipeline, the pipeline company shall ensure that the pipeline section in the vicinity of the excavation is examined for damage prior to being reburied.

(2) Immediately upon receiving information of third-party damage to a hazardous liquid pipeline, the company that operates the pipeline shall terminate the flow of hazardous liquid in that pipeline until it has visually inspected the pipeline. After visual inspection, the (~~(operator of the hazardous liquid)~~) pipeline company shall determine whether the damaged pipeline section should be replaced or repaired, or whether it is safe to resume pipeline operation. Immediately upon receiving information of third-party damage to a gas pipeline, the (~~(company that operates the)~~) pipeline company shall conduct a visual inspection of the pipeline to determine whether the flow of gas through that pipeline should be terminated, and whether the damaged pipeline should be replaced or repaired. A record of the pipeline company's inspection report and test results shall be provided to the (~~(utilities and transportation)~~) commission, consistent with reporting requirements under 49 C.F.R. Parts 191 and 195, Subpart B.

(3) Pipeline companies shall immediately notify local first responders and the department of ecology of any reportable release of a hazardous liquid from a pipeline. Pipeline companies shall immediately notify local first responders and the commission of any blowing gas leak from a gas pipeline that has ignited or represents a probable hazard to persons or property. Pipeline companies shall take all appropriate steps to ensure the public safety in the event of a release of hazardous liquid or gas under this subsection.

(4) No damaged pipeline may be buried until it is repaired or relocated. The pipeline company shall arrange for repairs or relocation of a damaged pipeline as soon as is practical or may permit the excavator to do necessary repairs or relocation at a mutually acceptable price.

Sec. 8. RCW 19.122.040 and 1984 c 144 s 4 are each amended to read as follows:

(1) Project owners shall indicate in bid or contract documents the existence of underground facilities known by the project owner to be located within the proposed area of excavation. The following (~~(shall be)~~) are deemed to be changed or differing site conditions:

(a) An underground facility not identified as required by this chapter or other provision of law; (~~(and)~~) or

(b) An underground facility not located, as required by this chapter or other provision of law, by the project owner, facility operator, or excavator if the project owner or excavator is also a (~~(utility)~~) facility operator.

(2) An excavator shall use reasonable care to avoid damaging underground facilities. An excavator (~~(shall)~~) must:

(a) Determine the precise location of underground facilities which have been marked;

(b) Plan the excavation to avoid damage to or minimize interference with underground facilities in and near the excavation area; and

(c) Provide such support for underground facilities in and near the construction area, including during backfill operations, as may be reasonably necessary for the protection of such facilities.

(3) If an underground facility is damaged and such damage is the consequence of the failure to fulfill an obligation under this chapter, the party failing to perform that obligation (~~(shall be)~~) is liable for any damages. Any clause in an excavation contract which attempts to allocate liability, or requires indemnification to shift the economic consequences of liability, (~~(different)~~) that differs from the provisions of this chapter is against public policy and unenforceable. Nothing in this chapter prevents the parties to an excavation contract from contracting with respect to the allocation of risk for changed or differing site conditions.

(4) In any action brought under this section, the prevailing party is entitled to reasonable attorneys' fees.

Sec. 9. RCW 19.122.050 and 1984 c 144 s 5 are each amended to read as follows:

(1) An excavator who, in the course of excavation, contacts or damages an underground facility shall notify the (~~(utility owning or operating such)~~) facility operator and (~~(the)~~) a one-number locator service, and report the damage as required under section 20 of this act. If the damage causes an emergency condition, the excavator causing the damage shall also alert the appropriate local public safety agencies and take all appropriate steps to ensure the public safety. No damaged underground facility may be buried until it is repaired or relocated.

(2) (~~(The owner of the underground facilities damaged)~~) A facility operator notified in accordance with subsection (1) of this section shall arrange for repairs or relocation as soon as is practical, or (~~(may)~~) permit the excavator to do necessary repairs or relocation at a mutually acceptable price.

Sec. 10. RCW 19.122.055 and 2005 c 448 s 3 are each amended to read as follows:

EIGHTY SEVENTH DAY, APRIL 6, 2011

2011 REGULAR SESSION

(1)(a) Any excavator who fails to notify ~~((the))~~ a one-number locator service and causes damage to a hazardous liquid or gas ~~((pipeline))~~ underground facility is subject to a civil penalty of not more than ten thousand dollars for each violation.

(b) The civil penalty in this subsection may also be imposed on any excavator who violates RCW 19.122.090.

(2) All civil penalties recovered under this section ~~((shall))~~ must be deposited into the ~~((pipeline safety))~~ damage prevention account created in ~~((RCW 81.88.050))~~ section 12 of this act.

Sec. 11. RCW 19.122.070 and 2005 c 448 s 4 are each amended to read as follows:

(1) Any person who violates any provision of this chapter not amounting to a violation of RCW 19.122.055~~((, and which violation results in damage to underground facilities,))~~ is subject to a civil penalty of not more than one thousand dollars for ~~((each violation. All penalties recovered in such actions shall be deposited in the general fund))~~ an initial violation, and not more than five thousand dollars for each subsequent violation within a three-year period. All penalties recovered in such actions must be deposited in the damage prevention account created in section 12 of this act.

(2) Any excavator who willfully or maliciously damages a ~~((field marked))~~ marked underground facility ~~((shall be))~~ is liable for treble the costs incurred in repairing or relocating the facility. In those cases in which an excavator fails to notify known ~~((underground))~~ facility ~~((owners))~~ operators or ~~((the))~~ a one-number locator service, any damage to the underground facility ~~((shall be))~~ is deemed willful and malicious and ~~((shall be))~~ is subject to treble damages for costs incurred in repairing or relocating the facility.

(3) This chapter does not affect any civil remedies for personal injury or for property damage, including that to underground facilities, nor does this chapter create any new civil remedies for such damage.

NEW SECTION. Sec. 12. A new section is added to chapter 19.122 RCW to read as follows:

The damage prevention account is created in the custody of the state treasurer. All receipts from moneys directed by law or the commission to be deposited to the account must be deposited in the account. Expenditures from the account may be used only for purposes designated in section 13 of this act. Only the commission or the commission's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW.

NEW SECTION. Sec. 13. A new section is added to chapter 19.122 RCW to read as follows:

The commission may use money deposited in the damage prevention account created in section 12 of this act to:

(1) Develop and disseminate educational programming designed to improve worker and public safety relating to excavation and underground facilities; and

(2) Provide grants to persons who have developed educational programming that the commission and the safety committee created pursuant to section 18 of this act deem appropriate for improving worker and public safety relating to excavation and underground facilities.

Sec. 14. RCW 19.122.075 and 2000 c 191 s 23 are each amended to read as follows:

Any person who willfully damages or removes a permanent marking used to identify an underground facility or pipeline, or a temporary marking prior to its intended use, is subject to a civil penalty of not more than one thousand dollars for ~~((each act))~~ an initial violation, and not more than five thousand dollars for each subsequent violation within a three-year period.

Sec. 15. RCW 19.122.080 and 1984 c 144 s 8 are each amended to read as follows:

The notification and marking provisions of this chapter may be waived for one or more designated persons by ~~((an underground))~~ a facility ~~((owner))~~ operator with respect to all or part of that ~~((underground))~~ facility ~~((owner's own))~~ operator's underground facilities.

Sec. 16. RCW 19.122.100 and 2005 c 448 s 6 are each amended to read as follows:

If charged with a violation of RCW 19.122.090, an equipment operator ~~((will be))~~ is deemed to have established an affirmative defense to such charges if:

(1) The equipment operator was provided a valid excavation confirmation code;

(2) The excavation was performed in an emergency situation;

(3) The equipment operator was provided a false confirmation code by an identifiable third party; or

(4) Notice of the excavation was not required under this chapter.

Sec. 17. RCW 19.122.110 and 2005 c 448 s 7 are each amended to read as follows:

Any person who intentionally provides an equipment operator with a false excavation confirmation code is guilty of a misdemeanor.

NEW SECTION. Sec. 18. A new section is added to chapter 19.122 RCW to read as follows:

(1) The commission must contract with a statewide, nonprofit entity whose purpose is to reduce damages to underground and above ground facilities, promote safe excavation practices, and review complaints of alleged violations of this chapter. The contract must not obligate funding by the commission for activities performed by the nonprofit entity or the safety committee under this section, and is therefore exempt under RCW 39.29.040(1) from the requirements of chapter 39.29 RCW.

(2) The contracting entity must create a safety committee to:

(a) Advise the commission and other state agencies, the legislature, and local governments on best practices and training to prevent damage to underground utilities, and policies to enhance worker and public safety; and

(b) Review complaints alleging violations of this chapter involving practices related to underground facilities.

(3) The safety committee will consist of thirteen members, who must be nominated by represented groups and appointed by the contracting entity to staggered three-year terms. The safety committee must include representatives of:

(a) Local governments;

(b) A natural gas utility subject to regulation under Titles 80 and 81 RCW;

(c) Contractors;

(d) Excavators;

(e) An electric utility subject to regulation under Title 80 RCW;

(f) A consumer-owned utility, as defined in RCW 19.27A.140;

(g) A pipeline company;

(h) The insurance industry;

(i) The commission; and

(j) A telecommunications company.

(4) The safety committee must meet at least once every three months.

(5) The safety committee may review complaints of alleged violations of this chapter involving practices related to underground facilities. Any person may bring a complaint to the safety committee regarding an alleged violation.

(6) To review complaints of alleged violations, the safety committee must appoint at least three and not more than five members as a review committee. The review committee must include the same number of members representing excavators and facility operators. One member representing facility operators must also be a representative of a pipeline company or a natural gas utility subject to regulation under Titles 80 and 81 RCW. The

review committee must also include a member representing the insurance industry.

(7) Before reviewing a complaint alleging a violation of this chapter, the review committee must notify the person making the complaint and the alleged violator of its review and of the opportunity to participate.

(8) The safety committee may provide written notification to the commission, with supporting documentation, that a person has likely committed a violation of this chapter, and recommend remedial action that may include a penalty amount, training, or education to improve public safety, or some combination thereof.

(9) This section expires December 31, 2020.

NEW SECTION. Sec. 19. A new section is added to chapter 19.122 RCW to read as follows:

(1) The commission may enforce the civil penalties authorized in RCW 19.122.070 or 19.122.075 when it receives written notification from the safety committee created under section 18 of this act indicating that a violation of this chapter has likely been committed by a person subject to regulation by the commission, or involving the underground facilities of such a person.

(2) If the commission receives written notification from the safety committee pursuant to section 18 of this act that a violation of this chapter has likely been committed by a person who is not subject to regulation by the commission, and in which the underground facility involved is also not subject to regulation by the commission, the commission may refer the matter to the attorney general for enforcement of a civil penalty under RCW 19.122.070 or 19.122.075. The commission must provide funding for such enforcement. However, any costs and fees recovered by the attorney general pursuant to subsection (3) of this section must be deposited by the commission in the fund that paid for such enforcement.

(3) In a matter referred to it by the commission pursuant to subsection (2) of this section, the attorney general may bring an action to enforce the penalties authorized in RCW 19.122.070 or 19.122.075. In such an action, the court may award the state all costs of investigation and trial, including a reasonable attorneys' fee fixed by the court.

(4) This section expires December 31, 2020.

NEW SECTION. Sec. 20. A new section is added to chapter 19.122 RCW to read as follows:

(1) Facility operators and excavators who observe or cause damage to an underground facility must report the damage event to the commission.

(2) A nonpipeline facility operator conducting an excavation, or a subcontractor conducting an excavation on the facility operator's behalf, that strikes the facility operator's own underground facility is not required to report that damage event to the commission.

(3) Reports must be made to the commission's office of pipeline safety within forty-five days of the damage event, or sooner if required by law, using the commission's virtual private damage information reporting tool (DIRT) report form, or other similar form if it reports:

(a) The name of the person submitting the report and whether the person is an excavator, a representative of a one-number locator service, or a facility operator;

(b) The date and time of the damage event;

(c) The address where the damage event occurred;

(d) The type of right-of-way, where the damage event occurred, including but not limited to city street, state highway, or utility easement;

(e) The type of underground facility damaged, including but not limited to pipes, transmission pipelines, distribution lines, sewers, conduits, cables, valves, lines, wires, manholes, attachments, or parts of poles or anchors below ground;

(f) The type of utility service or commodity the underground facility stores or conveys, including but not limited to electronic, telephonic or telegraphic communications, water, sewage, cablevision, electric energy, petroleum products, gas, gaseous vapors, hazardous liquids, or other substances;

(g) The type of excavator involved, including but not limited to contractors or facility operators;

(h) The excavation equipment used, including but not limited to augers, bulldozers, backhoes, or hand tools;

(i) The type of excavation being performed, including but not limited to drainage, grading, or landscaping;

(j) Whether a one-number locator service was notified before excavation commenced, and, if so, the excavation confirmation code provided by a one-number locator service;

(k) If applicable:

(i) The person who located the underground facility, and their employer;

(ii) Whether underground facility marks were visible in the proposed excavation area before excavation commenced;

(iii) Whether underground facilities were marked correctly;

(l) Whether an excavator experienced interruption of work as a result of the damage event;

(m) A description of the damage; and

(n) Whether the damage caused an interruption of underground facility service.

(4) The commission must use reported data to evaluate the effectiveness of the damage prevention program.

NEW SECTION. Sec. 21. A new section is added to chapter 19.122 RCW to read as follows:

(1) The commission may investigate and enforce violations of RCW 19.122.055, 19.122.075, and 19.122.090 relating to pipeline facilities without initial referral to the safety committee created under section 18 of this act.

(2) If the commission's investigation of notifications received pursuant to section 19 of this act or subsection (1) of this section substantiates violations of this chapter, the commission may impose penalties authorized by RCW 19.122.055, 19.122.070, 19.122.075, and 19.122.090, and require training, education, or any combination thereof.

(3) With respect to referrals from the safety committee, the commission must consider any recommendation by the committee regarding enforcement and remedial actions involving an alleged violator.

(4) In an action to impose a penalty initiated by the commission under subsection (1) or (2) of this section, the penalty is due and payable when the person incurring the penalty receives a notice of penalty in writing from the commission describing the violation and advising the person that the penalty is due. The person incurring the penalty has fifteen days from the date the person receives the notice of penalty to file with the commission a request for mitigation or a request for a hearing. The commission must include this time limit information in the notice of penalty. After receiving a timely request for mitigation or hearing, the commission must suspend collection of the penalty until it issues a final order concerning the penalty or mitigation of that penalty. A person aggrieved by the commission's final order may seek judicial review, subject to provisions of the administrative procedure act, chapter 34.05 RCW.

(5) If a penalty imposed by the commission is not paid, the attorney general may, on the commission's behalf, file a civil action in superior court to collect the penalty.

(6) This section expires December 31, 2020.

NEW SECTION. Sec. 22. A new section is added to chapter 19.122 RCW to read as follows:

All penalties collected pursuant to section 21 of this act must be deposited in the damage prevention account created in section 12 of this act.

EIGHTY SEVENTH DAY, APRIL 6, 2011

2011 REGULAR SESSION

NEW SECTION. Sec. 23. RCW 19.122.060 (Exemption from notice and marking requirements for property owners) and 1984 c 144 s 6 are each repealed.

NEW SECTION. Sec. 24. A new section is added to chapter 19.122 RCW to read as follows:

Nothing in this act may be construed to classify a consumer-owned utility, as defined in RCW 19.27A.140, to be under the authority of the commission.

NEW SECTION. Sec. 25. A new section is added to chapter 19.122 RCW to read as follows:

This act may be known and cited as the underground utility damage prevention act.

NEW SECTION. Sec. 26. By December 1, 2015, the utilities and transportation commission must report to the appropriate committees of the legislature on the effectiveness of the damage prevention program established under chapter 19.122 RCW. The legislative report required under this section must include analysis of damage data reported under section 20 of this act.

NEW SECTION. Sec. 27. This act takes effect January 1, 2013."

Senators Rockefeller, Honeyford and Nelson spoke in favor of adoption of the striking amendment.

The President declared the question before the Senate to be the adoption of the striking amendment by Senators Rockefeller, Nelson and Honeyford to Engrossed Second Substitute House Bill No. 1634.

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

MOTION

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

On page 1, line 1 of the title, after "utilities;" strike the remainder of the title and insert "amending RCW 19.122.010, 19.122.020, 19.122.027, 19.122.030, 19.122.033, 19.122.035, 19.122.040, 19.122.050, 19.122.055, 19.122.070, 19.122.075, 19.122.080, 19.122.100, and 19.122.110; adding new sections to chapter 19.122 RCW; creating a new section; repealing RCW 19.122.060; prescribing penalties; providing an effective date; and providing expiration dates."

MOTION

On motion of Senator Rockefeller, the rules were suspended, Engrossed Second Substitute House Bill No. 1634 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Rockefeller spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Second Substitute House Bill No. 1634 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute House Bill No. 1634 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King,

Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1634 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1402, by House Committee on State Government & Tribal Affairs (originally sponsored by Representatives Upthegrove and Orwall)

Concerning certain social card games in an area annexed by a city or town.

The measure was read the second time.

MOTION

On motion of Senator Prentice, the rules were suspended, Substitute House Bill No. 1402 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Prentice and Holmquist Newbry spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1402.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1402 and the bill passed the Senate by the following vote: Yeas, 46; Nays, 2; Absent, 1; Excused, 0.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Harper, Hatfield, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

Voting nay: Senators Hargrove and Haugen

Absent: Senator Kline

SUBSTITUTE HOUSE BILL NO. 1402, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1051, by House Committee on Judiciary (originally sponsored by Representatives Pedersen, Rodne, Eddy, Goodman, Kelley and Moeller)

Amending trusts and estates statutes.

The measure was read the second time.

MOTION

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

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 11.02.005 and 2008 c 6 s 901 are each amended to read as follows:

When used in this title, unless otherwise required from the context:

(1) "Personal representative" includes executor, administrator, special administrator, and guardian or limited guardian and special representative.

(2) "Net estate" refers to the real and personal property of a decedent exclusive of homestead rights, exempt property, the family allowance and enforceable claims against, and debts of, the deceased or the estate.

(3) "Representation" refers to a method of determining distribution in which the takers are in unequal degrees of kinship with respect to a decedent, and is accomplished as follows: After first determining who, of those entitled to share in the estate, are in the nearest degree of kinship, the estate is divided into equal shares, the number of shares being the sum of the number of persons who survive the decedent who are in the nearest degree of kinship and the number of persons in the same degree of kinship who died before the decedent but who left issue surviving the decedent; each share of a deceased person in the nearest degree shall be divided among those of the deceased person's issue who survive the decedent and have no ancestor then living who is in the line of relationship between them and the decedent, those more remote in degree taking together the share which their ancestor would have taken had he or she survived the decedent.

(4) "Issue" means all the lineal descendants of an individual. An adopted individual is a lineal descendant of each of his or her adoptive parents and of all individuals with regard to which each adoptive parent is a lineal descendant. A child conceived prior to the death of a parent but born after the death of the deceased parent is considered to be the surviving issue of the deceased parent for purposes of this title.

(5) "Degree of kinship" means the degree of kinship as computed according to the rules of the civil law; that is, by counting upward from the intestate to the nearest common ancestor and then downward to the relative, the degree of kinship being the sum of these two counts.

(6) "Heirs" denotes those persons, including the surviving spouse or surviving domestic partner, who are entitled under the statutes of intestate succession to the real and personal property of a decedent on the decedent's death intestate.

(7) "Real estate" includes, except as otherwise specifically provided herein, all lands, tenements, and hereditaments, and all rights thereto, and all interest therein possessed and claimed in fee simple, or for the life of a third person.

(8) "Will" means an instrument validly executed as required by RCW 11.12.020.

(9) "Codicil" means a will that modifies or partially revokes an existing earlier will. A codicil need not refer to or be attached to the earlier will.

(10) "Guardian" or "limited guardian" means a personal representative of the person or estate of an incompetent or disabled person as defined in RCW 11.88.010 and the term may be used in lieu of "personal representative" wherever required by context.

(11) "Administrator" means a personal representative of the estate of a decedent and the term may be used in lieu of "personal representative" wherever required by context.

(12) "Executor" means a personal representative of the estate of a decedent appointed by will and the term may be used in lieu of "personal representative" wherever required by context.

(13) "Special administrator" means a personal representative of the estate of a decedent appointed for limited purposes and the term may be used in lieu of "personal representative" wherever required by context.

(14) "Trustee" means an original, added, or successor trustee and includes the state, or any agency thereof, when it is acting as the trustee of a trust to which chapter 11.98 RCW applies.

(15) "Nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under a written instrument or arrangement other than the person's will. "Nonprobate asset" includes, but is not limited to, a right or interest passing under a joint tenancy with right of survivorship, joint bank account with right of survivorship, payable on death or trust bank account, transfer on death security or security account, deed or conveyance if possession has been postponed until the death of the person, trust of which the person is grantor and that becomes effective or irrevocable only upon the person's death, community property agreement, individual retirement account or bond, or note or other contract the payment or performance of which is affected by the death of the person. "Nonprobate asset" does not include: A payable-on-death provision of a life insurance policy, annuity, or other similar contract, or of an employee benefit plan; a right or interest passing by descent and distribution under chapter 11.04 RCW; a right or interest if, before death, the person has irrevocably transferred the right or interest, the person has waived the power to transfer it or, in the case of contractual arrangement, the person has waived the unilateral right to rescind or modify the arrangement; or a right or interest held by the person solely in a fiduciary capacity. For the definition of "nonprobate asset" relating to revocation of a provision for a former spouse upon dissolution of marriage or declaration of invalidity of marriage, RCW 11.07.010(5) applies. For the definition of "nonprobate asset" relating to revocation of a provision for a former spouse upon dissolution of marriage or declaration of invalidity of marriage, see RCW 11.07.010(5). For the definition of "nonprobate asset" relating to testamentary disposition of nonprobate assets, see RCW 11.11.010(7).

(16) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended or renumbered as of January 1, 2001.

(17) References to "section 2033A" of the Internal Revenue Code in wills, trust agreements, powers of appointment, beneficiary designations, and other instruments governed by or subject to this title shall be deemed to refer to the comparable or corresponding provisions of section 2057 of the Internal Revenue Code, as added by section 6006(b) of the Internal Revenue Service Restructuring Act of 1998 (H.R. 2676, P.L. 105-206); and references to the section 2033A "exclusion" shall be deemed to mean the section 2057 deduction.

(18) "Surviving spouse" or "surviving domestic partner" does not include an individual whose marriage to or state registered domestic partnership with the decedent has been terminated, dissolved, or invalidated unless, by virtue of a subsequent marriage or state registered domestic partnership, he or she is married to or in a domestic partnership with the decedent at the time of death. A decree of separation that does not terminate the status of spouses or domestic partners is not a dissolution or invalidation for purposes of this subsection.

(19) "Trustor" means a person, including a testator, who creates, or contributes property to, a trust.

(20) "Settlor" has the same meaning as provided for "trustor" in this section.

Words that import the singular number may also be applied to the plural of persons and things.

Words importing the masculine gender only may be extended to females also.

EIGHTY SEVENTH DAY, APRIL 6, 2011

2011 REGULAR SESSION

Sec. 2. RCW 11.28.237 and 1997 c 252 s 85 are each amended to read as follows:

(1) Within twenty days after appointment, the personal representative of the estate of a decedent shall cause written notice of his or her appointment and the pendency of said probate proceedings, to be served personally or by mail to each heir, legatee and devisee of the estate and each beneficiary or transferee of a nonprobate asset of the decedent whose names and addresses are known to him or her, and proof of such mailing or service shall be made by affidavit and filed in the cause. If a trust is a legatee or devisee of the estate or a beneficiary or transferee of a nonprobate asset of the decedent, then notice to the trustee is sufficient.

(2) If the personal representative does not otherwise give notice to creditors under chapter 11.40 RCW within thirty days after appointment, the personal representative shall cause written notice of his or her appointment and the pendency of the probate proceedings to be mailed to the state of Washington department of social and health services' office of financial recovery, and proof of the mailing shall be made by affidavit and filed in the cause.

Sec. 3. RCW 11.68.090 and 2003 c 254 s 3 are each amended to read as follows:

(1) Any personal representative acting under nonintervention powers may borrow money on the general credit of the estate and may mortgage, encumber, lease, sell, exchange, convey, and otherwise have the same powers, and be subject to the same limitations of liability, that a trustee has under ~~((RCW 11.98.070 and))~~ chapters 11.98, 11.100, and 11.102 RCW with regard to the assets of the estate, both real and personal, all without an order of court and without notice, approval, or confirmation, and in all other respects administer and settle the estate of the decedent without intervention of court. Except as otherwise specifically provided in this title or by order of court, a personal representative acting under nonintervention powers may exercise the powers granted to a personal representative under chapter 11.76 RCW but is not obligated to comply with the duties imposed on personal representatives by that chapter. A party to such a transaction and the party's successors in interest are entitled to have it conclusively presumed that the transaction is necessary for the administration of the decedent's estate.

(2) Except as otherwise provided in chapter 11.108 RCW or elsewhere in order to preserve a marital deduction from estate taxes, a testator may by a will relieve the personal representative from any or all of the duties, restrictions, and liabilities imposed: Under common law; by chapters 11.54, 11.56, 11.100, 11.102, and 11.104A RCW; or by RCW 11.28.270 and 11.28.280, 11.68.095, and 11.98.070. In addition, a testator may likewise alter or deny any or all of the privileges and powers conferred by this title, and may add duties, restrictions, liabilities, privileges, or powers to those imposed or granted by this title. If any common law or any statute referenced earlier in this subsection is in conflict with a will, the will controls whether or not specific reference is made in the will to this section. However, notwithstanding the rest of this subsection, a personal representative may not be relieved of the duty to act in good faith and with honest judgment.

Sec. 4. RCW 11.94.050 and 2001 c 203 s 12 are each amended to read as follows:

(1) Although a designated attorney-in-fact or agent has all powers of absolute ownership of the principal, or the document has language to indicate that the attorney-in-fact or agent shall have all the powers the principal would have if alive and competent, the attorney-in-fact or agent shall not have the power to make, amend, alter, or revoke the principal's wills or codicils, and shall not have the power, unless specifically provided otherwise in the document: To make, amend, alter, or revoke any of the principal's life insurance, annuity, or similar contract beneficiary designations,

employee benefit plan beneficiary designations, trust agreements, registration of the principal's securities in beneficiary form, payable on death or transfer on death beneficiary designations, designation of persons as joint tenants with right of survivorship with the principal with respect to any of the principal's property, community property agreements, or any other provisions for nonprobate transfer at death contained in nontestamentary instruments described in RCW 11.02.091; to make any gifts of property owned by the principal; to exercise the principal's rights to distribute property in trust or cause a trustee to distribute property in trust to the extent consistent with the terms of the trust agreement; to make transfers of property to any trust (whether or not created by the principal) unless the trust benefits the principal alone and does not have dispositive provisions which are different from those which would have governed the property had it not been transferred into the trust~~((;))~~; or to disclaim property.

(2) Nothing in subsection (1) of this section prohibits an attorney-in-fact or agent from making any transfer of resources not prohibited under chapter 74.09 RCW when the transfer is for the purpose of qualifying the principal for medical assistance or the limited casualty program for the medically needy.

Sec. 5. RCW 11.96A.030 and 2009 c 525 s 20 are each amended to read as follows:

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

(1) "Citation" or "cite" and other similar terms, when required of a person interested in the estate or trust or a party to a petition, means to give notice as required under RCW 11.96A.100. "Citation" or "cite" and other similar terms, when required of the court, means to order, as authorized under RCW 11.96A.020 and 11.96A.060, and as authorized by law.

(2) "Matter" includes any issue, question, or dispute involving:

(a) The determination of any class of creditors, devisees, legatees, heirs, next of kin, or other persons interested in an estate, trust, nonprobate asset, or with respect to any other asset or property interest passing at death;

(b) The direction of a personal representative or trustee to do or to abstain from doing any act in a fiduciary capacity;

(c) The determination of any question arising in the administration of an estate or trust, or with respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, that may include, without limitation, questions relating to: (i) The construction of wills, trusts, community property agreements, and other writings; (ii) a change of personal representative or trustee; (iii) a change of the situs of a trust; (iv) an accounting from a personal representative or trustee; or (v) the determination of fees for a personal representative or trustee;

(d) The grant to a personal representative or trustee of any necessary or desirable power not otherwise granted in the governing instrument or given by law;

(e) An action or proceeding under chapter 11.84 RCW;

(f) The amendment, reformation, or conformation of a will or a trust instrument to comply with statutes and regulations of the United States internal revenue service in order to achieve qualification for deductions, elections, and other tax requirements, including the qualification of any gift thereunder for the benefit of a surviving spouse who is not a citizen of the United States for the estate tax marital deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a qualified domestic trust under section 2056A of the internal revenue code, the qualification of any gift thereunder as a qualified conservation easement as permitted by federal law, or the qualification of any gift for the charitable estate tax deduction permitted by federal law, including the addition of mandatory

governing instrument requirements for a charitable remainder trust; ~~((and))~~

(g) With respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, including joint tenancy property, property subject to a community property agreement, or assets subject to a pay on death or transfer on death designation:

(i) The ascertaining of any class of creditors or others for purposes of chapter 11.18 or 11.42 RCW;

(ii) The ordering of a qualified person, the notice agent, or resident agent, as those terms are defined in chapter 11.42 RCW, or any combination of them, to do or abstain from doing any particular act with respect to a nonprobate asset;

(iii) The ordering of a custodian of any of the decedent's records relating to a nonprobate asset to do or abstain from doing any particular act with respect to those records;

(iv) The determination of any question arising in the administration under chapter 11.18 or 11.42 RCW of a nonprobate asset;

(v) The determination of any questions relating to the abatement, rights of creditors, or other matter relating to the administration, settlement, or final disposition of a nonprobate asset under this title;

(vi) The resolution of any matter referencing this chapter, including a determination of any questions relating to the ownership or distribution of an individual retirement account on the death of the spouse of the account holder as contemplated by RCW 6.15.020(6);

(vii) The resolution of any other matter that could affect the nonprobate asset; and

(h) The reformation of a will or trust to correct a mistake under section 11 of this act.

(3) "Nonprobate assets" has the meaning given in RCW 11.02.005.

(4) "Notice agent" has the meanings given in RCW 11.42.010.

(5) "Party" or "parties" means each of the following persons who has an interest in the subject of the particular proceeding and whose name and address are known to, or are reasonably ascertainable by, the petitioner:

(a) The trustor if living;

(b) The trustee;

(c) The personal representative;

(d) An heir;

(e) A beneficiary, including devisees, legatees, and trust beneficiaries;

(f) The surviving spouse or surviving domestic partner of a decedent with respect to his or her interest in the decedent's property;

(g) A guardian ad litem;

(h) A creditor;

(i) Any other person who has an interest in the subject of the particular proceeding;

(j) The attorney general if required under RCW 11.110.120;

(k) Any duly appointed and acting legal representative of a party such as a guardian, special representative, or attorney-in-fact;

(l) Where applicable, the virtual representative of any person described in this subsection the giving of notice to whom would meet notice requirements as provided in RCW 11.96A.120;

(m) Any notice agent, resident agent, or a qualified person, as those terms are defined in chapter 11.42 RCW; and

(n) The owner or the personal representative of the estate of the deceased owner of the nonprobate asset that is the subject of the particular proceeding, if the subject of the particular proceeding relates to the beneficiary's liability to a decedent's estate or creditors under RCW 11.18.200.

(6) "Persons interested in the estate or trust" means the trustor, if living, all persons beneficially interested in the estate or trust, persons holding powers over the trust or estate assets, the attorney general in the case of any charitable trust where the attorney general would be a necessary party to judicial proceedings concerning the trust, and any personal representative or trustee of the estate or trust.

(7) ("Principal place of administration of the trust" means the trustee's usual place of business where the day-to-day records pertaining to the trust are kept, or the trustee's residence if the trustee has no such place of business.

(8)) "Representative" and other similar terms refer to a person who virtually represents another under RCW 11.96A.120.

((9) The "situs" of a trust means the place where the principal place of administration of the trust is located, unless otherwise provided in the instrument creating the trust.

(10)) (8) "Trustee" means any acting and qualified trustee of the trust.

Sec. 6. RCW 11.96A.050 and 2001 c 203 s 10 are each amended to read as follows:

(1) Venue for proceedings pertaining to trusts shall be:

(a) For testamentary trusts established under wills probated in the state of Washington, in the superior court of the county where ~~((letters testamentary were granted to a personal representative of the estate subject to the will or, in the alternative, the superior court of the county of the situs of the trust; and~~

~~—(b) For all other trusts, in the superior court of the county in which the situs of the trust is located, or, if the situs is not located in the state of Washington, in any county))~~ the probate of the will is being administered or was completed or, in the alternative, the superior court of the county where any beneficiary of the trust entitled to notice under RCW 11.97.010 resides, the county where any trustee resides or has a place of business, or the county where any real property that is an asset of the trust is located; and

(b) For all other trusts, in the superior court of the county where any beneficiary of the trust entitled to notice under RCW 11.97.010 resides, the county where any trustee resides or has a place of business, or the county where any real property that is an asset of the trust is located. If no county has venue for proceedings pertaining to a trust under the preceding sentence, then in any county.

(2) A party to a proceeding pertaining to a trust may request that venue be changed. If the request is made within four months of the giving of the first notice of a proceeding pertaining to the trust, except for good cause shown, venue must be moved to the county with the strongest connection to the trust as determined by the court, considering such factors as the residence of a beneficiary of the trust entitled to notice under RCW 11.97.010, the residence or place of business of a trustee, and the location of any real property that is an asset of the trust.

(3) Venue for proceedings subject to chapter 11.88 or 11.92 RCW shall be determined under the provisions of those chapters.

((3)) (4) Venue for proceedings pertaining to the probate of wills, the administration and disposition of a decedent's property, including nonprobate assets, and any other matter not identified in subsection (1) ~~((or)), (2), or (3)~~ of this section, ~~((may)) shall~~ be in any county in the state of Washington that the petitioner selects. A party to a proceeding may request that venue be changed if the request is made within four months of the mailing of the notice of appointment and pendency of probate required by RCW 11.28.237, and except for good cause shown, venue must be moved as follows:

(a) If the decedent was a resident of the state of Washington at the time of death, to the county of the decedent's residence; or

(b) If the decedent was not a resident of the state of Washington at the time of death, to any of the following:

(i) Any county in which any part of the probate estate might be;

(ii) If there are no probate assets, any county where any nonprobate asset might be; or

EIGHTY SEVENTH DAY, APRIL 6, 2011

2011 REGULAR SESSION

(iii) The county in which the decedent died.

~~((4))~~ (5) Once letters testamentary or of administration have been granted in the state of Washington, all orders, settlements, trials, and other proceedings under this title shall be had or made in the county in which such letters have been granted unless venue is moved as provided in subsection ~~((2))~~ (4) of this section.

~~((5))~~ (6) Venue for proceedings pertaining to powers of attorney shall be in the superior court of the county of the principal's residence, except for good cause shown.

~~((6))~~ (7) If venue is moved, an action taken before venue is changed is not invalid because of the venue.

~~((7))~~ (8) Any request to change venue that is made more than four months after the commencement of the action may be granted in the discretion of the court.

Sec. 7. RCW 11.96A.070 and 1999 c 42 s 204 are each amended to read as follows:

(1)(a) ((An action against the trustee of an express trust for a breach of fiduciary duty must be brought within three years from the earlier of: (i) The time the alleged breach was discovered or reasonably should have been discovered; (ii) the discharge of a trustee from the trust as provided in RCW 11.98.041 or by agreement of the parties under RCW 11.96A.220; or (iii) the time of termination of the trust or the trustee's repudiation of the trust.

(b) The provisions of (a) of this subsection apply to all express trusts, no matter when created, however it shall not apply to express trusts created before June 10, 1959, until the date that is three years after January 1, 2000.

(c)) A beneficiary of an express trust may not commence a proceeding against a trustee for breach of trust more than three years after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.

(b) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into its existence. A report that includes the following information is presumed to have provided such sufficient information regarding the existence of potential claims for breach of trust:

(i) A statement of receipts and disbursements of principal and income that have occurred during the accounting period;

(ii) A statement of the assets and liabilities of the trust and their values at the beginning and end of the period;

(iii) The trustee's compensation for the period;

(iv) The agents hired by the trustee, their relationship to the trustee, if any, and their compensation, for the period;

(v) Disclosure of any pledge, mortgage, option, or lease of trust property, or other agreement affecting trust property binding for a period of five years or more that was granted or entered into during the accounting period;

(vi) Disclosure of all transactions during the period that are equivalent to one of the types of transactions described in section 32 of this act or otherwise could have been affected by a conflict between the trustee's fiduciary and personal interests;

(vii) A statement that the recipient of the account information may petition the superior court pursuant to chapter 11.106 RCW to obtain review of the statement and of acts of the trustee disclosed in the statement; and

(viii) A statement that claims against the trustee for breach of trust may not be made after the expiration of three years from the date the beneficiary receives the statement.

(c) If (a) of this subsection does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within three years after the first to occur of:

(i) The removal, resignation, or death of the trustee;

(ii) The termination of the beneficiary's interest in the trust; or

(iii) The termination of the trust.

(d) For purposes of this section, "express trust" does not include resulting trusts, constructive trusts, business trusts in which certificates of beneficial interest are issued to the beneficiary, investment trusts, voting trusts, trusts in the nature of mortgages or pledges, ((trusts created by the judgment or decree of a court not sitting in probate,)) liquidation trusts, or trusts for the sole purpose of paying dividends, interest, interest coupons, salaries, wages, pensions, or profits, trusts created in deposits in any financial institution under chapter 30.22 RCW, unless any such trust that is created in writing specifically incorporates this chapter in whole or in part.

(2) Except as provided in RCW 11.96A.250 with respect to special representatives, an action against a personal representative for alleged breach of fiduciary duty by an heir, legatee, or other interested party must be brought before discharge of the personal representative.

(3) The legislature hereby confirms the long standing public policy of promoting the prompt and efficient resolution of matters involving trusts and estates. To further implement this policy, the legislature adopts the following statutory provisions in order to: (a) Encourage and facilitate the participation of qualified individuals as special representatives; (b) serve the public's interest in having a prompt and efficient resolution of matters involving trusts or estates; and (c) promote complete and final resolution of proceedings involving trusts and estates.

(i) Actions against a special representative must be brought before the earlier of:

(A) Three years from the discharge of the special representative as provided in RCW 11.96A.250; or

(B) The entry of an order by a court of competent jurisdiction under RCW 11.96A.240 approving the written agreement executed by all interested parties in accord with the provisions of RCW 11.96A.220.

(ii) If a legal action is commenced against the special representative after the expiration of the period during which claims may be brought against the special representative as provided in (c)(i) of this subsection, alleging property damage, property loss, or other civil liability caused by or resulting from an alleged act or omission of the special representative arising out of or by reason of the special representative's duties or actions as special representative, the special representative shall be indemnified: (A) From the assets held in the trust or comprising the estate involved in the dispute; and (B) by the persons bringing the legal action, for all expenses, attorneys' fees, judgments, settlements, decrees, or amounts due and owing or paid in satisfaction of or incurred in the defense of the legal action. To the extent possible, indemnification must be made first by the persons bringing the legal action, second from that portion of the trust or estate that is held for the benefit of, or has been distributed or applied to, the persons bringing the legal action, and third from the other assets held in the trust or comprising the estate involved in the dispute.

(4) The tolling provisions of RCW 4.16.190 apply to this chapter except that the running of a statute of limitations under subsection (1) or (2) of this section, or any other applicable statute of limitations for any matter that is the subject of dispute under this chapter, is not tolled as to an individual who had a guardian ad litem, limited or general guardian of the estate, or a special representative to represent the person during the probate or dispute resolution proceeding.

Sec. 8. RCW 11.96A.110 and 1999 c 42 s 304 are each amended to read as follows:

(1) Subject to RCW 11.96A.160, in all judicial proceedings under this title that require notice, the notice must be personally served on or mailed to all parties or the parties' virtual representatives at least twenty days before the hearing on the petition unless a different period is provided by statute or ordered by the court. The date of service shall be determined under the rules of civil procedure. Notwithstanding the foregoing, notice that is provided in an electronic transmission and electronically transmitted complies with this section if the party receiving notice has previously consented in a record delivered to the party giving notice to receiving notice by electronic transmission. Consent to receive notice by electronic transmission may be revoked at any time by a record delivered to the party giving notice. Consent is deemed revoked if the party giving notice is unable to electronically transmit two consecutive notices given in accordance with the consent.

(2) Proof of the service ~~((or))~~, mailing, or electronic delivery required in this section must be made by affidavit or declaration filed at or before the hearing.

(3) For the purposes of this title, the terms "electronic transmission" and "electronically transmitted" have the same meaning as set forth in RCW 23B.01.400.

Sec. 9. RCW 11.96A.120 and 2008 c 6 s 928 are each amended to read as follows:

(1) With respect to a particular matter that affects a trust, probate estate, guardianship estate, or property subject to a power of attorney, in which the interests of such fiduciary estate and the beneficiaries are not in conflict:

(a) A guardian may represent and bind the estate that the guardian controls;

(b) An agent having authority to act with respect to the particular question or dispute may represent and bind the principal;

(c) A trustee may represent and bind the beneficiaries of the trust; and

(d) A personal representative of a decedent's estate may represent and bind persons interested in the estate.

(2) This section is intended to adopt the common law concept of virtual representation. This section supplements the common law relating to the doctrine of virtual representation and shall not be construed as limiting the application of that common law doctrine.

~~((2))~~ (3) Any notice requirement in this title is satisfied if ~~(notice is given as follows):~~

(a) Where an interest in an estate, trust, or nonprobate asset or an interest that may be affected by a power of attorney has been given to persons who comprise a certain class upon the happening of a certain event, notice may be given to the living persons who would constitute the class if the event had happened immediately before the commencement of the proceeding requiring notice, and the persons shall virtually represent all other members of the class;

(b) Where an interest in an estate, trust, or nonprobate asset or an interest that may be affected by a power of attorney has been given to a living person, and the same interest, or a share in it, is to pass to the surviving spouse or surviving domestic partner or to persons who are, or might be, the distributees, heirs, issue, or other kindred of that living person upon the happening of a future event, notice may be given to that living person, and the living person shall virtually represent the surviving spouse or surviving domestic partner, distributees, heirs, issue, or other kindred of the person; ~~(and)~~

(c) Except as otherwise provided in this subsection, where an interest in an estate, trust, or nonprobate asset or an interest that may be affected by a power of attorney has been given to a person or a class of persons, or both, upon the happening of any future event, and the same interest or a share of the interest is to pass to another person or class of persons, or both, upon the happening of an additional future event, notice may be given to the living person or persons who would take the interest upon the happening of the first

event, and the living person or persons shall virtually represent the persons and classes of persons who might take on the happening of the additional future event~~((-~~

~~(3) A party is not virtually represented by a person receiving notice if a conflict of interest involving the matter is known to exist between the notified person and the party.~~

~~(4))~~; and

(d) The holder of a general power of appointment, exercisable either during the power holder's life or by will, or a limited power of appointment, exercisable either during the power holder's life or by will, that excludes as possible appointees only the power holder, his or her estate, his or her creditors, and the creditors of his or her estate, may accept notice and virtually represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power, to the extent there is no conflict of interest between the holder of the power of appointment and the persons represented with respect to the particular question or dispute.

(4) A party is not virtually represented by a person receiving notice if a conflict of interest involving the matter is known to exist between the notified person and the party.

(5) An action taken by the court is conclusive and binding upon each person receiving actual or constructive notice or who is otherwise ~~(virtually)~~ represented under this section.

NEW SECTION. Sec. 10. A new section is added to chapter 11.96A RCW to read as follows:

(1) Except as otherwise provided in subsection (2) of this section, with respect to any charitable disposition made in a will or trust, if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful:

(a) The disposition does not fail, in whole or in part;

(b) The subject property does not revert to the alternative, residuary, or intestate heirs of the estate or, in the case of a trust, the trustor or the trustor's successors in interest; and

(c) The court may modify or terminate the trust by directing that the property be applied or distributed, in whole or in part, in a manner consistent with the testator's or trustor's charitable purposes.

(2) A provision in the terms of a will or charitable trust that would result in distribution of the property to a noncharitable beneficiary prevails over the power of the court under subsection (1) of this section to modify or terminate the will provision or trust only if, when the provision takes effect:

(a) The property is to revert to the trustor and the trustor is still living; or

(b) Fewer than twenty-one years have elapsed since the following:

(i) In the case of a charitable disposition in trust, the date of the trust's creation or the date the trust became irrevocable; or

(ii) In the case of a charitable disposition in a will, the death of the testator, in the case of a charitable disposition in a will.

(3) For purposes of this title, a charitable purpose is one for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to a community.

NEW SECTION. Sec. 11. A new section is added to chapter 11.96A RCW to read as follows:

The terms of a will or trust, even if unambiguous, may be reformed by judicial proceedings or binding nonjudicial procedure under this chapter to conform the terms to the intention of the testator or trustor if it is proved by clear, cogent, and convincing evidence, or the parties to a binding nonjudicial agreement agree that there is clear, cogent, and convincing evidence, that both the intent of the testator or trustor and the terms of the will or trust were affected by a mistake of fact or law, whether in expression or inducement.

EIGHTY SEVENTH DAY, APRIL 6, 2011

2011 REGULAR SESSION

Sec. 12. RCW 11.97.010 and 2003 c 254 s 4 are each amended to read as follows:

(1) The trustor of a trust may by the provisions of the trust relieve the trustee from any or all of the duties, restrictions, and liabilities which would otherwise be imposed by chapters 11.95, 11.98, 11.100, and 11.104A RCW and RCW 11.106.020, or may alter or deny any or all of the privileges and powers conferred by those provisions; or may add duties, restrictions, liabilities, privileges, or powers to those imposed or granted by those provisions. If any specific provision of those chapters is in conflict with the provisions of a trust, the provisions of the trust control whether or not specific reference is made in the trust to any of those chapters, except as provided in RCW 6.32.250, 11.96A.190, 19.36.020, 11.98.200 through 11.98.240 ((and)), 11.95.100 through 11.95.150, and chapter 11.--- RCW (the new chapter created in section 39 of this act). In no event may a trustee be relieved of the duty to act in good faith and with honest judgment or the duty to provide information to beneficiaries as required in this section. Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute," "sole," or "uncontrolled," the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(2) Within sixty days after the date of acceptance of the position of trustee of an irrevocable trust, or the date the trustee of a formerly revocable trust acquires knowledge that the trust has become irrevocable, whether by the death of the trustor or otherwise, the trustee shall give notice of: (a) The existence of the trust, (b) the identity of the trustor or trustors, (c) the trustee's name, address, and telephone number, and (d) the right to request such information as is reasonably necessary to enable the notified person to enforce his or her rights under the trust, to all persons interested in the trust, as defined in RCW 11.96A.030, and who would be entitled to notice under RCW 11.96A.110 and 11.96A.120 if they were a party to judicial proceedings regarding the trust. If any such person is a minor and no guardian has been appointed for such person by any court, then such notice may be given to a parent of the person. If a person otherwise entitled to notice under this section is a charitable organization, and the charitable organization's only interest in the trust is a future interest that may be revoked, then such notice shall instead be given to the attorney general. A trustee who gives notice pursuant to this section satisfies the duty to inform the beneficiaries of the existence of the trust. The notice required under this subsection (2) applies only to irrevocable trusts created after December 31, 2011, and revocable trusts that become irrevocable after December 31, 2011, provided that all common law duties of a trustee to notify beneficiaries applicable to trusts created or that became irrevocable before such date are not affected.

(3) A trustee shall keep all persons interested in the trust, as defined in RCW 11.96A.030, and who would be entitled to notice under RCW 11.96A.110 and 11.96A.120 if they were a party to judicial proceedings regarding the trust, reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. A report that contains the following is presumed to satisfy the trustee's duty to keep such persons reasonably informed for the relevant period of trust administration:

(a) A statement of receipts and disbursements of principal and income that have occurred during the accounting period;

(b) A statement of the assets and liabilities of the trust and their values at the beginning and end of the period;

(c) The trustee's compensation for the period;

(d) The agents hired by the trustee, their relationship to the trustee, if any, and their compensation, for the period;

(e) Disclosure of any pledge, mortgage, option, or lease of trust property, or other agreement affecting trust property binding for a

period of five years or more that was granted or entered into during the accounting period;

(f) Disclosure of all transactions during the period that are equivalent to one of the types of transactions described in section 32 of this act or otherwise could have been affected by a conflict between the trustee's fiduciary and personal interests;

(g) A statement that the recipient of the account information may petition the superior court pursuant to chapter 11.106 RCW to obtain review of the statement and of acts of the trustee disclosed in the statement; and

(h) A statement that claims against the trustee for breach of trust may not be made after the expiration of three years from the date the beneficiary receives the statement.

(4) Unless unreasonable under the circumstances, a trustee shall promptly respond to any beneficiary's request for information related to the administration of the trust.

(5) If a person entitled to notice under this section requests information reasonably necessary to enable the notified person to enforce his or her rights under the trust, then the trustee must provide such information within sixty days of receipt of such request. Delivery of the entire trust instrument to the persons entitled to notice under this section who request information concerning the terms of the trust reasonably necessary to enable the notified person to enforce his or her rights under the trust is deemed to satisfy the trustee's obligations under this subsection.

NEW SECTION. Sec. 13. A new section is added to chapter 11.97 RCW to read as follows:

The rules of construction that apply in this state to the interpretation of a will and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property.

Sec. 14. RCW 11.98.009 and 1985 c 30 s 40 are each amended to read as follows:

Except as provided in this section, this chapter applies to express trusts executed by the trustor after June 10, 1959, and does not apply to resulting trusts, constructive trusts, business trusts where certificates of beneficial interest are issued to the beneficiary, investment trusts, voting trusts, trusts in the nature of mortgages or pledges, ~~((trusts created by the judgment or decree of a court not sitting in probate,))~~ liquidation trusts, or trusts for the sole purpose of paying dividends, interest, interest coupons, salaries, wages, pensions or profits, trusts created in deposits in any financial institution pursuant to chapter 30.22 RCW, unless any such trust which is created in writing incorporates this chapter in whole or in part.

NEW SECTION. Sec. 15. A new section is added to chapter 11.98 RCW to read as follows:

METHODS OF CREATING A TRUST. A trust may be created by:

(1) Transfer of property to another person as trustee during the trustor's lifetime or by will or other disposition taking effect upon the trustor's death;

(2) Declaration by the owner of property that the owner holds identifiable property as trustee; or

(3) Exercise of a power of appointment in favor of a trustee.

NEW SECTION. Sec. 16. A new section is added to chapter 11.98 RCW to read as follows:

REQUIREMENTS FOR CREATION. (1) A trust is created only if:

(a) The trustor has capacity to create a trust;

(b) The trustor indicates an intention to create the trust;

(c) The trust has a definite beneficiary or is:

(i) A charitable trust;

(ii) A trust for the care of an animal, as provided in chapter 11.118 RCW; or

(iii) A trust for a noncharitable purpose, as provided in section 20 of this act;

(d) The trustee has duties to perform; and

(e) The same person is not the sole trustee and sole beneficiary.

(2) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(3) A power in a trustee to select a beneficiary from an indefinite class is valid, except to the extent that the trustee may distribute trust property to himself or herself. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

NEW SECTION. Sec. 17. A new section is added to chapter 11.98 RCW to read as follows:

TRUSTS CREATED IN OTHER JURISDICTIONS. A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation or in the case of a revocable trust, at the time the trust became irrevocable:

(1) The trustor was domiciled, had a residence, or was a national;

(2) The trustee was domiciled or had a place of business; or

(3) Any trust property was located.

NEW SECTION. Sec. 18. A new section is added to chapter 11.98 RCW to read as follows:

TRUST PURPOSES. A trust may be created only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve.

NEW SECTION. Sec. 19. A new section is added to chapter 11.98 RCW to read as follows:

EVIDENCE OF ORAL TRUST. Except as required by a statute other than this title, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear, cogent, and convincing evidence.

NEW SECTION. Sec. 20. A new section is added to chapter 11.98 RCW to read as follows:

NONCHARITABLE TRUST WITHOUT ASCERTAINABLE BENEFICIARY. Except as otherwise provided in chapter 11.118 RCW or by another statute, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for longer than the time period specified in RCW 11.98.130 as the period during which a trust cannot be deemed to violate the rule against perpetuities;

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court; and

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the trustor, if then living, otherwise to the trustor's successors in interest. Successors in interest include the beneficiaries under the trustor's will, if the trustor has a will, or, in the absence of an effective will provision, the trustor's heirs.

Sec. 21. RCW 11.98.039 and 2005 c 97 s 13 are each amended to read as follows:

(1) Where a vacancy occurs in the office of the trustee and there is a successor trustee who is willing to serve as trustee and (a) is named in the governing instrument as successor trustee or (b) has been selected to serve as successor trustee under the procedure established in the governing instrument for the selection of a

successor trustee, the outgoing trustee, or any other interested party, shall give notice of such vacancy, whether arising because of the trustee's resignation or because of any other reason, and of the successor trustee's agreement to serve as trustee, to each adult distributee or permissible distributee of trust income or of trust principal or of both trust income and trust principal. If there are no such adults, no notice need be given. The successor trustee named in the governing instrument or selected pursuant to the procedure therefor established in the governing instrument shall be entitled to act as trustee except for good cause or disqualification. The successor trustee shall serve as of the effective date of the discharge of the predecessor trustee as provided in RCW 11.98.041.

(2) Where a vacancy exists or occurs in the office of the trustee and there is no successor trustee who is named in the governing instrument or who has been selected to serve as successor trustee under the procedure established in the governing instrument for the selection of a successor trustee, and who is willing to serve as trustee, then all parties with an interest in the trust may agree to a nonjudicial change of the trustee under RCW 11.96A.220. The successor trustee shall serve as of the effective date of the discharge of the predecessor trustee as provided in RCW 11.98.041 or, in circumstances where there is no predecessor trustee, as of the effective date of the trustee's appointment.

(3) When there is a desire to name one or more cotrustees to serve with the existing trustee, then all parties with an interest in the trust may agree to the nonjudicial addition of one or more cotrustees under RCW 11.96A.220. The additional cotrustee shall serve as of the effective date of the cotrustee's appointment.

(4) Unless subsection (1), (2), or (3) of this section applies, any beneficiary of a trust, the trustor, if alive, or the trustee may petition the superior court having jurisdiction for the appointment or change of a trustee or cotrustee under the procedures provided in RCW 11.96A.080 through 11.96A.200: (a) Whenever the office of trustee becomes vacant; (b) upon filing of a petition of resignation by a trustee; or (c) for any other reasonable cause.

(5) For purposes of this subsection, the term fiduciary includes both trustee and personal representative.

(a) Except as otherwise provided in the governing instrument, a successor fiduciary, absent actual knowledge of a breach of fiduciary duty: (i) Is not liable for any act or omission of a predecessor fiduciary and is not obligated to inquire into the validity or propriety of any such act or omission; (ii) is authorized to accept as conclusively accurate any accounting or statement of assets tendered to the successor fiduciary by a predecessor fiduciary; and (iii) is authorized to receipt only for assets actually delivered and has no duty to make further inquiry as to undisclosed assets of the trust or estate.

(b) Nothing in this section relieves a successor fiduciary from liability for retaining improper investments, nor does this section in any way bar the successor fiduciary, trust beneficiaries, or other party in interest from bringing an action against a predecessor fiduciary arising out of the acts or omissions of the predecessor fiduciary, nor does it relieve the successor fiduciary of liability for its own acts or omissions except as specifically stated or authorized in this section.

(6) A change of trustee to a foreign trustee does not change the situs of the trust. Transfer of situs of a trust to another jurisdiction requires compliance with section 22 of this act and RCW 11.98.045 through 11.98.055.

NEW SECTION. Sec. 22. A new section is added to chapter 11.98 RCW to read as follows:

SITUS OF TRUST AND GOVERNING LAW. (1) If provisions of a trust instrument designate Washington as the situs of the trust or designate Washington law to govern the trust or any of its terms, then the situs of the trust is Washington provided that one of the following conditions is met:

EIGHTY SEVENTH DAY, APRIL 6, 2011

2011 REGULAR SESSION

(a) A trustee has a place of business in or a trustee is a resident of Washington; or

(b) More than an insignificant part of the trust administration occurs in Washington; or

(c) The trustor resides in Washington at the time situs is being established, or resided in Washington at the time the trust became irrevocable; or

(d) One or more of the beneficiaries resides in Washington; or

(e) An interest in real property located in Washington is an asset of the trust.

(2)(a) Unless the trust instrument designates a state other than Washington as the situs of the trust and does not expressly authorize transfer of situs, the trustee may register the trust as a Washington trust if any of the factors in subsection (1)(a) through (e) of this section are present. The trustee shall register the trust by filing with the clerk of the court in any county where venue lies for the trust under RCW 11.96A.050, a statement including the following information:

(i) The name and address of the trustee;

(ii) The date of the trust, name of the trustor, and name of the trust, if any;

(iii) The factor or factors listed in subsection (1)(a) through (e) of this section that are present for the trust and which qualify the trust for registration.

(b) Within five days of filing the registration with the court, the trustee shall mail a copy of the registration to each person who would be entitled to notice under RCW 11.97.010 and has not waived notice of the registration, in writing, filed in the cause, together with a notice that must be in substantially the same form as set forth in this section. Persons receiving such notice shall have thirty days from the date of filing the registration to file a petition in the court objecting to such registration and requesting the court to issue an order that Washington is not the proper situs of the trust, and to serve a copy of such petition upon the trustee or the trustee's lawyer. If a petition objecting to the registration is filed within thirty days of the date of filing the registration, the trustee must request the court to fix a time and place for the hearing of the petition and notify by mail, personal service or electronic transmission, if a valid consent to electronic transmission is in effect under the terms of RCW 11.96A.110, all persons who were entitled to notice of the registration of the time and place of the hearing, not less than ten days before the hearing on the petition.

(c) Unless a person receiving notice of the registration files a petition with the court objecting to the registration within thirty days of the date of filing the registration, the registration shall be deemed the equivalent of an order entered by the court declaring that the situs of the trust is Washington. After expiration of the thirty-day period following filing of the registration, the trustee may obtain a certificate of registration signed by the clerk, and issued under the seal of the court, which may be in the form specified in (d) of this subsection.

(d) Notice of registration and certificates of registration may be in the following form:

(i) Notice form:

NOTICE OF FILING OF REGISTRATION OF [NAME AND DATE OF TRUST] AS A WASHINGTON TRUST

NOTICE IS GIVEN that the attached Registration of Trust was filed by the undersigned in the above-entitled court on the . . . day of . . . , 20 . . . ; unless you file a petition in the above-entitled court objecting to such registration and requesting the court to issue an order that Washington is not the proper situs of the trust, and serve a copy thereof upon the trustee or the trustee's lawyer, within thirty days after the date of the filing, the registration will be deemed the equivalent of an order entered by the court declaring that the situs of the trust is Washington.

If you file and serve a petition within the period specified, the undersigned will request the court to fix a time and place for the hearing of your petition, and you will be notified of the time and place thereof, by mail, or personal service, not less than ten days before the hearing on the petition.

(ii) Certificate of Registration:

State of Washington, County of

In the superior court of the county of

Whereas, the attached Registration of Trust was filed with this court on . . . , the attached Notice of Filing Registration of Trust and Affidavit of Mailing Notice of Filing Registration of Trust were filed with this court on . . . , and no objections to such Registration have been filed with this court, the trust known as . . . , under trust agreement dated . . . , between . . . as Trustor and . . . as Trustee, is hereby registered as a Washington trust.

Witness my hand and the seal of said court this . . . day of . . . , 20 . . .

(3) If the instrument establishing a trust does not designate Washington as the situs or designate Washington law to apply to the trust, and the trustee of the trust has not registered the trust as allowed in subsection (2) of this section, the situs of the trust is Washington if the conditions specified in this subsection (3) are met.

(a) For a testamentary trust, the situs of the trust is Washington if:

(i) The will was admitted to probate in Washington; or

(ii) The will has not been admitted to probate in Washington, but any trustee of the trust resides or has a place of business in Washington, any beneficiary entitled to notice under RCW 11.97.010 resides in Washington, or any real property that is an asset of the trust is located in Washington.

(b) For an intervivos trust where the trustor is domiciled in Washington either when the trust becomes irrevocable or, in the case of a revocable trust, when judicial proceedings under chapter 11.96A RCW are commenced, the situs of the trust is Washington if:

(i) The trustor is living and Washington is the trustor's domicile or any of the trustees reside in or have a place of business in Washington; or

(ii) The trustor is deceased, situs has not previously been established by any court proceeding, and:

(A) The trustor's will was admitted to probate in Washington;

(B) The trustor's will was not admitted to probate in Washington, but any person entitled to notice under RCW 11.97.010 resides in Washington, any trustee resides or has a place of business in Washington, or any real property that is an asset of the trust is located in Washington.

(c) If the situs of the trust is not determined under (a) or (b) of this subsection, the determination regarding the situs of the trust is a matter for purposes of RCW 11.96A.030. Whether Washington is the situs shall be determined by a court in a judicial proceeding conducted under RCW 11.96A.080 if:

(i) A trustee has a place of business in or a trustee is a resident of Washington; or

(ii) More than an insignificant part of the trust administration occurs in Washington; or

(iii) One or more of the beneficiaries resides in Washington; or

(iv) An interest in real property located in Washington is an asset of the trust.

(d) Determination of situs under (c) of this subsection (3) cannot be made by nonjudicial agreement under RCW 11.96A.220.

Sec. 23. RCW 11.98.045 and 1985 c 30 s 45 are each amended to read as follows:

(1) ((A trustee may transfer trust assets to a trustee in another jurisdiction or may transfer the place of administration of a trust to another jurisdiction)) If a trust is a Washington trust under section

22 of this act, a trustee may transfer the situs of the trust to a jurisdiction other than Washington if the trust instrument so provides or in accordance with RCW 11.98.051 or 11.98.055.

(2) Transfer under this section is permitted only if:

(a) The transfer would facilitate the economic and convenient administration of the trust;

(b) The transfer would not materially impair the interests of the beneficiaries or others interested in the trust;

(c) The transfer does not violate the terms of the trust; ~~(and)~~

(d) The new trustee is qualified and able to administer the trust or such assets on the terms set forth in the trust; and

(e) The trust meets at least one condition for situs listed in section 22(1) of this act with respect to the new jurisdiction.

(3) Acceptance of such transfer by a foreign corporate trustee or trust company under this section ~~(;)~~ or RCW 11.98.051 ~~(;)~~ or 11.98.055 shall not be construed to be doing a "trust business" as described in RCW 30.08.150(9).

Sec. 24. RCW 11.98.051 and 1999 c 42 s 619 are each amended to read as follows:

(1) The trustee may transfer ~~((trust assets or the place of administration))~~ trust situs (a) in accordance with RCW 11.96A.220 ~~(- In addition, the trustee shall give);~~ or (b) by giving written notice to those persons entitled to notice as provided for under RCW 11.96A.110 and to the attorney general in the case of a charitable trust subject to chapter 11.110 RCW not less than sixty days before initiating the transfer. The notice ~~((shall))~~ must:

(a) State the name and mailing address of the trustee;

(b) Include a copy of the governing instrument of the trust;

(c) Include a statement of assets and liabilities of the trust dated within ninety days of the notice;

(d) State the name and mailing address of the trustee to whom the ~~((assets or administration))~~ trust will be transferred together with evidence that the trustee has agreed to accept the ~~((assets or))~~ trust ~~((administration))~~ in the manner provided by law of the new ~~((place of administration))~~ situs. The notice ~~((shall))~~ must also contain a statement of the trustee's qualifications and the name of the court, if any, having jurisdiction of that trustee or in which a proceeding with respect to the administration of the trust may be heard;

(e) State the facts supporting the requirements of RCW 11.98.045(2);

(f) Advise the beneficiaries of the ~~((right to petition for judicial determination of the proposed transfer as provided in RCW 11.98.055))~~ date, not less than sixty days after the giving of the notice, by which the beneficiary must notify the trustee of an objection to the proposed transfer; and

(g) Include a form on which the recipient may indicate consent or objection to the proposed transfer.

(2) If the ~~((trustee receives written consent to the proposed transfer from all persons entitled to notice))~~ date upon which the beneficiaries' right to object to the transfer expires without receipt by the trustee of any objection, the trustee may transfer the trust ~~((assets or place of administration))~~ situs as provided in the notice. ~~((Transfer in accordance with the notice is a full discharge of the trustee's duties in relation to all property referred to therein. Any person dealing with the trustee is entitled to rely on the authority of the trustee to act and is not obliged to inquire into the validity or propriety of the transfer.))~~ If the trust was registered under RCW 11.98.045(2), the trustee must file a notice of transfer of situs and termination of registration with the court of the county where the trust was registered.

(3) The authority of a trustee under this section to transfer a trust's situs terminates if a beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(4) A change of trust situs does not authorize a change of

trustee. Change of trustee of a trust requires compliance with RCW 11.98.039.

Sec. 25. RCW 11.98.055 and 1999 c 42 s 620 are each amended to read as follows:

(1) Any trustee, beneficiary, or beneficiary representative may petition the superior court of the county of the situs of the trust for a transfer of ~~((trust assets or transfer of the place of administration))~~ the situs of a trust in accordance with RCW 11.96A.080 through 11.96A.200.

(2) At the conclusion of the hearing, if the court finds the requirements of RCW 11.98.045(2) have been satisfied, it may direct the transfer of ~~((trust assets or the place of trust administration))~~ the situs of a trust on such terms and conditions as it deems appropriate. The court in its discretion may provide for payment from the trust of reasonable fees and expenses for any party to the proceeding. Delivery of trust assets in accordance with the court's order is a full discharge of the trustee's duties in relation to all transferred property.

(3) A change of trust situs does not authorize a change of trustee. Change of trustee of a trust requires compliance with RCW 11.98.039.

Sec. 26. RCW 11.98.070 and 2010 c 8 s 2091 are each amended to read as follows:

A trustee, or the trustees jointly, of a trust, in addition to the authority otherwise given by law, have discretionary power to acquire, invest, reinvest, exchange, sell, convey, control, divide, partition, and manage the trust property in accordance with the standards provided by law, and in so doing may:

(1) Receive property from any source as additions to the trust or any fund of the trust to be held and administered under the provisions of the trust;

(2) Sell on credit;

(3) Grant, purchase or exercise options;

(4) Sell or exercise subscriptions to stock or other corporate securities and to exercise conversion rights;

(5) Deposit stock or other corporate securities with any protective or other similar committee;

(6) Assent to corporate sales, leases, and encumbrances;

(7) Vote trust securities in person or by proxy with power of substitution; and enter into voting trusts;

(8) Register and hold any stocks, securities, or other property in the name of a nominee or nominees without mention of the trust relationship, provided the trustee or trustees are liable for any loss occasioned by the acts of any nominee, except that this subsection shall not apply to situations covered by subsection (31) of this section;

(9) Grant leases of trust property, with or without options to purchase or renew, to begin within a reasonable period and for terms within or extending beyond the duration of the trust, for any purpose including exploration for and removal of oil, gas and other minerals; enter into community oil leases, pooling and unitization agreements;

(10) Subdivide, develop, dedicate to public use, make or obtain the vacation of public plats, adjust boundaries, partition real property, and on exchange or partition to adjust differences in valuation by giving or receiving money or money's worth;

(11) Compromise or submit claims to arbitration;

(12) Borrow money, secured or unsecured, from any source, including a corporate trustee's banking department, or from the individual trustee's own funds;

(13) Make loans, either secured or unsecured, at such interest as the trustee may determine to any person, including any beneficiary of a trust, except that no trustee who is a beneficiary of a trust may participate in decisions regarding loans to such beneficiary from the trust ~~((unless the loan is as described in RCW 83.110.020(2);))~~ and then only to the extent of the loan, and also except that if a beneficiary or the grantor of a trust has the power to change a trustee

EIGHTY SEVENTH DAY, APRIL 6, 2011

2011 REGULAR SESSION

of the trust, the power to loan shall be limited to loans at a reasonable rate of interest and for adequate security;

(14) Determine the hazards to be insured against and maintain insurance for them;

(15) Select any part of the trust estate in satisfaction of any partition or distribution, in kind, in money or both; make nonpro rata distributions of property in kind; allocate particular assets or portions of them or undivided interests in them to any one or more of the beneficiaries without regard to the income tax basis of specific property allocated to any beneficiary and without any obligation to make an equitable adjustment;

(16)(a) Pay ((any income or principal distributable to or for the use of any beneficiary, whether that beneficiary is under legal disability, to the beneficiary or for the beneficiary's use to the beneficiary's parent, guardian, custodian under the uniform gifts to minors act of any state, person with whom he or she resides, or third person)) an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

(i) Paying it to the beneficiary's guardian;

(ii) Paying it to the beneficiary's custodian under chapter 11.114 RCW, and, for that purpose, creating a custodianship;

(iii) If the trustee does not know of a guardian or custodian, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, with instructions to expend the funds on the beneficiary's behalf; or

(iv) Managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution.

(b) If the trustee pays any amount to a third party under (a)(i) through (iii) of this subsection, the trustee has no further obligations regarding the amounts so paid;

(17) Change the character of or abandon a trust asset or any interest in it;

(18) Mortgage, pledge the assets or the credit of the trust estate, or otherwise encumber trust property, including future income, whether an initial encumbrance or a renewal or extension of it, for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the trustee;

(19) Make ordinary or extraordinary repairs or alterations in buildings or other trust property, demolish any improvements, raze existing structures, and make any improvements to trust property;

(20) Create restrictions, easements, including easements to public use without consideration, and other servitudes;

(21) Manage any business interest, including any farm or ranch interest, regardless of form, received by the trustee from the trustor of the trust, as a result of the death of a person, or by gratuitous transfer from any other transferor, and with respect to the business interest, have the following powers:

(a) To hold, retain, and continue to operate that business interest solely at the risk of the trust, without need to diversify and without liability on the part of the trustee for any resulting losses;

(b) To enlarge or diminish the scope or nature or the activities of any business;

(c) To authorize the participation and contribution by the business to any employee benefit plan, whether or not qualified as being tax deductible, as may be desirable from time to time;

(d) To use the general assets of the trust for the purpose of the business and to invest additional capital in or make loans to such business;

(e) To endorse or guarantee on behalf of the trust any loan made to the business and to secure the loan by the trust's interest in the business or any other property of the trust;

(f) To leave to the discretion of the trustee the manner and degree of the trustee's active participation in the management of the business, and the trustee is authorized to delegate all or any part of the trustee's power to supervise, manage, or operate to such persons as the trustee may select, including any partner, associate, director, officer, or employee of the business; and also including electing or employing directors, officers, or employees of the trustee to take part in the management of the business as directors or officers or otherwise, and to pay that person reasonable compensation for services without regard to the fees payable to the trustee;

(g) To engage, compensate, and discharge or to vote for the engaging, compensating, and discharging of managers, employees, agents, lawyers, accountants, consultants, or other representatives, including anyone who may be a beneficiary of the trust or any trustee;

(h) To cause or agree that surplus be accumulated or that dividends be paid;

(i) To accept as correct financial or other statements rendered by any accountant for any sole proprietorship or by any partnership or corporation as to matters pertaining to the business except upon actual notice to the contrary;

(j) To treat the business as an entity separate from the trust, and in any accounting by the trustee it is sufficient if the trustee reports the earning and condition of the business in a manner conforming to standard business accounting practice;

(k) To exercise with respect to the retention, continuance, or disposition of any such business all the rights and powers that the trustor of the trust would have if alive at the time of the exercise, including all powers as are conferred on the trustee by law or as are necessary to enable the trustee to administer the trust in accordance with the instrument governing the trust, subject to any limitations provided for in the instrument; and

(l) To satisfy contractual and tort liabilities arising out of an unincorporated business, including any partnership, first out of the business and second out of the estate or trust, but in no event may there be a liability of the trustee, except as provided in RCW 11.98.110 (2) and (4), and if the trustee is liable, the trustee is entitled to indemnification from the business and the trust, respectively;

(22) Participate in the establishment of, and thereafter in the operation of, any business or other enterprise according to subsection (21) of this section except that the trustee shall not be relieved of the duty to diversify;

(23) Cause or participate in, directly or indirectly, the formation, reorganization, merger, consolidation, dissolution, or other change in the form of any corporate or other business undertaking where trust property may be affected and retain any property received pursuant to the change;

(24) Limit participation in the management of any partnership and act as a limited or general partner;

(25) Charge profits and losses of any business operation, including farm or ranch operation, to the trust estate as a whole and not to the trustee; make available to or invest in any business or farm operation additional moneys from the trust estate or other sources;

(26) Pay reasonable compensation to the trustee or co-trustees considering all circumstances including the time, effort, skill, and responsibility involved in the performance of services by the trustee and reimburse the trustee, with interest as appropriate, for expenses that were properly incurred in the administration of the trust;

(27) Employ persons, including lawyers, accountants, investment advisors, or agents, even if they are associated with the trustee, to advise or assist the trustee in the performance of the trustee's duties or to perform any act, regardless of whether the act is discretionary, and to act without independent investigation upon their recommendations, except that:

(a) A trustee may not delegate all of the trustee's duties and responsibilities;

(b) This power to employ and to delegate duties does not relieve the trustee of liability for such person's discretionary acts, that, if done by the trustee, would result in liability to the trustee;

(c) This power to employ and to delegate duties does not relieve the trustee of the duty to select and retain a person with reasonable care;

(d) The trustee, or a successor trustee, may sue the person to collect any damages suffered by the trust estate even though the trustee might not be personally liable for those damages, subject to the statutes of limitation that would have applied had the claim been one against the trustee who was serving when the act or failure to act occurred;

(28) Appoint an ancillary trustee or agent to facilitate management of assets located in another state or foreign country;

(29) Retain and store such items of tangible personal property as the trustee selects and pay reasonable storage charges thereon from the trust estate;

(30) Issue proxies to any adult beneficiary of a trust for the purpose of voting stock of a corporation acting as the trustee of the trust;

(31) Place all or any part of the securities at any time held by the trustee in the care and custody of any bank, trust company, or member firm of the New York Stock Exchange with no obligation while the securities are so deposited to inspect or verify the same and with no responsibility for any loss or misapplication by the bank, trust company, or firm, so long as the bank, trust company, or firm was selected and retained with reasonable care, and have all stocks and registered securities placed in the name of the bank, trust company, or firm, or in the name of its nominee, and to appoint such bank, trust company, or firm agent as attorney to collect, receive, receipt for, and disburse any income, and generally may perform, but is under no requirement to perform, the duties and services incident to a so-called "custodian" account;

(32) Determine at any time that the corpus of any trust is insufficient to implement the intent of the trust, and upon this determination by the trustee, terminate the trust by distribution of the trust to the current income beneficiary or beneficiaries of the trust or their legal representatives, except that this determination may only be made by the trustee if the trustee is neither the grantor nor the beneficiary of the trust, and if the trust has no charitable beneficiary;

(33) Continue to be a party to any existing voting trust agreement or enter into any new voting trust agreement or renew an existing voting trust agreement with respect to any assets contained in trust; ~~(and)~~

(34)(a) Donate a qualified conservation easement, as defined by ~~(section)~~ 26 U.S.C. Sec. 2031(c) of the federal internal revenue code, on any real property, or consent to the donation of a qualified conservation easement on any real property by a personal representative of an estate of which the trustee is a devisee, to obtain the benefit of the estate tax exclusion allowed under ~~(section)~~ 26 U.S.C. Sec. 2031(c) of the federal internal revenue code or the deduction allowed under ~~(section)~~ 26 U.S.C. Sec. 2055(f) of the federal internal revenue code as long as:

(i)(A) The governing instrument authorizes the donation of a qualified conservation easement on the real property; or

(B) Each beneficiary that may be affected by the qualified conservation easement consents to the donation under the provisions of chapter 11.96A RCW; and

(ii) The donation of a qualified conservation easement will not result in the insolvency of the decedent's estate.

(b) The authority granted under this subsection includes the authority to amend a previously donated qualified conservation easement, as defined under ~~(section)~~ 26 U.S.C. Sec. 2031(c)(8)(B)

of the federal internal revenue code, and to amend a previously donated unqualified conservation easement for the purpose of making the easement a qualified conservation easement under ~~(section)~~ 26 U.S.C. Sec. 2031(c)(8)(B);

(35) Pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(36) Exercise elections with respect to federal, state, and local taxes;

(37) Prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(38) On termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it; and

(39) Select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds.

NEW SECTION. Sec. 27. A new section is added to chapter 11.98 RCW to read as follows:

DISTRIBUTION UPON TERMINATION. (1) Upon termination or partial termination of a trust, the trustee may send, by personal service, certified mail with return receipt requested, or in an electronic transmission if there is a consent of the recipient to electronic transmission then in effect under the terms of RCW 11.96A.110, to the beneficiaries a proposed plan to distribute existing trust assets. The right of any beneficiary to object to the plan to distribute existing trust assets, including the right to object to nonpro rata distributions authorized under RCW 11.98.070(15), terminates if the beneficiary does not notify the trustee of an objection within thirty days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

(2) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.

NEW SECTION. Sec. 28. A new section is added to chapter 11.98 RCW to read as follows:

NONLIABILITY OF THIRD PERSONS WITHOUT KNOWLEDGE OF BREACH. (1) A person other than a beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised the power.

(2) A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

(3) A person who in good faith delivers assets to a trustee need not ensure their proper application.

(4) A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

(5) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

NEW SECTION. Sec. 29. A new section is added to chapter 11.98 RCW to read as follows:

EXCULPATION OF TRUSTEE. (1) An exculpatory term which was inserted as the result of an abuse of a fiduciary or

EIGHTY SEVENTH DAY, APRIL 6, 2011

2011 REGULAR SESSION

confidential relationship between the trustor and the trustee is unenforceable.

(2) An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that the exculpatory term is fair under the circumstances and that its existence and contents were adequately communicated to the trustor.

NEW SECTION. Sec. 30. A new section is added to chapter 11.98 RCW to read as follows:

BENEFICIARY'S CONSENT, RELEASE, OR RATIFICATION. A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless:

(1) The consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or

(2) At the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach.

NEW SECTION. Sec. 31. A new section is added to chapter 11.98 RCW to read as follows:

CERTIFICATION OF TRUST. (1) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing the following information:

(a) That the trust exists and the date the trust instrument was executed;

(b) The identity of the trustor;

(c) The identity and address of the currently acting trustee;

(d) Relevant powers of the trustee;

(e) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;

(f) The authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee; and

(g) The name of the trust or the titling of the trust property.

(2) A certification of trust may be signed or otherwise authenticated by any trustee or by an attorney for the trust.

(3) A certification of trust must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.

(4) A certification of trust need not contain the dispositive terms of a trust.

(5) A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments which designate the trustee and confer upon the trustee the power to act in the pending transaction or any other reasonable information.

(6) A person who acts in reliance upon a certification of trust without knowledge that the representations contained therein are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.

(7) A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

(8) A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for damages, including reasonable attorney fees, if the court determines that the person did not act in good faith in demanding the trust instrument.

(9) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

NEW SECTION. Sec. 32. A new section is added to chapter 11.98 RCW to read as follows:

DUTY OF LOYALTY. (1) A trustee shall administer the trust solely in the interests of the beneficiaries.

(2) Subject to the rights of persons dealing with or assisting the trustee as provided in RCW 11.98.090, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

(a) The transaction was authorized by the terms of the trust;

(b) The transaction was approved by the court or approved in a nonjudicial binding agreement in compliance with RCW 11.96A.210 through 11.96A.250;

(c) The beneficiary did not commence a judicial proceeding within the time allowed by RCW 11.96A.070;

(d) The beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with section 30 of this act; or

(e) The transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

(3)(a) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be "otherwise affected" by a conflict between fiduciary and personal interests under this section if it is entered into by the trustee with:

(i) The trustee's spouse or registered domestic partner;

(ii) The trustee's descendants, siblings, parents, or their spouses or registered domestic partners;

(iii) An agent or attorney of the trustee; or

(iv) A corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(b) The presumption is rebutted if the trustee establishes that the conflict did not adversely affect the interests of the beneficiaries.

(4) A sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account that is voidable under subsection (2) of this section may be voided by a beneficiary without further proof.

(5) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment complies with the prudent investor rule of chapter 11.100 RCW. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee must at least annually notify the persons entitled under RCW 11.106.020 to receive a copy of the trustee's annual report of the rate and method by which that compensation was determined.

(6) The following transactions, if fair to the beneficiaries, cannot be voided under this section:

(a) An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

(b) Payment of reasonable compensation to the trustee and any affiliate providing services to the trust, provided total compensation is reasonable;

(c) A transaction between a trust and another trust, decedent's estate, or guardianship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(d) A deposit of trust money in a regulated financial-service institution operated by the trustee or its affiliate;

(e) A delegation and any transaction made pursuant to the delegation from a trustee to an agent that is affiliated or associated with the trustee; or

(f) Any loan from the trustee or its affiliate.

(7) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

(8) If a trust has two or more beneficiaries, the trustee shall act impartially in administering the trust and distributing the trust property, giving due regard to the beneficiaries' respective interests.

NEW SECTION. Sec. 33. A new section is added to chapter 11.98 RCW to read as follows:

DAMAGES FOR BREACH OF TRUST. (1) A trustee who commits a breach of trust is liable for the greater of:

(a) The amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or

(b) The profit the trustee made by reason of the breach.

(2) Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

Sec. 34. RCW 11.100.090 and 1985 c 30 s 75 are each amended to read as follows:

Unless the instrument creating the trust expressly provides to the contrary and except as authorized in section 32 of this act, any fiduciary in carrying out the obligations of the trust, may not buy or sell investments from or to himself, herself, or itself or any affiliated or subsidiary company or association. This section shall not be construed as prohibiting the trustee's powers under RCW 11.98.070(12).

NEW SECTION. Sec. 35. **CAPACITY OF TRUSTOR OF REVOCABLE TRUST.** The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

NEW SECTION. Sec. 36. **REVOCATION OR AMENDMENT OF REVOCABLE TRUST.** (1) Unless the terms of a trust expressly provide that the trust is revocable, the trustor may not revoke or amend the trust.

(2) If a revocable trust is created or funded by more than one trustor and unless the trust agreement provides otherwise:

(a) To the extent the trust consists of community property, the trust may be revoked by either spouse or either domestic partner acting alone but may be amended only by joint action of both spouses or both domestic partners;

(b) To the extent the trust consists of property other than community property, each trustor may revoke or amend the trust with regard to the portion of the trust property attributable to that trustor's contribution;

(c) The character of community property or separate property is unaffected by its transfer to and from a revocable trust; and

(d) Upon the revocation or amendment of the trust by fewer than all of the trustors, the trustee shall promptly notify the other trustors of the revocation or amendment.

(3) The trustor may revoke or amend a revocable trust:

(a) By substantial compliance with a method provided in the terms of the trust; or

(b)(i) If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

(A) A later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or

(B) A written instrument signed by the trustor evidencing intent to revoke or amend.

(ii) The requirements of chapter 11.11 RCW do not apply to revocation or amendment of a revocable trust under (b)(i) of this subsection.

(4) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the trustor directs.

(5) A trustor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the power, as provided in RCW 11.94.050(1) and to the extent consistent with or expressly authorized by the trust agreement.

(6) A guardian of the trustor may exercise a trustor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the guardianship pursuant to RCW 11.92.140.

(7) A trustee who does not know that a trust has been revoked or amended is not liable to the trustor or trustor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

(8) This section does not limit or affect operation of RCW 11.96A.220 through 11.96A.240.

NEW SECTION. Sec. 37. **TRUSTOR'S POWERS--POWERS OF WITHDRAWAL.** While a trust is revocable by the trustor, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the trustor. If a revocable trust has more than one trustor, the duties of the trustee are owed to all of the trustors having the right to revoke the trust.

NEW SECTION. Sec. 38. **LIMITATION ON ACTION CONTESTING VALIDITY OF REVOCABLE TRUST--DISTRIBUTION OF TRUST PROPERTY.** (1) A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the trustor's death within the earlier of:

(a) Twenty-four months after the trustor's death; or

(b) Four months after the trustee sent to the person by personal service, mail, or in an electronic transmission if there is a consent of the recipient to electronic transmission then in effect under the terms of RCW 11.96A.110, a notice with the information required in RCW 11.97.010, and notice of the time allowed for commencing a proceeding.

(2) Upon the death of the trustor of a trust that was revocable at the trustor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust, unless:

(a) The trustee knows of a pending judicial proceeding contesting the validity of the trust; or

(b) A potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within sixty days after the contestant sent the notification.

(3) A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.

NEW SECTION. Sec. 39. Sections 35 through 38 of this act constitute a new chapter in Title 11 RCW.

NEW SECTION. Sec. 40. **APPLICATION.** Except as otherwise provided in this act:

EIGHTY SEVENTH DAY, APRIL 6, 2011

2011 REGULAR SESSION

(1) This act applies to all trusts created before, on, or after January 1, 2012;

(2) This act applies to all judicial proceedings concerning trusts commenced on or after January 1, 2012;

(3) Any rule of construction or presumption provided in this act applies to trust instruments executed before January 1, 2012, unless there is a clear indication of a contrary intent in the terms of the trust;

(4) An action taken before January 1, 2012, is not affected by this act; and

(5) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before January 1, 2012, that statute continues to apply to the right even if it has been repealed or superseded.

NEW SECTION. Sec. 41. EFFECTIVE DATE. This act takes effect January 1, 2012."

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

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Judiciary to Substitute House Bill No. 1051.

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

MOTION

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

On page 1, line 1 of the title, after "estates;" strike the remainder of the title and insert "amending RCW 11.02.005, 11.28.237, 11.68.090, 11.94.050, 11.96A.030, 11.96A.050, 11.96A.070, 11.96A.110, 11.96A.120, 11.97.010, 11.98.009, 11.98.039, 11.98.045, 11.98.051, 11.98.055, 11.98.070, and 11.100.090; adding new sections to chapter 11.96A RCW; adding a new section to chapter 11.97 RCW; adding new sections to chapter 11.98 RCW; adding a new chapter to Title 11 RCW; creating a new section; and providing an effective date."

MOTION

On motion of Senator Kline, the rules were suspended, Substitute House Bill No. 1051 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Kline spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1051 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1051 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 1; Excused, 0.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Stevens, Swecker, Tom, White and Zarelli

Absent: Senator Shin

SUBSTITUTE HOUSE BILL NO. 1051 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

On motion of Senator White, Senator Shin was excused.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1721, by House Committee on Environment (originally sponsored by Representatives Frockt, Kenney, Roberts, Fitzgibbon and Stanford)

Preventing storm water pollution from coal tar sealants.

The measure was read the second time.

MOTION

Senator Rockefeller moved that the following committee striking amendment by the Committee on Environment, Water & Energy be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Coal tar" means a viscous substance obtained by the destructive distillation of coal and containing levels of polycyclic aromatic hydrocarbons in excess of ten thousand milligrams per kilogram. "Coal tar" includes, but is not limited to, refined coal tar, high temperature coal tar, coal tar pitch, or any substance identified by chemical abstract number 65996-93-2.

(2) "Coal tar pavement product" means a material that contains coal tar that is intended for use as a pavement sealant.

(3) "Department" means the department of ecology.

NEW SECTION. Sec. 2. (1) After January 1, 2012, no person may sell at wholesale or retail a coal tar pavement product that is labeled as containing coal tar.

(2) After July 1, 2012, a person may not apply a coal tar pavement product on a driveway or parking area.

(3) The department may issue a notice of corrective action to a person in violation of subsection (1) or (2) of this section.

(4) A city or county may adopt an ordinance providing for enforcement of the requirements of subsection (1) or (2) of this section. A city or county adopting an ordinance has jurisdiction concurrent with the department to enforce this section.

NEW SECTION. Sec. 3. Sections 1 and 2 of this act constitute a new chapter in Title 70 RCW."

MOTION

Senator Schoesler moved that the following amendment by Senator Schoesler to the committee striking amendment be adopted:

On page 1, beginning on line 14 of the amendment, strike all of section 2 and insert the following:

"NEW SECTION. Sec. 2. (1) A county may adopt an ordinance to restrict the sale and use of a coal tar pavement product by: (a) A two-thirds majority vote by a county legislative authority or county council; or (b) approval by a vote of the people of the county.

(2) A county ordinance to ban wholesale or retail sales of a coal tar pavement product that is labeled as containing coal tar may not take effect until January 1, 2012.

(3) A county ordinance to ban the use or application of a coal tar pavement product on a driveway or parking area may not take effect until July 1, 2012."

Senator Schoesler spoke in favor of adoption of the amendment to the committee striking amendment.

Senator Nelson spoke against adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Schoesler on page 1, line 14 to the committee striking amendment to Engrossed Substitute House Bill No. 1721.

The motion by Senator Schoesler failed and the amendment to the committee striking amendment was not adopted by voice vote.

MOTION

Senator Hargrove moved that the following amendment by Senator Hargrove to the committee striking amendment be adopted:

On page 1, line 17 of the amendment, after "July 1," strike "2012" and insert "2013"

Senators Hargrove and Honeyford spoke in favor of adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Hargrove on page 1, line 17 to the committee striking amendment to Engrossed Substitute House Bill No. 1721.

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

MOTION

Senator Honeyford moved that the following amendment by Senator Honeyford to the committee striking amendment be adopted:

On page 1, line 19, after "(3)" insert "(a)"

On page 1, after line 20, insert the following:

"(b) Prior to issuing a notice of corrective action under (a) of this subsection, the department shall verify that the product referenced in the notice is a coal tar pavement product.

(c) In determining whether a product is a coal tar pavement product under (b) of this subsection, the department shall use credible testing data that incorporates peer-reviewed science." Senator Honeyford spoke in favor of adoption of the amendment to the committee striking amendment.

Senator Rockefeller spoke against adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Honeyford on page 1, line 19 to the committee striking amendment to Engrossed Substitute House Bill No. 1721.

The motion by Senator Honeyford failed and the amendment to the committee striking amendment was not adopted by voice vote.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Environment, Water & Energy as amended to Engrossed Substitute House Bill No. 1721.

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

MOTION

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

On page 1, line 2 of the title, after "sealants;" strike the remainder of the title and insert "and adding a new chapter to Title 70 RCW."

MOTION

On motion of Senator Rockefeller, the rules were suspended, Engrossed Substitute House Bill No. 1721 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Rockefeller spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 1721 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 1721 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 36; Nays, 12; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Benton, Brown, Chase, Conway, Eide, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Kastama, Keiser, Kilmer, Kline, Kohl-Welles, Litzow, McAuliffe, Murray, Nelson, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Rockefeller, Schoesler, Sheldon, Swecker, Tom and White

Voting nay: Senators Baxter, Becker, Carrell, Delvin, Ericksen, Holmquist Newbry, Honeyford, King, Morton, Roach, Stevens and Zarelli

Excused: Senator Shin

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1721 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED HOUSE BILL NO. 1703, by Representatives Dammeier, Haigh, Anderson, Probst, Parker, Alexander, Zeiger and Smith

Addressing fiscal notes for legislation that uniquely affects school districts.

The measure was read the second time.

MOTION

On motion of Senator Zarelli, the rules were suspended, Engrossed House Bill No. 1703 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Zarelli spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed House Bill No. 1703.

ROLL CALL

EIGHTY SEVENTH DAY, APRIL 6, 2011

2011 REGULAR SESSION

MOTION

The Secretary called the roll on the final passage of Engrossed House Bill No. 1703 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 1; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Murray, Nelson, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Stevens, Swecker, Tom, White and Zarelli

Voting nay: Senator Morton

Excused: Senator Shin

ENGROSSED HOUSE BILL NO. 1703, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SIGNED BY THE PRESIDENT

The President signed:

- SENATE BILL NO. 5011,
- ENGROSSED SUBSTITUTE SENATE BILL NO. 5020,
- SENATE BILL NO. 5033,
- ENGROSSED SUBSTITUTE SENATE BILL NO. 5068,
- ENGROSSED SUBSTITUTE SENATE BILL NO. 5105,
- SENATE BILL NO. 5117,
- SUBSTITUTE SENATE BILL NO. 5168,
- SENATE BILL NO. 5172,
- SUBSTITUTE SENATE BILL NO. 5386,
- SENATE BILL NO. 5463,
- SUBSTITUTE SENATE BILL NO. 5546,
- ENGROSSED SUBSTITUTE SENATE BILL NO. 5585,
- SENATE BILL NO. 5589,
- SENATE BILL NO. 5633,
- SUBSTITUTE SENATE BILL NO. 5635,
- SUBSTITUTE SENATE BILL NO. 5664,
- SUBSTITUTE SENATE BILL NO. 5797,
- SUBSTITUTE SENATE BILL NO. 5800.

RULING BY THE PRESIDENT

President Owen: "In ruling upon the point of order raised by Senator Hargrove as to whether Senate Bill 5806 is an expansion of gambling which would take a sixty percent vote under the Constitution, the President finds and rules as follows:

Senator Hargrove is correct that Article II, section 24 of the Washington Constitution provides that an expansion of gambling requires a sixty percent vote of the legislature. Not every bill dealing with this topic, however, requires a super-majority vote. For example, there is ample precedent in this body, as well as other legal authority, to differentiate an expansion of gambling from the designation of new games or themes to take place under a pre-existing statutory scheme.

Such is the case with this bill. The President believes that this measure does not expand gambling, but instead makes use of existing authority under RCW 67.70.040 and adopted WACs. Under current law, the Lottery Commission may already conduct raffles, and it has done so in the past. This measure simply makes use of this existing framework to dedicate a raffle to veterans, specify the date of the drawing, and direct the sale proceeds.

For these reasons, the President believes this measure will take only a simple majority vote on final passage.

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

THIRD READING

SENATE BILL NO. 5806, by Senators Conway, Swecker, Kastama, Hobbs, Roach, Kilmer, Shin and Kline.

Authorizing a statewide raffle to benefit veterans and their families.

The bill was read on Third Reading.

Senators Conway and Holmquist Newbry spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Senate Bill No. 5806.

ROLL CALL

The Secretary called the roll on the final passage of Senate Bill No. 5806 and the bill passed the Senate by the following vote: Yeas, 46; Nays, 2; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Harper, Hatfield, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Stevens, Swecker, Tom, White and Zarelli

Voting nay: Senators Hargrove and Haugen

Excused: Senator Shin

SENATE BILL NO. 5806, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

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

SECOND READING

HOUSE BILL NO. 1178, by Representatives Appleton and Miloscia

Addressing the office of regulatory assistance.

The measure was read the second time.

MOTION

Senator Kastama moved that the following committee striking amendment by the Committee on Economic Development, Trade & Innovation be adopted:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 34.05.328 and 2010 c 112 s 15 are each amended to read as follows:

(1) Before adopting a rule described in subsection (5) of this section, an agency shall:

(a) Clearly state in detail the general goals and specific objectives of the statute that the rule implements;

(b) Determine that the rule is needed to achieve the general goals and specific objectives stated under (a) of this subsection, and analyze alternatives to rule making and the consequences of not adopting the rule;

(c) Provide notification in the notice of proposed rule making under RCW 34.05.320 that a preliminary cost-benefit analysis is available. The preliminary cost-benefit analysis must fulfill the requirements of the cost-benefit analysis under (d) of this subsection. If the agency files a supplemental notice under RCW 34.05.340, the supplemental notice shall include notification that a revised preliminary cost-benefit analysis is available. A final cost-benefit analysis shall be available when the rule is adopted under RCW 34.05.360;

(d) Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented;

(e) Determine, after considering alternative versions of the rule and the analysis required under (b), (c), and (d) of this subsection, that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated under (a) of this subsection;

(f) Determine that the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law;

(g) Determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law;

(h) Determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified by the following:

(i) A state statute that explicitly allows the agency to differ from federal standards; or

(ii) Substantial evidence that the difference is necessary to achieve the general goals and specific objectives stated under (a) of this subsection; and

(i) Coordinate the rule, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.

(2) In making its determinations pursuant to subsection (1)(b) through (h) of this section, the agency shall place in the rule-making file documentation of sufficient quantity and quality so as to persuade a reasonable person that the determinations are justified.

(3) Before adopting rules described in subsection (5) of this section, an agency shall place in the rule-making file a rule implementation plan for rules filed under each adopting order. The plan shall describe how the agency intends to:

(a) Implement and enforce the rule, including a description of the resources the agency intends to use;

(b) Inform and educate affected persons about the rule;

(c) Promote and assist voluntary compliance; and

(d) Evaluate whether the rule achieves the purpose for which it was adopted, including, to the maximum extent practicable, the use of interim milestones to assess progress and the use of objectively measurable outcomes.

(4) After adopting a rule described in subsection (5) of this section regulating the same activity or subject matter as another provision of federal or state law, an agency shall do all of the following:

(a) Coordinate implementation and enforcement of the rule with the other federal and state entities regulating the same activity or subject matter by making every effort to do one or more of the following:

(i) Deferring to the other entity;

(ii) Designating a lead agency; or

(iii) Entering into an agreement with the other entities specifying how the agency and entities will coordinate implementation and enforcement.

If the agency is unable to comply with this subsection (4)(a), the agency shall report to the legislature pursuant to (b) of this subsection;

(b) Report to the joint administrative rules review committee:

(i) The existence of any overlap or duplication of other federal or state laws, any differences from federal law, and any known overlap, duplication, or conflict with local laws; and

(ii) Make recommendations for any legislation that may be necessary to eliminate or mitigate any adverse effects of such overlap, duplication, or difference.

(5)(a) Except as provided in (b) of this subsection, this section applies to:

(i) Significant legislative rules of the departments of ecology, labor and industries, health, revenue, social and health services, and natural resources, the employment security department, the forest practices board, the office of the insurance commissioner, and to the legislative rules of the department of fish and wildlife implementing chapter 77.55 RCW; and

(ii) Any rule of any agency, if this section is voluntarily made applicable to the rule by the agency, or is made applicable to the rule by a majority vote of the joint administrative rules review committee within forty-five days of receiving the notice of proposed rule making under RCW 34.05.320.

(b) This section does not apply to:

(i) Emergency rules adopted under RCW 34.05.350;

(ii) Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party;

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

(iv) Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect;

(v) Rules the content of which is explicitly and specifically dictated by statute;

(vi) Rules that set or adjust fees or rates pursuant to legislative standards;

(vii) Rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents; or

(viii) Rules of the department of revenue that adopt a uniform expiration date for reseller permits as authorized in RCW 82.32.780 and 82.32.783.

(c) For purposes of this subsection:

(i) A "procedural rule" is a rule that adopts, amends, or repeals (A) any procedure, practice, or requirement relating to any agency hearings; (B) any filing or related process requirement for making application to an agency for a license or permit; or (C) any policy statement pertaining to the consistent internal operations of an agency.

(ii) An "interpretive rule" is a rule, the violation of which does not subject a person to a penalty or sanction, that sets forth the agency's interpretation of statutory provisions it administers.

(iii) A "significant legislative rule" is a rule other than a procedural or interpretive rule that (A) adopts substantive provisions of law pursuant to delegated legislative authority, the violation of which subjects a violator of such rule to a penalty or sanction; (B)

EIGHTY SEVENTH DAY, APRIL 6, 2011

2011 REGULAR SESSION

establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit; or (C) adopts a new, or makes significant amendments to, a policy or regulatory program.

(d) In the notice of proposed rule making under RCW 34.05.320, an agency shall state whether this section applies to the proposed rule pursuant to (a)(i) of this subsection, or if the agency will apply this section voluntarily.

(6) By January 31, 1996, and by January 31st of each even-numbered year thereafter, the office of (~~financial management~~) regulatory assistance, after consulting with state agencies, counties, and cities, and business, labor, and environmental organizations, shall report to the governor and the legislature regarding the effects of this section on the regulatory system in this state. The report shall document:

(a) The rules proposed to which this section applied and to the extent possible, how compliance with this section affected the substance of the rule, if any, that the agency ultimately adopted;

(b) The costs incurred by state agencies in complying with this section;

(c) Any legal action maintained based upon the alleged failure of any agency to comply with this section, the costs to the state of such action, and the result;

(d) The extent to which this section has adversely affected the capacity of agencies to fulfill their legislatively prescribed mission;

(e) The extent to which this section has improved the acceptability of state rules to those regulated; and

(f) Any other information considered by the office of financial management to be useful in evaluating the effect of this section.

Sec. 2. RCW 43.42.010 and 2009 c 97 s 4 are each amended to read as follows:

(1) The office of regulatory assistance is created in the office of financial management and (~~shall~~) must be administered by the office of the governor to help improve the regulatory system and assist citizens, businesses, and project proponents.

(2) The governor (~~shall~~) must appoint a director. The director may employ a deputy director and a confidential secretary and such staff as are necessary, or contract with another state agency pursuant to chapter 39.34 RCW for support in carrying out the purposes of this chapter.

(3) The office (~~shall~~) must offer to:

(a) Act as the central point of contact for the project proponent in communicating about defined issues;

(b) Conduct project scoping as provided in RCW 43.42.050;

(c) Verify that the project proponent has all the information needed to correctly apply for all necessary permits;

(d) Provide general coordination services;

(e) Coordinate the efficient completion among participating agencies of administrative procedures, such as collecting fees or providing public notice;

(f) Maintain contact with the project proponent and the permit agencies to promote adherence to agreed schedules;

(g) Assist in resolving any conflict or inconsistency among permit requirements and conditions;

(h) Coordinate, to the extent practicable, with relevant federal permit agencies and tribal governments;

(i) Facilitate meetings;

(j) Manage a fully coordinated permit process, as provided in RCW 43.42.060;

(k) Help local jurisdictions comply with the requirements of chapter 36.70B RCW by providing information about best permitting practices methods to improve communication with, and solicit early involvement of, state agencies when needed; and

(l) Maintain and furnish information as provided in RCW 43.42.040.

(4) The office (~~shall~~) must provide the following by September 1, 2009, and biennially thereafter, to the governor and the appropriate committees of the legislature:

(a) A performance report including:

(i) Information regarding use of the office's voluntary cost-reimbursement services as provided in RCW 43.42.070;

(ii) The number and type of projects where the office provided services and the resolution provided by the office on any conflicts that arose on such projects; (~~and~~)

(iii) The agencies involved on specific projects;

(iv) Specific information on any difficulty encountered in provision of services, implementation of programs or processes, or use of tools; and

(v) Trend reporting that allows comparisons between statements of goals and performance targets and the achievement of those goals and targets; and

(b) Recommendations on system improvements including recommendations regarding:

(i) Measurement of overall system performance; (~~and~~)

(ii) Changes needed to make cost reimbursement, a fully coordinated permit process, multiagency permitting teams, and other processes effective; and

(iii) Resolving any conflicts or inconsistencies arising from differing statutory or regulatory authorities, roles and missions of agencies, timing and sequencing of permitting and procedural requirements as identified by the office in the course of its duties.

NEW SECTION. Sec. 3. The following acts or parts of acts are each repealed:

(1) RCW 43.131.401 (Office of regulatory assistance--Termination) and 2007 c 231 s 6, 2007 c 94 s 15, 2003 c 71 s 5, & 2002 c 153 s 13; and

(2) RCW 43.131.402 (Office of regulatory assistance--Repeal) and 2010 c 162 s 7.

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 29, 2011."

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

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Economic Development, Trade & Innovation to House Bill No. 1178.

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

MOTION

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

On page 1, line 2 of the title, after "34.05.328" insert "and 43.42.010"

MOTION

On motion of Senator Kastama, the rules were suspended, House Bill No. 1178 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Kastama and Baumgartner spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 1178 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 1178 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 43; Nays, 5; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Murray, Nelson, Parlette, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Swecker, Tom, White and Zarelli

Voting nay: Senators Ericksen, Honeyford, Morton, Pflug and Stevens

Excused: Senator Shin

HOUSE BILL NO. 1178 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1506, by House Committee on Judiciary (originally sponsored by Representatives Chandler, Takko and Johnson)

Addressing fire suppression efforts and capabilities on unprotected land outside a fire protection jurisdiction.

The measure was read the second time.

MOTION

On motion of Senator Eide, further consideration of Substitute House Bill No. 1506 was deferred and the bill held its place on the second reading calendar.

SECOND READING

ENGROSSED HOUSE BILL NO. 1517, by Representatives Jinkins, Hinkle, Green, Harris and Stanford

Requiring comparable coverage for patients who require orally administered anticancer medication.

The measure was read the second time.

MOTION

Senator Keiser moved that the following committee striking amendment by the Committee on Health & Long-Term Care be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The Washington state legislature finds that for cancer patients, there is an inequity in how much they have to pay toward the cost of a self-administered oral medication and how much they have to pay for an intravenous product that is administered in a physician's office or clinic. The legislature further finds that when these inequities exist, patients' access to medically necessary, appropriate treatment is often unfairly restricted. The legislature also acknowledges that self-administered chemotherapy is the only treatment for some types of cancer where there is no intravenous alternative. The legislature

declares that in order to reduce the out-of-pocket costs for cancer patients whose diagnosis requires treatment through self-administered anticancer medication, the cost-sharing responsibilities for these patients must be on a basis at least comparable to those of patients receiving intravenously administered anticancer medication.

NEW SECTION. Sec. 2. A new section is added to chapter 41.05 RCW to read as follows:

(1) Each health plan offered to public employees and their covered dependents under this chapter, including those subject to the provision of Title 48 RCW, and is issued or renewed beginning January 1, 2012, and provides coverage for cancer chemotherapy treatment must provide coverage for prescribed, self-administered anticancer medication that is used to kill or slow the growth of cancerous cells on a basis at least comparable to cancer chemotherapy medications administered by a health care provider or facility as defined in RCW 48.43.005 (15) and (16).

(2) Nothing in this section may be interpreted to prohibit a health plan from administering a formulary or preferred drug list, requiring prior authorization, or imposing other appropriate utilization controls in approving coverage for any chemotherapy.

NEW SECTION. Sec. 3. A new section is added to chapter 48.20 RCW to read as follows:

(1) Each health plan issued or renewed on or after January 1, 2012, that provides coverage for cancer chemotherapy treatment must provide coverage for prescribed, self-administered anticancer medication that is used to kill or slow the growth of cancerous cells on a basis at least comparable to cancer chemotherapy medications administered by a health care provider or facility as defined in RCW 48.43.005 (15) and (16).

(2) Nothing in this section may be interpreted to prohibit a health plan from administering a formulary or preferred drug list, requiring prior authorization, or imposing other appropriate utilization controls in approving coverage for any chemotherapy.

NEW SECTION. Sec. 4. A new section is added to chapter 48.21 RCW to read as follows:

(1) Each health plan issued or renewed on or after January 1, 2012, that provides coverage for cancer chemotherapy treatment must provide coverage for prescribed, self-administered anticancer medication that is used to kill or slow the growth of cancerous cells on a basis at least comparable to cancer chemotherapy medications administered by a health care provider or facility as defined in RCW 48.43.005 (15) and (16).

(2) Nothing in this section may be interpreted to prohibit a health plan from administering a formulary or preferred drug list, requiring prior authorization, or imposing other appropriate utilization controls in approving coverage for any chemotherapy.

NEW SECTION. Sec. 5. A new section is added to chapter 48.44 RCW to read as follows:

(1) Each health plan issued or renewed on or after January 1, 2012, that provides coverage for cancer chemotherapy treatment must provide coverage for prescribed, self-administered anticancer medication that is used to kill or slow the growth of cancerous cells on a basis at least comparable to cancer chemotherapy medications administered by a health care provider or facility as defined in RCW 48.43.005 (15) and (16).

(2) Nothing in this section may be interpreted to prohibit a health plan from administering a formulary or preferred drug list, requiring prior authorization, or imposing other appropriate utilization controls in approving coverage for any chemotherapy.

NEW SECTION. Sec. 6. A new section is added to chapter 48.46 RCW to read as follows:

(1) Each health plan issued or renewed on or after January 1, 2012, that provides coverage for cancer chemotherapy treatment must provide coverage for prescribed, self-administered anticancer medication that is used to kill or slow the growth of cancerous cells

EIGHTY SEVENTH DAY, APRIL 6, 2011

2011 REGULAR SESSION

on a basis at least comparable to cancer chemotherapy medications administered by a health care provider or facility as defined in RCW 48.43.005 (15) and (16).

(2) Nothing in this section may be interpreted to prohibit a health plan from administering a formulary or preferred drug list, requiring prior authorization, or imposing other appropriate utilization controls in approving coverage for any chemotherapy.

NEW SECTION. **Sec. 7.** Each health plan offering individual or small group products that provides coverage for prescribed, self-administered anticancer medication as required under this act must report to the health committees of the legislature by November 1, 2013, with a summary of their cost experience."

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

MOTION

On motion of Senator Parlette, Senator Ericksen was excused.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Health & Long-Term Care to Engrossed House Bill No. 1517.

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

MOTION

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

On page 1, line 2 of the title, after "medication;" strike the remainder of the title and insert "adding a new section to chapter 41.05 RCW; adding a new section to chapter 48.20 RCW; adding a new section to chapter 48.21 RCW; adding a new section to chapter 48.44 RCW; adding a new section to chapter 48.46 RCW; and creating new sections."

MOTION

On motion of Senator Keiser, the rules were suspended, Engrossed House Bill No. 1517 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Keiser and Hill spoke in favor of passage of the bill.

MOTION

On motion of Senator Parlette, Senator Baumgartner was excused.

MOTION

On motion of Senator Eide, Senator Kline was excused.

The President declared the question before the Senate to be the final passage of Engrossed House Bill No. 1517 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed House Bill No. 1517 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 43; Nays, 2; Absent, 0; Excused, 4.

Voting yea: Senators Baxter, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Kastama, Keiser, Kilmer, King, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Sheldon, Stevens, Swecker, Tom, White and Zarelli

Voting nay: Senators Honeyford and Schoesler

Excused: Senators Baumgartner, Ericksen, Kline and Shin

ENGROSSED HOUSE BILL NO. 1517 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

PERSONAL PRIVILEGE

Senator Hill: "I would like to point out that my daughter Allie is in the wings and it is her thirteenth birthday today so let's wrap it up quickly here so I can go have dinner with her."

REMARKS BY THE PRESIDENT

President Owen: "If I'm not mistaken Senator Hill, she's also one of our outstanding pages this week, is that not true?"

Senator Hill: "No, that's the other one."

REPLY BY THE PRESIDENT

President Owen: "Oh, the other one. Oh. Oh there she is. She's waiting for dinner too."

SECOND READING

ENGROSSED HOUSE BILL NO. 1171, by Representatives Rolfes, Armstrong, Liias, Billig, Angel, Finn, Appleton, Seaquist and Reykdal

Concerning high capacity transportation system plan components and review.

The measure was read the second time.

MOTION

On motion of Senator Kilmer, the rules were suspended, Engrossed House Bill No. 1171 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Kilmer spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed House Bill No. 1171.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed House Bill No. 1171 and the bill passed the Senate by the following vote: Yeas, 40; Nays, 6; Absent, 0; Excused, 3.

Voting yea: Senators Baxter, Becker, Brown, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Rockefeller, Sheldon, Stevens, Swecker, Tom and White

Voting nay: Senators Benton, Carrell, Hewitt, Roach, Schoesler and Zarelli

Excused: Senators Baumgartner, Kline and Shin

ENGROSSED HOUSE BILL NO. 1171, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1438, by House Committee on Public Safety & Emergency Preparedness (originally sponsored by Representatives Kelley and Dammeier)

Concerning the interstate compact for adult offender supervision.

The measure was read the second time.

MOTION

On motion of Senator Hargrove, the rules were suspended, Substitute House Bill No. 1438 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Hargrove and Carrell spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1438.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1438 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Stevens, Swecker, Tom, White and Zarelli

Excused: Senator Shin

SUBSTITUTE HOUSE BILL NO. 1438, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1565, by House Committee on Judiciary (originally sponsored by Representatives Frockt, Rodne, Pedersen, Eddy, Goodman, Roberts, Walsh, Green, Jacks, Fitzgibbon, Reykdal, Kenney, Stanford, Billig and Kelley)

Concerning the modification and termination of domestic violence protection orders.

The measure was read the second time.

MOTION

On motion of Senator Hargrove, the rules were suspended, Substitute House Bill No. 1565 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Hargrove spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1565.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1565 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Stevens, Swecker, Tom, White and Zarelli

Excused: Senator Shin

SUBSTITUTE HOUSE BILL NO. 1565, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 1485, by House Committee on Judiciary (originally sponsored by Representatives Rodne, Kirby, Pedersen, Johnson and Kelley)

Regarding charitable solicitations.

The measure was read the second time.

MOTION

Senator Kohl-Welles moved that the following committee striking amendment by the Committee on Labor, Commerce & Consumer Protection be adopted:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 19.09.010 and 2007 c 471 s 1 are each amended to read as follows:

The purpose of this chapter is to:

(1) Provide citizens of the state of Washington with information relating to ~~((persons and organizations who))~~ any entity that solicits funds from the public for public charitable purposes in order to prevent (a) deceptive and dishonest practices in the conduct of soliciting funds for or in the name of charity; and (b) improper use of contributions intended for charitable purposes;

(2) Improve the transparency and accountability of organizations that solicit funds from the public for charitable purposes; and

(3) Develop and operate educational programs or partnerships for charitable organizations, board members, and the general public that help build public confidence and trust in organizations that solicit funds from the public for charitable purposes.

Sec. 2. RCW 19.09.020 and 2007 c 471 s 2 are each amended to read as follows:

When used in this chapter, unless the context otherwise requires:

(1) A "bona fide officer or employee" of a charitable organization is one (a) whose conduct is subject to direct control by

EIGHTY SEVENTH DAY, APRIL 6, 2011

2011 REGULAR SESSION

such organization; (b) who does not act in the manner of an independent contractor in his or her relation with the organization; and (c) whose compensation is not computed on funds raised or to be raised.

(2) "Charitable organization" means any entity that solicits or collects contributions from the general public where the contribution is or is purported to be used to support a charitable purpose, but does not include any commercial fund-raiser, commercial fund-raising entity, commercial coventurer, or any fund-raising counsel, as defined in this section. Churches and their integrated auxiliaries, and political organizations are not charitable organizations, but ~~all~~ are subject to RCW 19.09.100 ~~((12)),~~ (15) ~~(and)~~ through (18).

(3) "Charitable purpose" means any religious, charitable, scientific, testing for public safety, literary, or educational purpose or any other purpose that is beneficial to the community, including environmental, humanitarian, patriotic, or civic purposes, the support of national or international amateur sports competition, the prevention of cruelty to children or animals, the advancement of social welfare, or the benefit of law enforcement personnel, firefighters, and other persons who protect public safety. The term "charitable" is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.

(4) "Commercial coventurer" means any individual or corporation, partnership, sole proprietorship, limited liability company, limited partnership, limited liability partnership, or any other legal entity, that:

(a) Is regularly and primarily engaged in making sales of goods or services for profit directly to the general public;

(b) Is not otherwise regularly or primarily engaged in making ~~((charitable))~~ solicitations in this state or otherwise raising funds in this state for one or more charitable organizations;

(c) Represents to prospective purchasers that, if they purchase a good or service from the commercial coventurer, a portion of the sales price or a sum of money or some other specified thing of value will be donated to a named charitable organization; and

(d) Does not ask purchasers to make checks or other instruments payable to a named charitable organization or any entity other than the commercial coventurer itself under its regular commercial name.

(5) "Commercial fund-raiser" or "commercial fund-raising entity" means any entity that for compensation or other consideration ~~((within this state))~~ directly or indirectly solicits or receives contributions within this state for or on behalf of any charitable organization or charitable purpose, or that is engaged in the business of, ~~((is held out))~~ represents to persons in this state as independently engaged in the business of, soliciting or receiving contributions for such purposes. However, a commercial coventurer, fund-raising counsel, or consultant is not a commercial fund-raiser or commercial fund-raising entity.

(6) "Compensation" means salaries, wages, fees, commissions, or any other remuneration or valuable consideration.

(7) "Contribution" means the payment, donation, or promise, ~~((or grant))~~ for consideration or otherwise, of any money or property of any kind or value which contribution is wholly or partly induced by a solicitation. Reference to dollar amounts of "contributions" or "solicitations" in this chapter means in the case of payments or promises to pay for merchandise or rights of any description, the value of the total amount paid or promised to be paid for such merchandise or rights.

(8) "Cost of solicitation" means and includes all direct and indirect costs, expenditures, debts, obligations, salaries, wages, commissions, fees, or other money or thing of value paid or incurred in making a solicitation.

(9) "Entity" means an individual, organization, group, association, partnership, corporation, agency or unit of state government, or any combination thereof.

(10) "Fund-raising counsel" or "consultant" means any entity or individual who is retained by a charitable organization, for a fixed fee or rate, that is not computed on a percentage of funds raised, or to be raised, under a written agreement only to plan, advise, consult, or prepare materials for a solicitation of contributions in this state, but who does not manage, conduct, or carry on a fund-raising campaign and who does not solicit contributions or employ, procure, or engage any compensated person to solicit contributions, and who does not at any time have custody or control of contributions. A volunteer, employee, or salaried officer of a charitable organization maintaining a permanent establishment or office in this state is not a fund-raising counsel. An attorney, investment counselor, or banker who advises an individual, corporation, or association to make a charitable contribution is not a fund-raising counsel as a result of the advice.

(11) "General public" or "public" means any individual or entity located in Washington state without a membership or other official relationship with a charitable organization before a solicitation by the charitable organization.

(12) "Gross revenue" or "annual gross revenue" means, for any accounting period, the total value of revenue, excluding unrealized capital gains, but including noncash contributions of tangible, personal property received by or on behalf of a charitable organization from all sources, without subtracting any costs or expenses.

(13) "Membership" means that for the payment of fees, dues, assessments, etc., an organization provides services and confers a bona fide right, privilege, professional standing, honor, or other direct benefit, in addition to the right to vote, elect officers, or hold office. The term "membership" does not include those persons who are granted a membership upon making a contribution as the result of solicitation.

~~((13))~~ (14) "Other employee" of a charitable organization means any person (a) whose conduct is subject to direct control by such organization; (b) who does not act in the manner of any independent contractor in his or her relation with the organization; and (c) who is not engaged in the business of or held out to persons in this state as independently engaged in the business of soliciting contributions for charitable purposes or religious activities.

~~((14))~~ (15) "Political organization" means those organizations whose activities are subject to chapter ~~((42.17))~~ 42.17A RCW or the Federal Elections Campaign Act of 1971, as amended.

~~((15))~~ (16) "Religious organization" means those entities that are not churches or integrated auxiliaries and includes nondenominational ministries, interdenominational and ecumenical organizations, mission organizations, speakers' organizations, faith-based social agencies, and other entities whose principal purpose is the study, practice, or advancement of religion.

~~((16))~~ (17) "Secretary" means the secretary of state.

~~((17))~~ (18) "Signed" means hand-written, or, if the secretary adopts rules facilitating electronic filing that pertain to this chapter, in the manner prescribed by those rules.

~~((18))~~ (19)(a) "Solicitation" means any oral or written request for a contribution, including the solicitor's offer or attempt to sell any property, rights, services, or other thing in connection with which:

(i) Any appeal is made for any charitable purpose;

(ii) The name of any charitable organization is used as an inducement for consummating the sale; or

(iii) Any statement is made that implies that the whole or any part of the proceeds from the sale will be applied toward any charitable purpose or donated to any charitable organization.

(b) The solicitation shall be deemed completed when made, whether or not the person making it receives any contribution or makes any sale.

(c) "Solicitation" does not include bingo activities, raffles, and amusement games conducted under chapter 9.46 RCW and applicable rules of the Washington state gambling commission.

(20) "Solicitation report" means the financial information the secretary requires pursuant to RCW 19.09.075 or 19.09.079.

NEW SECTION. Sec. 3. A new section is added to chapter 19.09 RCW to read as follows:

The application requirements of RCW 19.09.075 do not apply to:

(1) Any charitable organization raising less than fifty thousand dollars in any accounting year when all the activities of the organization, including all fund-raising activities, are carried on by persons who are unpaid for their services and no part of the charitable organization's assets or income inures to the benefit of or is paid to any officer, director, member, or trustee of the organization, other than as part of a charitable class benefited by the charitable organization.

(2) Appeals for funds on behalf of a specific individual named in the solicitation, but only if all of the proceeds of the solicitation are given to or expended for the direct benefit of that individual.

Sec. 4. RCW 19.09.062 and 2010 1st sp.s. c 29 s 11 are each amended to read as follows:

The secretary of state (~~(shall)~~) must collect the following fees in accordance with this chapter:

(1) For an application for registration as a charitable organization, a fee of sixty dollars. Twenty dollars of this fee must be deposited in the state general fund and the remaining forty dollars must be deposited in the charitable organization education account under RCW 19.09.530;

(2) For an annual renewal of registration as a charitable organization, a fee of forty dollars. Ten dollars of this fee must be deposited in the state general fund and the remaining thirty dollars must be deposited in the charitable organization education account under RCW 19.09.530;

(3) For an application for registration as a commercial fund-raiser, a fee of three hundred dollars. Two hundred fifty dollars of this fee must be deposited in the state general fund and the remaining fifty dollars must be deposited in the charitable organization education account under RCW 19.09.530;

(4) For an annual renewal of registration as a commercial fund-raiser, a fee of two hundred twenty-five dollars. One hundred seventy-five dollars of this fee must be deposited in the state general fund and the remaining fifty dollars must be deposited in the charitable organization education account under RCW 19.09.530;

(5) For a registration of a commercial fund-raiser service contract, a fee of twenty dollars. Ten dollars of this fee must be deposited in the state general fund and the remaining ten dollars must be deposited in the charitable organization education account under RCW 19.09.530.

Sec. 5. RCW 19.09.065 and 1993 c 471 s 2 are each amended to read as follows:

(1) All charitable organizations and commercial fund-raisers (~~(shall)~~) must register with the secretary prior to conducting any solicitations.

(2) Failure to register as required by this chapter is a violation of this chapter.

(3) Information provided to the secretary pursuant to this chapter (~~(shall be)~~) is a public record except as (~~(otherwise stated in~~

~~this chapter~~) provided by law. Social security numbers and financial account numbers are not public information.

(4) Registration (~~(shall)~~) must not be considered or be represented as an endorsement by the secretary or the state of Washington.

NEW SECTION. Sec. 6. A new section is added to chapter 19.09 RCW, to be codified between RCW 19.09.065 and 19.09.075, to read as follows:

(1) Entities are deemed registered under RCW 19.09.075 or 19.09.079 twenty days after receipt of the registration or renewal form by the secretary and may thereafter solicit contributions from the general public.

(2) If the secretary determines that the application for initial registration or renewal is incomplete, the secretary will notify the applicant of the information necessary to complete the application. The secretary may hold the application up to thirty days to allow the applicant time to provide additional information. If the applicant fails to provide complete information as requested by the secretary, the applicant will be deemed unregistered and must cease all solicitations as defined by this chapter.

(3) If an applicant fails to pay a required fee for any filing, the secretary will notify the applicant of the necessary fee to complete the application. The secretary may hold the application up to thirty days to allow the applicant time to submit the required payment. If the applicant fails to provide the required payment as requested by the secretary, the applicant will be deemed unregistered and must cease all solicitations as defined by this chapter.

NEW SECTION. Sec. 7. A new section is added to chapter 19.09 RCW, to be codified between section 6 of this act and RCW 19.09.075, to read as follows:

Charitable organizations must ensure that the financial information included in the solicitation report fairly represents, in all material respects, the financial condition and results of operations of the organization as of, and for, the period presented to the secretary for filing. If the financial information submitted to the secretary is incorrect in any material way, it is a violation of this chapter and the charitable organization may be subject to penalties as provided under RCW 19.09.279.

Sec. 8. RCW 19.09.075 and 2010 1st sp.s. c 29 s 12 are each amended to read as follows:

(1) An application for initial registration and renewal as a charitable organization (~~(shall)~~) must be submitted (~~(in)~~) on the form (~~(prescribed by rule)~~) approved by the secretary (~~(-containing, but not limited to, the following)~~) and must contain:

((4)) (a) The name, address, and telephone number of the charitable organization;

((2)) (b) The name(s) under which the charitable organization will solicit contributions;

((3)) (c) The name, address, and telephone number of the officers of or persons accepting responsibility for the charitable organization;

((4)) (d) The names of the three officers or employees receiving the greatest amount of compensation from the charitable organization;

((5)) (e) The purpose of the charitable organization;

((6)) (f) Whether the organization is exempt from federal income tax; and if so the organization shall attach to its application a copy of the letter by which the internal revenue service granted such status; ~~(and~~

((b)) (g) The name and address of the entity that prepares, reviews, or audits the financial statement of the charitable organization;

((7)) (h) A solicitation report of the charitable organization for the preceding, completed accounting year including:

((a)) (i) The types of solicitations conducted;

EIGHTY SEVENTH DAY, APRIL 6, 2011

2011 REGULAR SESSION

~~((b))~~ (ii) The ~~((total dollar value of contributions))~~ gross revenue received from ~~((solicitations and from))~~ all ~~((other))~~ sources ~~((received on behalf of the charitable purpose))~~ by or on behalf of the charitable organization before any expenses are paid or deducted;

~~((c))~~ (iii) The total ~~((amount of money applied to charitable purposes, fund-raising costs, and other expenses; and~~

(d) The name, address, and telephone number of any commercial fund-raiser used by the organization;

(8) An irrevocable appointment of the secretary to receive service of process in noncriminal proceedings as provided in RCW 19.09.305; and

(9) The total revenue of the preceding fiscal year.

The solicitation report required to be submitted under subsection (7) of this section shall be in the form prescribed by rule by the secretary, or as agreed to by the secretary and a charitable organization) value of contributions received from all solicitations for or on behalf of the charitable organization before any expenses are paid or deducted;

(iv) The total value of funds expended for charitable purposes; and

(v) Total expenses, including expenditures for charitable purposes, fund-raising costs, and administrative expenses;

(i) The name, address, and telephone number of any commercial fund-raiser retained by the charitable organization; and

(j) An irrevocable appointment of the secretary to receive service of process in noncriminal proceedings as provided in RCW 19.09.305; and

(k) Such other information the secretary deems necessary by rule.

(2) The governing body or committee thereof must review and accept any financial report that the charitable organization may be required to file with the office of the secretary.

(3) Charitable organizations that are required under federal tax law to file an annual return in the form 990 series or any successor series is not required to file a copy of such annual return with the secretary: PROVIDED, That the charitable organization complies with all federal tax law requirements with respect to public inspection of such annual return.

(4) The president, treasurer, or comparable officer of the organization must sign and date the application. The application ~~((shall))~~ must be submitted with a nonrefundable filing fee established in RCW 19.09.062. ~~((If the secretary determines that the application is complete, the application shall be filed and the applicant deemed registered.))~~

(5) Charitable organizations required to register and renew under this chapter must file a notice of change of information within thirty days of any change in the information contained in subsection (1)(a) through (k) of this section.

NEW SECTION. Sec. 9. A new section is added to chapter 19.09 RCW to read as follows:

The secretary is authorized to adopt rules, in accordance with chapter 34.05 RCW, that establish a set of tiered financial reporting requirements for charitable organizations required to register with the secretary pursuant to this chapter. Rules adopted under this section must include, but not be limited to, substantially the following:

(1) Tier one. Charitable organizations with one million dollars or less in annual gross revenue averaged over the three preceding, completed accounting years must meet the financial reporting requirements specified in RCW 19.09.075;

(2) Tier two. Charitable organizations with more than one million dollars and up to three million dollars in annual gross revenue averaged over the three preceding, completed accounting years must, in addition to the reporting requirements in RCW

19.09.075, make one of the following financial reporting requirements available to the public upon request, or accessible to the public on the internet:

(a) The federal financial reporting form (990, 990PF, 990EZ, 990T) the organization normally files with the IRS which must be prepared by a certified public accountant or other professional who normally prepares such forms in the ordinary course of their business; or

(b) An audited financial statement prepared by an independent certified public accountant for the preceding accounting year;

(3) Tier three. Charitable organizations with more than three million dollars in annual gross revenue averaged over the three preceding, completed accounting years must, in addition to the reporting requirements in RCW 19.09.075, obtain an independent, third-party audit of its financial records for the preceding accounting year. This audit report must be made available in paper form to the public upon request or accessible to the public on the internet.

(4) The secretary may waive a tiered reporting requirement as prescribed in rule.

Sec. 10. RCW 19.09.079 and 2010 1st sp.s. c 29 s 13 are each amended to read as follows:

An application for registration and renewal as a commercial fund-raiser ~~((shall))~~ must be submitted ~~((it))~~ on the form ~~((prescribed))~~ approved by the secretary ~~((containing, but not limited to, the following))~~ and must contain:

(1) The name, address, and telephone number of the commercial fund-raising entity;

(2) The name(s), address(es), and telephone number(s) of the owner(s) and principal officer(s) of the commercial fund-raising entity;

(3) The name, address, and telephone number of the individual responsible for the activities of the commercial fund-raising entity in Washington;

(4) The names of the three officers or employees receiving the greatest amount of compensation from the commercial fund-raising entity;

(5) The name and address of the entity that prepares, reviews, or audits the financial statement of the organization;

(6) A solicitation report of the commercial fund-raising entity for the preceding, completed accounting year, including:

(a) The types of fund-raising services conducted;

(b) The names of charitable organizations required to register under RCW ~~((19.09.065))~~ 19.09.075 for whom fund-raising services have been performed;

(c) The total value of contributions received on behalf of charitable organizations required to register under RCW ~~((19.09.065))~~ 19.09.075 by the commercial fund-raiser, affiliate of the commercial fund-raiser, or any entity retained by the commercial fund-raiser; and

(d) The amount of money disbursed to charitable organizations for charitable purposes, net of fund-raising costs paid by the charitable organization as stipulated in any agreement between charitable organizations and the commercial fund-raiser;

(7) The name, address, and telephone number of any other commercial fund-raiser that was retained in the conduct of providing fund-raising services; ~~((and))~~

(8) An irrevocable appointment of the secretary to receive service of process in noncriminal proceedings as provided in RCW 19.09.305; and

(9) Such other information the secretary deems necessary by rule.

The application ~~((shall))~~ must be signed by an officer or owner of the commercial fund-raiser and ~~((shall))~~ must be submitted with a nonrefundable fee established in RCW 19.09.062. ~~((If the~~

secretary determines that the application is complete, the application shall be filed and the applicant deemed registered.)

Commercial fund-raisers required to register and renew under this chapter must file a notice of change of information within thirty days of any change in the information contained in subsections (1) through (7) and (9) of this section.

NEW SECTION. Sec. 11. A new section is added to chapter 19.09 RCW to read as follows:

(1) Every commercial fund-raiser must execute a surety bond if it:

(a) Directly or indirectly receives contributions from the public on behalf of any charitable organization;

(b) Is compensated based upon funds raised or to be raised, number of solicitations made or to be made, or any other similar method;

(c) Incurs or is authorized to incur expenses on behalf of the charitable organization; or

(d) Has not been registered with the secretary as a commercial fund-raiser for the preceding accounting year.

(2) The surety bond must be executed as principal in the amount prescribed by the secretary in rule. The issuer of the surety bond must be licensed to do business in this state, and must promptly notify the secretary when claims or payments are made against the bond or when the bond is canceled. The bond must be filed with the secretary in the form prescribed by the secretary. The bond must run to the state and to any person who may have a cause of action against the obligor of said bond for any malfeasance, misfeasance, or deceptive practice in the conduct of solicitations.

The secretary may also provide by rule for the reduction and reinstatement of the bond required by this section.

Sec. 12. RCW 19.09.085 and 2007 c 471 s 6 are each amended to read as follows:

(1) Registration under this chapter (~~(shall be)~~) is effective for one year or (~~longer~~) as established by the secretary.

(2) (~~(Reregistration)~~) Renewals required under RCW 19.09.075 or 19.09.079 (~~(shall)~~) must be submitted to the secretary no later than the date established by the secretary by rule.

(3) (Entities required to register under this chapter shall file a notice of change of information within thirty days of any change in the information contained in RCW 19.09.075 (1) through (9) or 19.09.079 (1) through (7).

(4)) The secretary (shall) must notify entities registered under this chapter of the need to (~~(re)register~~) renew upon the expiration of their current registration. The notification (shall) must be (by mail, sent at least) made approximately sixty days prior to the expiration (of their current registration) date and must be made through postal or electronic means. Failure to (~~(register)~~) renew shall not be excused by a failure of the secretary to (~~(mail)~~) send the notice or by an entity's failure to receive the notice.

(4) Entities required to register and renew under this chapter must file a notice of change of information within thirty days of any change in the information contained in RCW 19.09.075 (1)(a) through (k) or 19.09.079 (1) through (7) and (9).

(5) Entities are deemed registered under RCW 19.09.075 or 19.09.079 no sooner than twenty days after receipt of the registration or renewal form by the secretary and may thereafter solicit contributions from the general public.

(6) If the secretary determines that the application for initial registration or renewal is incomplete, the secretary must notify the applicant of the information necessary to complete the application. The secretary may hold the application up to thirty days to allow the applicant time to provide additional information. If the applicant fails to provide complete information as requested by the secretary, the applicant must be deemed unregistered and must cease all solicitations as defined by this chapter.

(7) If an applicant fails to pay a required fee for any filing, the

secretary must notify the applicant of the necessary fee to complete the application. The secretary may hold the application up to thirty days to allow the applicant time to submit the required payment. If the applicant fails to provide the required payment as requested by the secretary, the applicant must be deemed unregistered and must cease all solicitations as defined by this chapter.

Sec. 13. RCW 19.09.097 and 2010 1st sp.s. c 29 s 14 are each amended to read as follows:

(1) No charitable organization may contract with a commercial fund-raiser for any fund-raising service or activity unless its contract requires that both parties comply with the law and permits officers of the charity reasonable access to:

(a) The fund-raisers' financial records relating to that charitable organization;

(b) The fund-raisers' operations including without limitation the right to be present during any telephone solicitation; and

(c) The names of all of the fund-raisers' employees or staff who are conducting fund-raising activities or (~~(charitable)~~) solicitations on behalf of the charitable organization. In addition, the contract shall specify the amount of raised funds that the charitable organization will receive or the method of computing that amount, the amount of compensation of the commercial fund-raiser or the method of computing that amount, and whether the compensation is fixed or contingent.

(2) Before a charitable organization may contract with a commercial fund-raiser for any fund-raising service or activity, the charitable organization and commercial fund-raiser shall complete and file a registration form with the secretary. The registration (~~(shall)~~) must be filed by the charitable organization (~~(in)~~) on the form (~~(prescribed)~~) approved by the secretary (~~(The registration shall) and must contain~~ (~~but not be limited to, the following information~~)).

(a) The name and registration number of the commercial fund-raiser;

(b) (The name of the surety or sureties issuing the bond required by RCW 19.09.190, the aggregate amount of such bond or bonds, the bond number(s), original effective date(s), and termination date(s);

(c)) The name and registration number of the charitable organization;

(~~(d)~~) (c) The name of the representative of the commercial fund-raiser who will be responsible for the conduct of the fund-raising;

(~~(e)~~) (d) The type(s) of service(s) to be provided by the commercial fund-raiser;

(~~(f)~~) (e) The term dates of the contract and the dates such service(s) will begin and end;

(~~(g)~~) (f) The terms of the (~~(agreement)~~) contract between the charitable organization and commercial fund-raiser relating to:

(i) Amount or percentages of amounts to inure to the charitable organization;

(ii) Limitations placed on the maximum amount to be raised by the fund-raiser, if the amount to inure to the charitable organization is not stated as a percentage of the amount raised;

(iii) Costs of fund-raising that will be the responsibility of the charitable organization, regardless of whether paid as a direct expense, deducted from the amounts disbursed, or otherwise; and

(iv) The manner in which contributions received directly by the charitable organization, not the result of services provided by the commercial fund-raiser, will be identified and used in computing the fee owed to the commercial fund-raiser; and

(~~(h)~~) (g) The names of any entity, other than the contracting commercial fund-raiser to which (~~(more than ten percent)~~) any of the total anticipated fund-raising cost is to be paid, and whether any principal officer or owner of the commercial fund-raiser or relative

EIGHTY SEVENTH DAY, APRIL 6, 2011

2011 REGULAR SESSION

by blood or marriage thereof is an owner or officer of any such entity.

(3) The registration form must be submitted with a nonrefundable filing fee established in RCW 19.09.062 and must be signed by an owner or principal officer of the commercial fund-raiser and the president, treasurer, trustee or comparable officer of the charitable organization.

(4) A correct copy of the contract shall be filed with the secretary before the commencement of any campaign.

((4) The registration form shall be submitted with a nonrefundable filing fee established in RCW 19.09.062 and shall be signed by an owner or principal officer of the commercial fund-raiser and the president, treasurer, or comparable officer of the charitable organization.))

(5) If the secretary determines that the application is incomplete, the secretary must notify the applicant of the information necessary to complete the application. The secretary may hold documents up to thirty days to allow the applicant time to provide additional information. If the applicant fails to provide complete information as requested by the secretary, the applicant must be deemed unregistered and the commercial fund-raiser must cease all solicitations under the terms of the contract.

(6) If an applicant fails to pay the required filing fee, the secretary must notify the applicant of the necessary fee to complete the application. The secretary may hold the application up to thirty days to allow the applicant time to submit the required payment. If the applicant fails to provide the required payment as requested by the secretary, the applicant must be deemed unregistered and the commercial fund-raiser must cease all solicitations under the terms of the contract.

Sec. 14. RCW 19.09.100 and 2007 c 471 s 8 and 2007 c 218 s 64 are each reenacted and amended to read as follows:

All entities soliciting contributions for charitable purposes must comply with the requirements of this section except entities exempted from registration are not required to make the disclosures under subsections (1)(c), (4)(b) or (c), and (5)(b) of this section. The following conditions apply to solicitations as defined by RCW 19.09.020:

(1) ~~((A charitable organization, whether or not required to register pursuant to this chapter,))~~ Any entity that directly solicits contributions from the public in this state ((shall)) must make the following clear and conspicuous disclosures at the point of solicitation:

(a) The name of the individual making the solicitation;

(b) The identity of the charitable organization and the city of the principal place of business of the charitable organization;

(c) ~~((If requested by the solicitee,))~~ The published number ((in)) and web site of the office of the secretary, if requested, for the donor to obtain additional financial ((disclosure)) and other information on file with the secretary. The disclosure must be made during an oral solicitation of a contribution, and at the same time at which a written request for a contribution is made.

(2) A commercial fund-raiser ~~((shall))~~ must meet the required disclosures described in subsection (1) of this section clearly and conspicuously ~~((disclose))~~ at the point of solicitation~~((;~~

~~(a) The name of the individual making the solicitation;~~

~~(b))~~ and must also disclose the name of the entity for which the fund-raiser is an agent or employee and the name and city of the charitable organization for which the solicitation is being conducted~~((;~~

~~(c) If requested by the solicitee, the published number in the office of the secretary for the donor to obtain additional financial disclosure information on file with the secretary. The disclosure must be made during an oral solicitation of a contribution, and at the same time at which a written request for a contribution is made).~~

~~(3) ((A person or organization soliciting charitable contributions by)) Telephone ~~((shall make))~~ solicitations must include the disclosures required under subsection (1) or (2) of this section ~~((in the course of the solicitation but))~~ prior to asking for a ~~((commitment for a))~~ contribution ~~((from the solicitee, and)).~~ The required disclosures must also be provided in writing within five business days to ((any solicitee that)) anyone who makes a pledge ~~((within five working days of making the pledge. If the person or organization sends any materials to the person or organization solicited before the receipt of any contribution, those materials shall include the disclosures required in subsection (1) or (2) of this section, whichever is applicable))~~ by telephone to donate.~~

(4) In the case of a solicitation by advertisement or mass distribution, including postal, electronic, posters, leaflets, automatic dialing machines, publications, and audio or video broadcasts, it ~~((shall))~~ must be clearly and conspicuously disclosed in the body of the solicitation material that:

(a) The solicitation is conducted by a named commercial fund-raiser, if it is;

(b) The ~~((notice of solicitation))~~ registration required by the charitable solicitation act is on file with the secretary's office; and

(c) The potential donor can obtain additional financial ~~((disclosure))~~ and other information at a published number ~~((in))~~ or web site for the office of the secretary.

(5) A container or vending machine displaying a solicitation must ~~((also))~~ display:

~~(a) In a clear and conspicuous manner the name of the charitable organization for which funds are solicited, the name, business address, and telephone number of the individual ((and)) or any commercial fund-raiser responsible for collecting funds placed in the containers or vending machines((, and the following));~~

~~(b) The statement: "This ((charity)) organization is currently registered with the secretary's office under the charitable solicitation act((, registration number ---)) - call 1-800-332-4483," if the charitable organization for which funds are solicited is required to register under chapter 19.09 RCW.~~

~~(6) ((A commercial fund raiser shall not))~~ No entity may represent that tickets to any fund-raising event will be donated for use by another person unless all the following requirements are met:

(a) The ~~((commercial fund raiser))~~ entity prior to conducting a solicitation has written commitments from persons stating that they will accept donated tickets and specifying the number of tickets they will accept;

(b) The written commitments are kept on file by the ~~((commercial fund raiser))~~ entity for three years and are made available to the secretary, attorney general, or county prosecutor on demand;

(c) The contributions solicited for donated tickets may not be more than the amount representing the number of ticket commitments received from persons and kept on file under (a) of this subsection; and

(d) Not later than seven calendar days prior to the date of the event for which ticket donations are solicited, the ~~((commercial fund raiser shall))~~ entity must give all donated tickets to the persons who made the written commitments to accept them.

(7) ~~((Each person or organization))~~ Any entity soliciting charitable contributions ~~((shall))~~ must not ~~((represent))~~ misrepresent orally or in writing ~~((that))~~:

(a) ~~((The charitable contribution is tax deductible unless the charitable organization for which charitable contributions are being solicited or to which tickets for fund-raising events or other services or goods will be donated, has applied for and received from the internal revenue service a letter of determination granting tax deductible status to the charitable organization))~~ The tax deductibility of a contribution;

(b) That the person soliciting the charitable contribution is a volunteer or words of similar meaning or effect that create the impression that the person soliciting is not a paid solicitor unless such person is unpaid for his or her services;

(c) That the person soliciting the charitable contribution is a member, staffer, helper, or employee of the charitable organization or words of similar meaning or effect that create the impression that the person soliciting is not a paid solicitor if the person soliciting is employed, contracted, or paid by a commercial fund-raiser.

(8) If the charitable organization is associated with, or has a name that is similar to, any unit of government (~~(each person or organization)~~) the entity soliciting contributions (~~(shall)~~ must disclose to each person solicited whether the charitable organization is or is not part of any unit of government and the true nature of its relationship to the unit of government. This subsection does not apply to a foundation or other charitable organization that is organized, operated, or controlled by or in connection with a registered public charity, including any governmental agency or unit, from which it derives its name.

(9) No (~~(person)~~ entity) may, in conducting any solicitation, use the name "police," "sheriff," (~~("firefighter,")~~) "firefighters," or a similar name unless properly authorized by (~~(a bona fide)~~ the police, sheriff, or firefighter organization or police, sheriff, or fire department it is representing. (~~(A proper)~~ Authorization (~~(shall)~~ must be in writing and signed by two authorized officials of the organization or department (~~(and shall)~~). The written authorization must be (~~(filed with the secretary)~~) retained in accordance with RCW 19.09.200.

(10) (~~(A person)~~ An entity) may not, in conducting any solicitation, use the name of a federally chartered or nationally recognized military veterans' service organization as determined by the United States veterans' administration unless authorized in writing by the highest ranking official of that organization in this state. The written authorization must be retained in accordance with RCW 19.09.200.

(11) (~~(A charitable organization shall)~~ Entities must comply with all local governmental regulations that apply to soliciting for or on behalf of charitable organizations.

(12) (~~(An entity soliciting contributions for a charitable purpose shall not include in any solicitation, or in any advertising material for a solicitation, or in any promotional plan for a solicitation, any statement that is false, misleading, or deceptive. All solicitations, advertising material, and promotional plans must fully and fairly disclose the identity of the entity on whose behalf the solicitation is made.)~~ Any entity required to register under this chapter must not engage in any solicitation for contributions unless it complies with all provisions of this chapter.

(13) Solicitations (~~(shall)~~ must not be conducted by a charitable organization or commercial fund-raiser that has, or if a corporation, its officers, directors, or principals have, been convicted of a crime involving solicitations for or on behalf of a charitable organization in this state, the United States, or any other state or foreign country within the past ten years or has been subject to any permanent injunction or administrative order or judgment under RCW 19.86.080 or 19.86.090, involving a violation or violations of RCW 19.86.020, within the past ten years, or of restraining a false or misleading promotional plan involving solicitations for charitable organizations.

(14) (~~(No charitable organization or commercial fund-raiser)~~ Any entity subject to this chapter (~~(may)~~ must not use or exploit the fact of registration under this chapter (~~(so as)~~) to lead the public to believe that registration constitutes an endorsement or approval by the state, but the use of the following is not deemed prohibited: "Currently registered with the Washington state secretary of state as required by law. Registration number . . ."

(15) (~~(No entity may engage in any solicitation for contributions for or on behalf of any charitable organization or commercial fund-raiser unless the charitable organization or commercial fund-raiser is currently registered with the secretary.~~

(16) No charitable organization or commercial fund-raiser may engage in any solicitation for contributions unless it complies with all provisions of this chapter.

(17)) Any entity soliciting contributions for a charitable purpose must not include in any solicitation, or in any advertising material for a solicitation, or in any promotional plan for a solicitation, any statement that is false, misleading, or deceptive. All solicitations, advertising materials, and promotional plans must fully and fairly disclose the identity of the entity on whose behalf the solicitation is made.

(16) No entity may place a telephone call to a donor or potential donor for the purpose of (~~(charitable solicitation)~~) soliciting contributions for a charitable purpose, before eight o'clock a.m. or after nine o'clock p.m. pacific time.

(~~(18))~~ (17) No entity may, when contacting a donor or potential donor for the purpose of (~~(charitable solicitation)~~) soliciting contributions for a charitable purpose, engage in any conduct the natural consequence of which is to harass, intimidate, or torment any person in connection with the contact.

(18) Any entity that solicits contributions may not collect or attempt to collect contributions in person or by courier unless:

(a) The contributions are noncash items such as contributions of tangible personal property; or

(b) The solicitations are made in person and the collections, or attempts to collect, are made at the time of the solicitations; or

(c) The contributor has agreed to purchase goods or items in connection with the solicitation and the collection or attempt to collect is made at the time of delivery of the goods or items.

(19) Failure to comply with subsections (1) through (18) of this section is a violation of this chapter.

Sec. 15. RCW 19.09.200 and 1993 c 471 s 11 are each amended to read as follows:

(1) (~~(Charitable organizations and commercial fund-raisers shall)~~ All entities required to register pursuant to this chapter must maintain accurate, current, and readily available books and records at their usual business locations until at least three years have elapsed following the effective period to which they relate. The books and records must contain, at a minimum, documentation supporting the information contained in the solicitation report and written authorization or authorizations required in RCW 19.09.100.

(2) All contracts between commercial fund-raisers and charitable organizations (~~(shall)~~ must be in writing, and true and correct copies of such contracts or records thereof (~~(shall)~~ must be kept on file in the various offices of the charitable organization and the commercial fund-raiser for a three-year period. Such records and contracts shall be available for inspection and examination by the secretary of state, attorney general, or by the county prosecuting attorney. A copy of such contract or record (~~(shall)~~ must be submitted by the charitable organization or commercial fund-raiser, within ten days, following receipt of a written demand (~~(therefor)~~) from the secretary of state, attorney general, or county prosecutor.

Sec. 16. RCW 19.09.210 and 2007 c 471 s 9 are each amended to read as follows:

Upon the request of the secretary of state, attorney general, or the county prosecutor, (~~(a charitable organization or commercial fund-raiser shall)~~ any entity subject to this chapter must submit a financial statement and all requested records containing, but not limited to, the following information:

(1) The gross amount of the contributions pledged and the gross amount collected.

EIGHTY SEVENTH DAY, APRIL 6, 2011

2011 REGULAR SESSION

(2) The amount thereof, given or to be given to charitable purposes represented together with details as to the manner of distribution as may be required.

(3) The aggregate amount paid and to be paid for the expenses of such solicitation.

(4) The amounts paid to and to be paid to commercial fund-raisers or charitable organizations.

(5) Copies of any annual or periodic reports furnished by the charitable organization or commercial fund-raiser of its activities during or for the same (~~fiscal~~) accounting period.

Sec. 17. RCW 19.09.230 and 1994 c 287 s 3 are each amended to read as follows:

No (~~charitable organization, commercial fund-raiser, or other~~) entity subject to this chapter may (~~knowingly~~):

(1) Use ~~(the)~~ an identical or deceptively similar name, symbol, statement, or emblem so closely related or similar that its use would confuse or mislead the public, of any other entity for the purpose of soliciting contributions from persons in this state without the written consent of such other entity. ~~(If the official name or the "doing business name" being registered is the same or deceptively similar as that of another entity, the secretary may request that a copy of the written consent from that entity be filed with the registration. Such consent may be deemed to have been given by anyone who is a director, trustee, or other authorized officer of that entity. A copy of the written consent must be kept on file by the charitable organization or commercial fund-raiser and made available to the secretary, attorney general, or county prosecutor upon demand. A person)~~ Written consent may be deemed to have been given by anyone who is a director, trustee, or other authorized officer of that entity.

(2) A copy of the written consent must be retained on file by the charitable organization or commercial fund-raiser and made available to the secretary, attorney general, or county prosecutor upon demand. The secretary may revoke or deny an application for registration that violates this section.

(3) An entity may be deemed to have used the name of another ~~(person)~~ entity for the purpose of soliciting contributions if such latter ~~(person's)~~ entity's name is listed on any stationery, advertisement, brochure, or correspondence of the ~~(charitable organization or person)~~ entity or if such name is listed or represented to anyone who has contributed to, sponsored, or endorsed the ~~(charitable organization or person)~~ entity, or its ~~(or his)~~ activities.

~~(The secretary may revoke or deny any application for registration that violates this section.)~~ This section does not apply to a foundation or other charitable organization that is organized, operated, or controlled by or in connection with a registered public charity, including any governmental agency or unit, from which it derives its name.

Sec. 18. RCW 19.09.271 and 1993 c 471 s 8 are each amended to read as follows:

(1) If the secretary or attorney general determines that any entity is soliciting in this state, directly or indirectly, by any means, and has not registered with the secretary as required by this chapter, the secretary may notify the charitable organization or commercial fund-raiser of its registration requirements by postal or electronic means.

(2) The secretary may notify the attorney general of any entity liable for late filing fees under subsection (1) of this section.

(3) Any (~~charitable organization or commercial fund-raiser~~) entity who, after notification by the secretary, fails to properly register under this chapter is subject to a late filing fee in an amount to be established by rule by the end of the first business day following the issuance of the notice (~~, is liable for a late filing fee in an amount to be established by rule of the secretary~~). The late

filing fee is in addition to any other filing fee provided by this chapter.

~~((2) The secretary shall notify the attorney general of any entity liable for late filing fees under subsection (1) of this section.)) (4) If the secretary or attorney general determines that any entity is soliciting in this state, directly or indirectly, by any means, and the entity has not registered with the secretary as required by this chapter, the secretary, after five days notice sent by postal or electronic means to the charitable organization or commercial fund-raiser, may publish a press release in newspapers or on the internet, a notice to the public regarding the entity's unregistered status.~~

Sec. 19. RCW 19.09.275 and 2003 c 53 s 142 are each amended to read as follows:

(1) Any (~~person~~) entity who knowingly violates any provision of this chapter or who knowingly gives false or incorrect information to the secretary, attorney general, or county prosecuting attorney in filing statements required by this chapter, whether or not such statement or report is verified is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW.

(2) Any (~~person~~) entity who violates any provisions of this chapter or who gives false or incorrect information to the secretary, attorney general, or county prosecuting attorney in filing statements required by this chapter, whether or not such statement or report is verified, is guilty of a misdemeanor punishable under chapter 9A.20 RCW.

Sec. 20. RCW 19.09.276 and 1994 c 287 s 4 are each amended to read as follows:

The secretary may waive penalties that have been set by rule and assessed by the secretary due from a registered (~~charitable organization~~) entity previously in good standing that would otherwise be penalized. (~~A charitable organization~~) An entity desiring to seek relief under this section must, within fifteen days of discovery of the missed filing or lapse by its (~~corporate officials~~) officers, directors, or other ~~(authorized officer of)~~ persons responsible for the missed filing or lapse, notify the secretary in writing. The notification must include the name and mailing address of the organization, the organization's officer to whom correspondence should be sent, and a statement under oath by a responsible officer of the organization, setting forth the nature of the missed filing or lapse, the circumstances giving rise to the missed filing or lapse, and the relief sought. Upon receipt of the notice, the secretary shall investigate the circumstances of the missed filing or lapse. If the secretary is satisfied that sufficient exigent or mitigating circumstances exist, that the ~~(organization)~~ entity has demonstrated good faith and a reasonable attempt to comply with the applicable ~~(corporate)~~ charitable solicitation statute(s) of this state, the secretary may issue an order allowing relief from the penalty. If the secretary determines the request does not comply with the requirements for relief, the secretary shall deny the relief and state the reasons for the denial. Notwithstanding chapter 34.05 RCW, a denial of relief by the secretary is not reviewable.

Sec. 21. RCW 19.09.277 and 1993 c 471 s 20 are each amended to read as follows:

If it appears to the attorney general that (~~a person~~) an entity has engaged or is about to engage in an act or practice constituting a violation of a provision of this chapter or a rule adopted or order issued under this chapter, the attorney general may, in the attorney general's discretion, issue an order directing the (~~person~~) entity to cease and desist from continuing the act or practice. Reasonable notice of and opportunity for a hearing shall be given. The attorney general may issue a temporary order pending the hearing, which shall remain in effect until ten days after the hearing is held and which shall become final if the (~~person~~) entity to whom the notice

is addressed does not request a hearing within fifteen days after the receipt of the notice.

Sec. 22. RCW 19.09.279 and 2002 c 74 s 3 are each amended to read as follows:

(1) The secretary may assess against any ~~((person or organization who))~~ entity that violates this chapter, or any rule adopted under this chapter, a civil penalty of not more than one thousand dollars for each violation.

(2) ~~((Such person or organization shall))~~ The entity must be afforded the opportunity for a hearing, upon request made to the secretary within thirty days after the date of issuance of the notice of assessment. The hearing shall be conducted in accordance with chapter 34.05 RCW.

(3) If any ~~((person))~~ entity fails to pay an assessment after it has become a final and unappealable order, or after the court has entered final judgment in favor of the state, the attorney general may recover the amount assessed by action in the appropriate superior court. In such action, the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

Sec. 23. RCW 19.09.305 and 1993 c 471 s 16 are each amended to read as follows:

When ~~((a person or an organization))~~ an entity registered under this chapter, or its president, treasurer, or comparable officers, cannot be found after reasonably diligent effort, the secretary of state ~~((shall))~~ must be an agent of such ~~((person or organization))~~ entity upon whom process may be served. Service on the secretary ~~((shall))~~ must be made by delivering to the secretary or the secretary's designee duplicate copies of such process, and a filing fee to be established by rule of the secretary. Thereupon, the secretary ~~((shall))~~ must immediately cause one of the copies ~~((thereof))~~ to be forwarded to the registrant at the most current address shown in the secretary's files. Any service ~~((so had))~~ on the secretary ~~((shall))~~ must be returnable in not less than thirty days. Any fee under this section ~~((shall))~~ may be taxable as costs in the action.

The secretary ~~((shall))~~ must maintain a record of all process served on the secretary under this section, and ~~((shall))~~ must record the date of service and the secretary's action ~~((with reference thereto)).~~

Nothing in this section limits or affects the right to serve process required or permitted to be served on a registrant in any other manner now or hereafter permitted by law.

Sec. 24. RCW 19.09.315 and 1993 c 471 s 17 are each amended to read as follows:

(1) The secretary may establish, by rule, standard forms and procedures for the efficient administration of this chapter.

(2) The secretary may provide by rule for the filing of a financial statement by registered entities.

(3) The secretary may issue such publications, reports, or information from the records as may be useful to the solicited public and charitable organizations. To defray the costs of any such publication, the secretary is authorized to charge a reasonable fee to cover the costs of preparing, printing, and distributing such publications, in accordance with RCW 43.07.130.

Sec. 25. RCW 19.09.340 and 1983 c 265 s 12 are each amended to read as follows:

(1) ~~((The commission by any person of an act or practice prohibited by this chapter is hereby declared to be an unfair act or practice or unfair method of competition in the conduct of trade or commerce for the purpose of application of the Consumer Protection Act, chapter 19.86 RCW.))~~ 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.

(2) The secretary may refer such evidence, as may be available, concerning violations of this chapter to the attorney general or the prosecuting attorney of the county wherein the alleged violation arose. In addition to any other action they might commence, the attorney general or the county prosecuting attorney may bring an action in the name of the state, with or without such reference, against any ~~((person))~~ entity to restrain and prevent the doing of any act or practice prohibited by this chapter: PROVIDED, That this chapter shall be considered in conjunction with chapters 9.04 and 19.86 RCW, as now or hereafter amended, and the powers and duties of the attorney general and the prosecuting attorney as they may appear in the aforementioned chapters, shall apply against all ~~((persons))~~ entities subject to this chapter.

Sec. 26. RCW 19.09.355 and 2010 1st sp.s. c 29 s 15 are each amended to read as follows:

Except as otherwise provided in this chapter, all fees and other moneys received by the secretary of state under this chapter ~~((shall))~~ must be transmitted to the state treasurer for deposit in the state general fund.

Sec. 27. RCW 19.09.400 and 1993 c 471 s 18 are each amended to read as follows:

The attorney general, in the attorney general's discretion, may:

(1) Annually, or more frequently, make such public or private investigations within or without this state as the attorney general deems necessary to determine whether any registration should be granted, denied, revoked, or suspended, or whether any ~~((person))~~ entity has violated or is about to violate a provision of this chapter or any rule adopted or order issued under this chapter, or to aid in the enforcement of this chapter or in the prescribing of rules and forms under this chapter; and

(2) Publish information concerning a violation of this chapter or a rule adopted or order issued under this chapter.

Sec. 28. RCW 19.09.430 and 1993 c 471 s 22 are each amended to read as follows:

The administrative procedure act, chapter 34.05 RCW, ~~((shall))~~ wherever applicable governs the rights, remedies, and procedures respecting the administration of this chapter.

NEW SECTION. **Sec. 29.** The following acts or parts of acts are each repealed:

(1) RCW 19.09.076 (Charitable organizations--Application for registration--Exemptions--Soliciting contributions) and 2007 c 471 s 4, 1994 c 287 s 1, 1993 c 471 s 4, & 1986 c 230 s 5;

(2) RCW 19.09.190 (Commercial fund-raisers--Surety bond) and 1993 c 471 s 10, 1986 c 230 s 16, 1983 c 265 s 16, 1982 c 227 s 8, 1977 ex.s. c 222 s 9, & 1973 1st ex.s. c 13 s 19;

(3) RCW 19.09.240 (Using similar name, symbol, emblem, or statement) and 1993 c 471 s 14, 1986 c 230 s 15, & 1973 1st ex.s. c 13 s 24;

(4) RCW 19.09.500 (Charitable organizations--Financial reports and information) and 2007 c 471 s 11; and

(5) RCW 19.09.540 (Rules--Tiered independent financial reporting) and 2007 c 471 s 15.

NEW SECTION. **Sec. 30.** 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."

Senator Kohl-Welles spoke in favor of adoption of the committee striking amendment.

MOTION

Senator Schoesler moved that the following amendment by Senator Schoesler to the committee striking amendment be adopted:

EIGHTY SEVENTH DAY, APRIL 6, 2011

2011 REGULAR SESSION

On page 14, line 9, strike all of section 12 and insert the following:

"**Sec. 12.** RCW 19.09.085 and 2007 c 471 s 6 are each amended to read as follows:

(1) Except as provided in subsection (4) of this section, Registration under this chapter ((shall be) is effective for one year or ((longer,) as established by the secretary.

(2) ((Reregistration)) Renewals required under RCW 19.09.075 or 19.09.079 ((shall) must be submitted to the secretary no later than the date established by the secretary by rule.

(3) ((Entities required to register under this chapter shall file a notice of change of information within thirty days of any change in the information contained in RCW 19.09.075 (1) through (9) or 19.09.079 (1) through (7).

(4)) The secretary ((shall) must notify entities registered under this chapter of the need to ((reregister)) renew upon the expiration of their current registration. The notification ((shall) must be ((by mail, sent at least)) made approximately sixty days prior to the expiration ((of their current registration)) date and must be made through postal or electronic means. Failure to ((register)) renew shall not be excused by a failure of the secretary to ((mail)) send the notice or by an entity's failure to receive the notice.

(4) Registrations or renewals filed on or after July 1, 2013, are effective for two years for any charitable organization receiving contributions of less than one hundred thousand dollars from the general public for charitable purposes during any accounting year. A two-year registration may be renewed annually by an organization on a voluntary basis to promote the accountability and transparency of the organization."

Senator Schoesler spoke in favor of adoption of the amendment to the committee striking amendment.

Senator Kohl-Welles spoke against adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Schoesler on page 14, line 9 to the committee striking amendment to Substitute House Bill No. 1485.

The motion by Senator Schoesler failed and the amendment to the committee striking amendment was not adopted on a rising vote.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Labor, Commerce & Consumer Protection to Substitute House Bill No. 1485.

The motion by Senator Kohl-Welles carried and the committee striking amendment was adopted by voice vote.

MOTION

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

On page 1, line 1 of the title, after "solicitations;" strike the remainder of the title and insert "amending RCW 19.09.010, 19.09.020, 19.09.062, 19.09.065, 19.09.075, 19.09.079, 19.09.085, 19.09.097, 19.09.200, 19.09.210, 19.09.230, 19.09.271, 19.09.275,

19.09.276, 19.09.277, 19.09.279, 19.09.305, 19.09.315, 19.09.340, 19.09.355, 19.09.400, and 19.09.430; reenacting and amending RCW 19.09.100; adding new sections to chapter 19.09 RCW; repealing RCW 19.09.076, 19.09.190, 19.09.240, 19.09.500, and 19.09.540; and prescribing penalties."

MOTION

On motion of Senator Kohl-Welles, the rules were suspended, Substitute House Bill No. 1485 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

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

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 1485 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 1485 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Brown, Carrell, Chase, Conway, Delvin, Eide, Ericksen, Fain, Fraser, Hargrove, Harper, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Parlette, Pflug, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Stevens, Swecker, Tom, White and Zarelli

Excused: Senator Shin

SUBSTITUTE HOUSE BILL NO. 1485 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

At 6:27 p.m., on motion of Senator Eide, the Senate adjourned until 9:30 a.m. Thursday, April 7, 2011.

BRAD OWEN, President of the Senate

THOMAS HOEMANN, Secretary of the Senate

EIGHTY SEVENTH DAY, APRIL 6, 2011

2011 REGULAR SESSION

1051-S	Other Action	51	Second Reading	2
	Second Reading	37, 38	Third Reading Final Passage	3
	Third Reading Final Passage	51	1703	
1169-S	Second Reading	21	Second Reading	52
	Third Reading Final Passage	21	Third Reading Final Passage	53
1171	Second Reading	57	1721-S	
	Third Reading Final Passage	57	Other Action	52
1178	Other Action	55	Second Reading	51, 52
	Second Reading	53	Third Reading Final Passage	52
	Third Reading Final Passage	56	1886-S	
1194-S	Second Reading	22	Other Action	10
1309-S	Other Action	17	Second Reading	4
	Second Reading	11	Third Reading Final Passage	10
	Third Reading Final Passage	17	1899-S	
1311-S	Other Action	20	Other Action	18
	Second Reading	18, 20	Second Reading	17
	Third Reading Final Passage	21	Third Reading Final Passage	18
1312-S	Messages	1	2019	
1402-S	Second Reading	37	Messages	1
	Third Reading Final Passage	37	5011	
1432	Second Reading	22	Messages	1
	Third Reading Final Passage	23	President Signed	53
1438-S	Second Reading	58	5020-S	
	Third Reading Final Passage	58	Messages	1
1477	Second Reading	3	President Signed	53
	Third Reading Final Passage	4	5033	
1485-S	Other Action	67	Messages	1
	Second Reading	58, 66	President Signed	53
	Third Reading Final Passage	67	5068-S	
1495-S	Messages	1	Messages	1
1506-S	Second Reading	56	President Signed	53
1517	Other Action	57	5105-S	
	Second Reading	56	Messages	1
	Third Reading Final Passage	57	President Signed	53
1565-S	Second Reading	58	5117	
	Third Reading Final Passage	58	Messages	1
1567-S	Other Action	25	President Signed	53
	Second Reading	23	5119	
	Third Reading Final Passage	25	Second Reading	22
1632-S	Messages	1	Third Reading Final Passage	22
1634-S2	Other Action	31, 37	5168-S	
	Second Reading	25, 31	Messages	1
	Third Reading Final Passage	37	President Signed	53
1663-S	Other Action	3	5172	
			Messages	1
			President Signed	53
			5386-S	
			Messages	1
			President Signed	53
			5463	
			Messages	1
			President Signed	53
			5546-S	
			Messages	1
			President Signed	53
			5585-S	
			Messages	1
			President Signed	53
			5589	
			Messages	1
			President Signed	53
			5633	
			Messages	1
			President Signed	53
			5635-S	

Messages	1	5920	
President Signed	53	Introduction & 1 st Reading	1
5664-S		8644	
Messages	1	Adopted	2
President Signed	53	Introduced	2
5797-S		9134 Suzan Delbene	
Messages	1	Confirmed	21
President Signed	53	PRESIDENT OF THE SENATE	
5800-S		Intro. Special Guests, Autism Society of WA	2
Messages	1	Remarks by the President	57
President Signed	53	Reply by the President	18, 22, 57
5806		Ruling by the President SB 5806	53
Third Reading	53	WASHINGTON STATE SENATE	
Third Reading Final Passage	53	Parliamentary Inquiry, Senator Kline	22
5918		Personal Privilege, Senator Hill	57
Introduction & 1 st Reading	1	Personal Privilege, Senator Honeyford	18
5919		Point of Inquiry, Senator Becker	21
Introduction & 1 st Reading	1		