FIFTY FIFTH DAY

MORNING SESSION

Senate Chamber, Olympia, Saturday, March 5, 2011

The Senate was called to order at 9:00 a.m. by President Owen. The Secretary called the roll and announced to the President that all Senators were present with the exception of Senators Keiser, Pflug and Roach.

The Sergeant at Arms Color Guard consisting of Senate Interns Ismaila Maidadi and Cody Raysinger, presented the Colors. Senator Morton offered the prayer.

MOTION

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

MOTION

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

INTRODUCTION AND FIRST READING

SB 5864 by Senators Benton, Roach, Carrell, Baxter, Baumgartner, Stevens, Morton, Zarelli, Holmquist Newbry, Ericksen, Parlette, Hill, Fain and Hewitt

AN ACT Relating to greater governmental fiscal responsibility through limitations on expenditures; and amending RCW 43.135.010 and 43.135.025.

Referred to Committee on Ways & Means.

SB 5865 by Senators Kline and Hargrove

AN ACT Relating to participation in the WorkFirst program; amending RCW 74.08A.010 and 74.08A.270; creating a new section; providing an effective date; and declaring an emergency.

Referred to Committee on Human Services & Corrections.

SB 5866 by Senators Kline and Hargrove

AN ACT Relating to reducing prison sentences in order to generate correctional cost savings and invest in evidence-based programming; amending RCW 9.94A.728; adding a new section to chapter 9.94A RCW; creating a new section; and declaring an emergency.

Referred to Committee on Human Services & Corrections.

INTRODUCTION AND FIRST READING OF HOUSE BILLS

SHB 1037 by House Committee on Judiciary (originally sponsored by Representatives Ross, Johnson, Bailey, Upthegrove, Hurst, Armstrong, Walsh, Hinkle, Angel, Warnick, Schmick, Short, Klippert, Dammeier, McCune, Fagan, Nealey, Blake, Ladenburg, Kristiansen, Pearson, Tharinger and Moeller)

AN ACT Relating to restrictions on legal claims initiated by persons serving criminal sentences in correctional facilities; and adding a new section to chapter 4.24 RCW.

Referred to Committee on Human Services & Corrections.

SHB 1048 by House Committee on State Government & Tribal Affairs (originally sponsored by Representative Hunt)

AN ACT Relating to making technical corrections needed as a result of the recodification of campaign finance provisions in chapter 204, Laws of 2010; amending RCW 15.65.280, 15.66.140, 15.89.070, 15.115.140, 18.25.210, 18.32.765, 18.71.430, 18.79.390, 19.09.020, 19.34.240, 28B.15.610, 28B.133.030, 29A.32.031, 29A.84.250, 35.02.130, 35.21.759, 36.70A.200, 40.14.070, 42.17A.125, 42.17A.255, 42.17A.415, 42.17A.770, 42.36.040, 42.52.010, 42.52.150, 42.52.180, 42.52.185, 42.52.380, 42.52.560, 43.03.305, 43.17.320, 43.52A.030, 43.60A.175, 43.105.260, 43.105.310, 43.167.020, 44.05.020, 44.05.080, 44.05.110, 46.20.075, 47.06B.020, 50.38.015, 68.52.220, 79A.25.830, 82.08.02525, 82.12.02525, and 47.06B.901; reenacting and amending RCW 42.17A.005 and 42.17A.225; reenacting RCW 42.17A.110 and 42.17A.235; providing an effective date; and providing a contingent expiration date.

Referred to Committee on Government Operations, Tribal Relations & Elections.

SHB 1057 by House Committee on Labor & Workforce Development (originally sponsored by Representatives Hudgins, Green and Reykdal)

AN ACT Relating to the creation of the farm labor account; and amending RCW 19.30.030.

Referred to Committee on Labor, Commerce & Consumer Protection.

SHB 1084 by House Committee on State Government & Tribal Affairs (originally sponsored by Representatives McCoy and Hunt)

AN ACT Relating to creating the board on geographic names; amending RCW 43.30.215; and adding new sections to chapter 43.30 RCW.

Referred to Committee on Natural Resources & Marine Waters.

E2SHB 1144 by House Committee on Ways & Means (originally sponsored by Representatives McCoy, Crouse, Eddy, Morris, Haler, Kelley, Liias, Jacks, Frockt and Hudgins)

AN ACT Relating to renewable energy investment cost recovery program; amending RCW 82.16.130; and reenacting and amending RCW 82.16.110 and 82.16.120.

Referred to Committee on Environment, Water & Energy.

HB 1150 by Representatives Smith, Probst, Schmick, Warnick, Dahlquist, Hunt, Ross, Pearson, Dammeier, Kenney, Rodne, Kagi, Hargrove, Harris, Nealey, Short, Liias, Orcutt,

Finn, Kelley, Takko, Taylor, Maxwell, Bailey, Reykdal, Upthegrove, Billig, Kristiansen, Frockt, Carlyle, Blake, Springer, Angel, Hurst, McCune, Rolfes, Condotta and Klippert

AN ACT Relating to extending the time in which a small business may correct a violation without a penalty; and amending RCW 34.05.110.

Referred to Committee on Government Operations, Tribal Relations & Elections.

EHB 1171 by Representatives Rolfes, Armstrong, Liias, Billig, Angel, Finn, Appleton, Seaquist and Reykdal

AN ACT Relating to high capacity transportation system plan components and review; and amending RCW 81.104.100 and 81.104.110.

Referred to Committee on Transportation.

SHB 1172 by House Committee on State Government & Tribal Affairs (originally sponsored by Representatives Kenney, Hasegawa, Maxwell, Finn, Ryu, Reykdal and Upthegrove)

AN ACT Relating to beer and wine tasting at farmers markets; amending RCW 66.24.170 and 66.28.040; reenacting and amending RCW 66.24.244; creating a new section; and providing an expiration date.

Referred to Committee on Labor, Commerce & Consumer Protection.

HB 1178 by Representatives Appleton and Miloscia

AN ACT Relating to the office of regulatory assistance; amending RCW 34.05.328; repealing RCW 43.131.401 and 43.131.402; providing an effective date; and declaring an emergency.

Referred to Committee on Economic Development, Trade & Innovation.

ESHB 1202 by House Committee on State Government & Tribal Affairs (originally sponsored by Representatives Hunt, Taylor and Moscoso)

AN ACT Relating to on-premise spirits sampling; amending RCW 66.08.050, 66.16.070, and 66.28.040; creating a new section; and providing an expiration date.

Referred to Committee on Labor, Commerce & Consumer Protection.

E2SHB 1206 by House Committee on General Government Appropriations & Oversight (originally sponsored by Representatives Dahlquist, Hurst, Pearson, Harris, Parker, Lytton, Rivers, Johnson, Taylor, Wilcox, Ross, Kelley, Ladenburg, Armstrong, Dammeier, Frockt and Schmick)

AN ACT Relating to harassment against criminal justice participants; amending RCW 9A.46.020; reenacting and amending RCW 40.24.030; adding a new section to chapter 9.94A RCW; prescribing penalties; and providing an expiration date.

Referred to Committee on Judiciary.

ESHB 1265 by House Committee on Local Government (originally sponsored by Representatives Kagi, Ryu, Rodne, Liias, Takko, Roberts, Smith and Upthegrove)

AN ACT Relating to land use planning in qualifying unincorporated portions of urban growth areas; adding a new section to chapter 43.21C RCW; and creating a new section.

Referred to Committee on Government Operations, Tribal Relations & Elections.

HB 1290 by Representatives Green, Cody, Van De Wege, Sells, Kenney and Reykdal

AN ACT Relating to the prohibition on mandatory overtime for certain health care employees; and amending RCW 49.28.130.

Referred to Committee on Labor, Commerce & Consumer Protection.

ESHB 1309 by House Committee on Judiciary (originally sponsored by Representatives Roberts, Appleton, Rodne, Springer, Hasegawa, Ryu, Eddy, Green, Kagi and Kelley)

AN ACT Relating to reserve accounts and studies for condominium and homeowners' associations; 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.

Referred to Committee on Financial Institutions, Housing & Insurance.

SHB 1339 by House Committee on Judiciary (originally sponsored by Representatives Fitzgibbon, Hope, Rolfes, Appleton, Billig, Liias, Frockt, Haigh, Cody, Goodman, Moeller, Pedersen and Kenney)

AN ACT Relating to negligent driving resulting in substantial bodily harm, great bodily harm, or death of a vulnerable user of a public way; amending RCW 46.63.070; reenacting and amending RCW 46.20.342; adding a new section to chapter 46.61 RCW; creating a new section; prescribing penalties; and providing an effective date.

Referred to Committee on Judiciary.

HB 1498 by Representatives Pettigrew, Orcutt, Sullivan, Parker, Springer, Kenney, Chandler, Condotta, Santos, Billig, Kagi, Stanford and Kelley

AN ACT Relating to the taxation of employee meals provided without specific charge; adding a new section to chapter 82.04 RCW; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; providing an effective date; and declaring an emergency.

Referred to Committee on Ways & Means.

SHB 1516 by House Committee on Transportation (originally sponsored by Representatives Morris, Armstrong, Rolfes, Clibborn, Fitzgibbon, Liias, Maxwell, Appleton, Sells, Eddy and Smith)

AN ACT Relating to improving and measuring performance of the management of the state ferry system; adding new sections to chapter 47.60 RCW; adding a new section to chapter 47.64 RCW; creating a new section; and declaring an emergency.

Referred to Committee on Transportation.

EHB 1674 by Representatives Kenney, Smith, Ryu, Johnson, Walsh, Finn, Maxwell and Stanford

AN ACT Relating to providing that the manufacturing innovation and modernization extension service program is not to sunset; amending RCW 43.338.040; and repealing RCW 43.131.409 and 43.131.410.

Referred to Committee on Economic Development, Trade & Innovation.

SHB 1783 by House Committee on Local Government (originally sponsored by Representatives Pedersen, Upthegrove, Takko, Blake, Rodne, Smith, Carlyle, Fitzgibbon, Springer, Angel and Kenney)

AN ACT Relating to houseboats and houseboat moorages; and amending RCW 79.105.060 and 90.58.270.

Referred to Committee on Natural Resources & Marine Waters.

HB 1794 by Representatives Ladenburg, Klippert and Kelley

AN ACT Relating to adding court-related employees to the assault in the third degree statute; and amending RCW 9A.36.031.

Referred to Committee on Judiciary.

SHB 1815 by House Committee on Education Appropriations & Oversight (originally sponsored by Representatives Sullivan, Anderson, Haigh, Dammeier, Parker, Maxwell, Reykdal and Santos)

AN ACT Relating to preserving the school district levy base; reenacting and amending RCW 84.52.0531; creating a new section; providing an effective date; and providing an expiration date.

Referred to Committee on Ways & Means.

ESHB 1864 by House Committee on Business & Financial Services (originally sponsored by Representatives Stanford, Frockt, Fitzgibbon, Ryu, Billig, Moscoso, Ladenburg and Kenney)

AN ACT Relating to business practices of collection agencies; and reenacting and amending RCW 19.16.250.

Referred to Committee on Judiciary.

HB 1937 by Representatives Ryu, Kenney, Moscoso, Ladenburg and Roberts

AN ACT Relating to authorizing local improvement district funding to benefit innovation partnership zones for the purposes of economic development; and amending RCW 35.43.040.

Referred to Committee on Economic Development, Trade & Innovation.

HB 1939 by Representative Appleton

AN ACT Relating to defining federally recognized tribes as agencies for purposes of agency-affiliated counselors; and amending RCW 18.19.020.

Referred to Committee on Government Operations, Tribal Relations & Elections.

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 sixth order of business.

MOTION TO LIMIT DEBATE

Senator Eide: "Mr. President, I move that the members of the Senate be allowed to speak but once on each question before the Senate, that such speech be limited to three minutes and that members be prohibited from yielding their time, however, the maker of a motion shall be allowed to open and close debate. This motion shall be in effect through March 5, 2011."

The President declared the question before the Senate to be the motion by Senator Eide to limit debate.

The motion by Senator Eide carried and debate was limited through March 5, 2011 by voice vote.

SECOND READING

SENATE BILL NO. 5819, by Senator Litzow

Concerning guardian and limited guardian duties.

The measure was read the second time.

MOTION

On motion of Senator Litzow, the rules were suspended, Senate Bill No. 5819 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Litzow 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. 5819.

ROLL CALL

The Secretary called the roll on the final passage of Senate Bill No. 5819 and the bill passed the Senate by the following vote:

Yeas, 46; Nays, 0; Absent, 3; 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, Kilmer, King, Kline, Kohl-Welles, Litzow, McAuliffe, Morton, Murray, Nelson, Parlette, Prentice, Pridemore, Ranker, Regala, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

Absent: Senators Keiser, Pflug and Roach

SENATE BILL NO. 5819, 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 Ericksen, Senators Pflug and Roach were excused.

SECOND READING

SENATE BILL NO. 5656, by Senators Hargrove, Regala, White, McAuliffe and Kline

Creating a state Indian child welfare act.

MOTION

On motion of Senator Hargrove, Substitute Senate Bill No. 5656 was substituted for Senate Bill No. 5656 and the substitute bill was placed on the second reading and read the second time.

MOTION

Senator Hargrove moved that the following striking amendment by Senators Hargrove and Stevens be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** SHORT TITLE. This chapter shall be known and cited as the "Washington state Indian child welfare act."

NEW SECTION. **Sec. 2.** APPLICATION. This chapter shall apply in all child custody proceedings as that term is defined in this chapter. Whenever there is a conflict between chapter 13.32A, 13.34, 13.36, 26.10, or 26.33 RCW, the provisions of this chapter shall apply.

NEW SECTION. **Sec. 3.** INTENT. The legislature finds that the state is committed to protecting the essential tribal relations and best interests of Indian children by promoting practices designed to prevent out-of-home placement of Indian children that is inconsistent with the rights of the parents, the health, safety, or welfare of the children, or the interests of their tribe. Whenever out-of-home placement of an Indian child is necessary in a proceeding subject to the terms of the federal Indian child welfare act and in this chapter, the best interests of the Indian child may be served by placing the Indian child in accordance with the placement priorities expressed in this chapter. The legislature further finds that where placement away from the parent or Indian custodian is necessary for the child's safety, the state is committed to a placement that reflects and honors the unique values of the child's tribal culture and is best able to assist the Indian child in establishing, developing, and maintaining a political, cultural, social, and spiritual relationship with the child's tribe and tribal community.

It is the intent of the legislature that this chapter is a step in clarifying existing laws and codifying existing policies and practices. This chapter shall not be construed to reject or eliminate current policies and practices that are not included in its provisions.

The legislature further intends that nothing in this chapter is intended to interfere with policies and procedures that are derived from agreements entered into between the department and a tribe or tribes, as authorized by section 109 of the federal Indian child welfare act. The legislature finds that this chapter specifies the minimum requirements that must be applied in a child custody proceeding and does not prevent the department from providing a higher standard of protection to the right of any Indian child, parent, Indian custodian, or Indian child's tribe.

It is also the legislature's intent that the department's policy manual on Indian child welfare, the tribal-state agreement, and relevant local agreements between individual federally recognized tribes and the department should serve as persuasive guides in the interpretation and implementation of the federal Indian child welfare act, this chapter, and other relevant state laws.

NEW SECTION. **Sec. 4.** DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Active efforts" means the following:

(a) In any foster care placement or termination of parental rights proceeding of an Indian child under chapter 13.34 RCW and this chapter where the department or a supervising agency as defined in RCW 74.13.020 has a statutory or contractual duty to directly provide services to, or procure services for, the parent or parents or Indian custodian, or is providing services to a parent or parents or Indian custodian pursuant to a disposition order entered pursuant to RCW 13.34.130, the department or supervising agency shall make timely and affirmative efforts to provide or procure such services, including engaging the parent or parents or Indian custodian in reasonably available and culturally appropriate preventive, remedial, or rehabilitative services. This shall include those services offered by tribes and Indian organizations whenever possible. At a minimum "active efforts" shall include:

(i) In any dependency proceeding under chapter 13.34 RCW seeking out-of-home placement of an Indian child in which the department or supervising agency provided voluntary services to the parent, parents, or Indian custodian prior to filing the dependency petition, a showing to the court that the department or supervising agency social workers actively worked with the parent, parents, or Indian custodian to engage them in remedial services and rehabilitation programs to prevent the breakup of the family beyond simply providing referrals to such services.

(ii) In any dependency proceeding under chapter 13.34 RCW, in which the petitioner is seeking the continued out-of-home placement of an Indian child, the department or supervising agency must show to the court that it has actively worked with the parent, parents, or Indian custodian in accordance with existing court orders and the individual service plan to engage them in remedial services and rehabilitative programs to prevent the breakup of the family beyond simply providing referrals to such services.

(iii) In any termination of parental rights proceeding regarding an Indian child under chapter 13.34 RCW in which the department or supervising agency provided services to the parent, parents, or Indian custodian, a showing to the court that the department or supervising agency social workers actively worked with the parent, parents, or Indian custodian to engage them in remedial services and rehabilitation programs ordered by the court or identified in the department or supervising agency's individual service and safety plan rather than requiring that the plan or court order be performed on its own.

(b) In any foster care placement or termination of parental rights proceeding in which the petitioner does not otherwise have a statutory or contractual duty to directly provide services to, or procure services for, the parent or Indian custodian, "active efforts" means a documented, concerted, and good faith effort to facilitate the parent's or Indian custodian's receipt of and engagement in

services capable of meeting the criteria set out in (a) of this subsection.

(2) "Best interests of the Indian child" means the use of practices in accordance with the federal Indian child welfare act, this chapter, and other applicable law, that are designed to accomplish the following: (a) Protect the safety, well-being, development, and stability of the Indian child; (b) prevent the unnecessary out-of-home placement of the Indian child; (c) acknowledge the right of Indian tribes to maintain their existence and integrity which will promote the stability and security of their children and families; (d) recognize the value to the Indian child of establishing, developing, or maintaining a political, cultural, social, and spiritual relationship with the Indian child's tribe and tribal community; and (e) in a proceeding under this chapter where out-of-home placement is necessary, to prioritize placement of the Indian child in accordance with the placement preferences of this chapter.

(3) "Child custody proceeding" includes:

(a) "Foster care placement" which means any action removing an Indian child from his or her parent or Indian custodian for temporary placement in a foster home, institution, or with a relative, guardian, conservator, or suitable other person where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(b) "Termination of parental rights" which means any action resulting in the termination of the parent-child relationship;

(c) "Preadoptive placement" which means the temporary placement of an Indian child in a foster home or institution after the termination of parental rights but before or in lieu of adoptive placement; and

(d) "Adoptive placement" which means the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

These terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a dissolution proceeding of custody to one of the parents.

(4) "Court of competent jurisdiction" means a federal or state court that entered an order in a child custody proceeding involving an Indian child, as long as the state court had proper subject matter jurisdiction in accordance with this chapter and the laws of that state, or the tribal court that had or has exclusive or concurrent jurisdiction pursuant to 25 U.S.C. Sec. 1911.

(5) "Department" means the department of social and health services and any of its divisions. "Department" also includes supervising agencies as defined in RCW 74.13.020(12) with which the department entered into a contract to provide services, care, placement, case management, contract monitoring, or supervision to children subject to a petition filed under chapter 13.34 or 26.33 RCW.

(6) "Indian" means a person who is a member of an Indian tribe, or who is an Alaska native and a member of a regional corporation as defined in 43 U.S.C. Sec. 1606.

(7) "Indian child" means an unmarried and unemancipated Indian person who is under eighteen years of age and is either: (a) A member of an Indian tribe; or (b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(8) "Indian child's family" or "extended family member" means an individual, defined by the law or custom of the child's tribe, as a relative of the child. If the child's tribe does not identify such individuals by law or custom, the term means an adult who is the Indian child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first or second cousin, or step-parent, even following termination of the marriage.

(9) "Indian child's tribe" means a tribe in which an Indian child is a member or eligible for membership.

(10) "Indian custodian" means an Indian person who under tribal law, tribal custom, or state law, has legal or temporary physical custody of an Indian child, or to whom the parent has transferred temporary care, physical custody, and control of an Indian child.

(11) "Indian tribe" or "tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the secretary of the interior because of their status as Indians, including any Alaska native village as defined in 43 U.S.C. Sec. 1602(c).

(12) "Member" and "membership" means a determination by an Indian tribe that a person is a member or eligible for membership in that Indian tribe.

(13) "Parent" means a biological parent or parents of an Indian child or a person who has lawfully adopted an Indian child, including adoptions made under tribal law or custom. "Parent" does not include an unwed father whose paternity has not been acknowledged or established.

(14) "Secretary of the interior" means the secretary of the United States department of the interior.

(15) "Tribal court" means a court or body vested by an Indian tribe with jurisdiction over child custody proceedings, including but not limited to a federal court of Indian offenses, a court established and operated under the code or custom of an Indian tribe, or an administrative body of an Indian tribe vested with authority over child custody proceedings.

(16) "Tribal customary adoption" means adoption or other process through the tribal custom, traditions, or laws of an Indian child's tribe by which the Indian child is permanently placed with a nonparent and through which the nonparent is vested with the rights, privileges, and obligations of a legal parent. Termination of the parent-child relationship between the Indian child and the biological parent is not required to effect or recognize a tribal customary adoption.

NEW SECTION. **Sec. 5.** DETERMINATION OF INDIAN STATUS. Any party seeking the foster care placement of, termination of parental rights over, or the adoption of a child must make a good faith effort to determine whether the child is an Indian child. This shall be done by consultation with the child's parent or parents, any person who has custody of the child or with whom the child resides, and any other person that reasonably can be expected to have information regarding the child's possible membership or eligibility for membership in an Indian tribe to determine if the child is an Indian child, and by contacting any Indian tribe in which the child may be a member or may be eligible for membership. Preliminary contacts for the purpose of making a good faith effort to determine a child's possible Indian status, do not constitute legal notice as required by section 7 of this act.

NEW SECTION. **Sec. 6.** JURISDICTION. (1) An Indian tribe shall have exclusive jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of that tribe, unless the tribe has consented to the state's concurrent jurisdiction, the tribe has expressly declined to exercise its exclusive jurisdiction, or the state is exercising emergency jurisdiction in strict compliance with section 14 of this act.

(2) If an Indian child is already a ward of a tribal court at the start of the child custody proceeding, the Indian tribe may retain exclusive jurisdiction, notwithstanding the residence or domicile of the child.

NEW SECTION. **Sec. 7.** NOTICE. (1) In any involuntary child custody proceeding seeking the foster care placement of, or the termination of parental rights to, a child in which the petitioning

party or the court knows, or has reason to know, that the child is or may be an Indian child as defined in this chapter, the petitioning party shall notify the parent or Indian custodian and the Indian child's tribe or tribes, by certified mail, return receipt requested, and by use of a mandatory Indian child welfare act notice. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the secretary of the interior by registered mail, return receipt requested, in accordance with the regulations of the bureau of Indian affairs. The secretary of the interior has fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe. The parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for the proceeding.

(2) The determination of the Indian status of a child shall be made as soon as practicable in order to serve the best interests of the Indian child and protect the interests of the child's tribe.

(3)(a) A written determination by an Indian tribe that a child is a member of or eligible for membership in that tribe, or testimony by the tribe attesting to such status shall be conclusive that the child is an Indian child;

(b) A written determination by an Indian tribe that a child is not a member of or eligible for membership in that tribe, or testimony by the tribe attesting to such status shall be conclusive that the child is not a member or eligible for membership in that tribe. Such determinations are presumptively those of the tribe where submitted in the form of a tribal resolution, or signed by or testified to by the person(s) authorized by the tribe's governing body to speak for the tribe, or by the tribe's agent designated to receive notice under the federal Indian child welfare act where such designation is published in the federal register;

(c) Where a tribe provides no response to notice under section 7 of this act, such nonresponse shall not constitute evidence that the child is not a member or eligible for membership. Provided, however, that under such circumstances the party asserting application of the federal Indian child welfare act, or this chapter, will have the burden of proving that the child is an Indian child.

(4) Where a child has been determined not to be an Indian child, any party to the proceeding, or an Indian tribe that subsequently determines the child is a member, may move the court for redetermination of the child's Indian status at any time based upon new evidence, redetermination by the child's tribe, or newly conferred federal recognition of the tribe.

NEW SECTION. **Sec. 8.** TRANSFER OF JURISDICTION. (1) In any proceeding for the foster care placement of, or termination of parental rights to, an Indian child who is not domiciled or residing within the reservation of the Indian child's tribe, the court shall, in the absence of good cause to the contrary, transfer the proceeding to the jurisdiction of the Indian child's tribe, upon the motion of any of the following persons:

(a) Either of the child's parents;

(b) The child's Indian custodian;

(c) The child's tribe; or

(d) The child, if age twelve or older.

The transfer shall be subject to declination by the tribe. The tribe shall have seventy-five days to affirmatively respond to a motion or order transferring jurisdiction to the tribal court. A failure of the tribe to respond within the seventy-five day period shall be construed as a declination to accept transfer of the case.

(2) If the child's tribe has not formally intervened, the moving party shall serve a copy of the motion and all supporting documents on the tribal court to which the moving party seeks transfer.

(3) If either of the Indian child's parents objects to transfer of the proceeding to the Indian child's tribe, the court shall not transfer the proceeding.

(4) Following entry of an order transferring jurisdiction to the Indian child's tribe:

(a) Upon receipt of an order from a tribal court accepting jurisdiction, the state court shall dismiss the child custody proceeding without prejudice.

(b) Pending receipt of such tribal court order, the state court may conduct additional hearings and enter orders which strictly comply with the requirements of the federal Indian child welfare act and this chapter. The state court shall not enter a final order in any child custody proceeding, except an order dismissing the proceeding and returning the Indian child to the care of the parent or Indian custodian from whose care the child was removed, while awaiting receipt of a tribal court order accepting jurisdiction, or in the absence of a tribal court order or other formal written declination of jurisdiction.

(c) If the Indian child's tribe declines jurisdiction, the state court shall enter an order vacating the order transferring jurisdiction and proceed with adjudication of the child custody matter in strict compliance with the federal Indian child welfare act, this chapter, and any applicable tribal-state agreement.

NEW SECTION. **Sec. 9.** INTERVENTION. The Indian child, the Indian child's tribe or tribes, and the Indian custodian have the right to intervene at any point in any child custody proceeding involving the Indian child.

NEW SECTION. **Sec. 10.** FULL FAITH AND CREDIT. The state shall give full faith and credit to the public acts, records, judicial proceedings, and judgments of any Indian tribe applicable to Indian child custody proceedings.

NEW SECTION. **Sec. 11.** RIGHT TO COUNSEL. In any child custody proceeding under this chapter in which the court determines the Indian child's parent or Indian custodian is indigent, the parent or Indian custodian shall have the right to court-appointed counsel. The court may, in its discretion, appoint counsel for the Indian child upon a finding that the appointment is in the best interests of the Indian child.

NEW SECTION. **Sec. 12.** RIGHT TO ACCESS TO EVIDENCE. Each party to a child custody proceeding involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to the proceeding may be based.

NEW SECTION. **Sec. 13.** EVIDENTIARY REQUIREMENTS. (1) A party seeking to effect a foster care placement of or termination of parental rights to an Indian child shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(2) No foster care placement may be ordered in a child custody proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. For purposes of this subsection, any harm to the bond between the foster parent and the child that could result from removing the child from foster care shall not be the sole basis or primary reason for continuing the child in foster care.

(3) No termination of parental rights may be ordered in a child custody proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(4)(a) For purposes of this section, "qualified expert witness" means a person who provides testimony in a proceeding under this chapter to assist a court in the determination of whether the continued custody of the child by, or return of the child to, the parent, parents, or Indian custodian, is likely to result in serious emotional or physical damage to the child. In any proceeding in which the child's Indian tribe has intervened pursuant to section 9 of this act or, if the department is the petitioner and the Indian child's tribe has entered into a local agreement with the department for the provision of child welfare services, the petitioner shall contact the tribe and ask the tribe to identify a tribal member or other person of the tribe's choice who is recognized by the tribe as knowledgeable regarding tribal customs as they pertain to family organization or child rearing practices. The petitioner shall notify the child's Indian tribe of the need to provide a "qualified expert witness" at least twenty days prior to any evidentiary hearing in which the testimony of the witness will be required. If the child's Indian tribe does not identify a "qualified expert witness" for the proceeding on a timely basis, the petitioner may proceed to identify such a witness pursuant to (b) of this subsection.

(b) In any proceeding in which the child's Indian tribe has not intervened or entered into a local agreement with the department for the provision of child welfare services, or a child's Indian tribe has not responded to a request to identify a "qualified expert witness" for the proceeding on a timely basis, the petitioner shall provide a "qualified expert witness" who meets one or more of the following requirements in descending order of preference:

(i) A member of the child's Indian tribe or other person of the tribe's choice who is recognized by the tribe as knowledgeable regarding tribal customs as they pertain to family organization or child rearing practices for this purpose;

(ii) Any person having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe;

(iii) Any person having substantial experience in the delivery of child and family services to Indians, and knowledge of prevailing social and cultural standards and child rearing practices in Indian tribes with cultural similarities to the Indian child's tribe; or

(iv) A professional person having substantial education and experience in the area of his or her specialty.

(c) When the petitioner is the department or a supervising agency, the currently assigned department or agency caseworker or the caseworker's supervisor may not testify as a "qualified expert witness" for purposes of this section. Nothing in this section shall bar the assigned department or agency caseworker or the caseworker's supervisor from testifying as an expert witness for other purposes in a proceeding under this chapter. Nothing in this section shall bar other department or supervising agency employees with appropriate expert qualifications or experience from testifying as a "qualified expert witness" in a proceeding under this chapter. Nothing in this section shall bar the petitioner or any other party in a proceeding under this chapter from providing additional witnesses or expert testimony, subject to the approval of the court, on any issue before the court including the determination of whether the continued custody of the child by, or return of the child to, the parent, parents, or Indian custodian, is likely to result in serious emotional or physical damage to the child.

NEW SECTION. **Sec. 14.** EMERGENCY REMOVAL OF AN INDIAN CHILD. (1) Notwithstanding any other provision of federal or state law, nothing shall be construed to prevent the department or law enforcement from the emergency removal of an Indian child who is a resident of or is domiciled on an Indian reservation, but is temporarily located off the reservation, from his or her parent or Indian custodian or the emergency placement of such child in a foster home, under applicable state law, to prevent imminent physical damage or harm to the child.

(2) The department or law enforcement agency shall ensure that the emergency removal or placement terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child and shall expeditiously initiate a child custody proceeding subject to the provisions of the federal Indian child welfare act and this chapter to transfer the child to the jurisdiction of the appropriate Indian tribe or restore the child to the child's parent or Indian custodian, if appropriate.

(3) When the nature of the emergency allows, the department must notify the child's tribe before the removal has occurred. If prior notification is not possible, the department shall notify the child's tribe by the quickest means possible. The notice must contain the basis for the Indian child's removal, the time, date, and place of the initial hearing, and the tribe's right to intervene and participate in the proceeding. This notice shall not constitute the notice required under section 7 of this act for purposes of subsequent dependency, termination of parental rights, or adoption proceedings.

NEW SECTION. **Sec. 15.** CONSENT. (1) If an Indian child's parent or Indian custodian voluntarily consents to a foster care placement of the child or to termination of parental rights, the consent is not valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court must also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent for release of custody given prior to, or within ten days after, the birth of the Indian child shall not be valid.

(2) An Indian child's parent or Indian custodian may withdraw consent to a voluntary foster care placement at any time and, upon the withdrawal of consent, the child shall be returned to the parent or Indian custodian.

(3) In a voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of an order terminating parental rights or a final decree of adoption, and the child shall be returned to the parent.

(4) After the entry of a final decree of adoption of an Indian child, the parent may withdraw consent to the adoption upon the grounds that consent was obtained through fraud or duress. Upon a finding that such consent was obtained through fraud or duress the court shall vacate the decree and return the child to the parent. No adoption which has been effective for at least two years may be invalidated under this section unless otherwise allowed by state law.

NEW SECTION. **Sec. 16.** IMPROPER REMOVAL OF AN INDIAN CHILD. If a petitioner in a child custody proceeding under this chapter has improperly removed the child from the custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over the petition and shall immediately return the child to the child's parent or Indian custodian unless returning the child to the parent or Indian custodian would subject the child to substantial and immediate danger or threat of such danger.

NEW SECTION. **Sec. 17.** REMOVAL OF INDIAN CHILD FROM ADOPTIVE OR FOSTER CARE PLACEMENT. (1) If a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, the biological parent or prior Indian custodian may petition to have the child returned to

their custody and the court shall grant the request unless there is a showing by clear and convincing evidence that return of custody to the biological parent or prior Indian custodian is not in the best interests of the Indian child.

(2) If an Indian child is removed from a foster care placement or a preadoptive or adoptive home for the purpose of further foster care, preadoptive, or adoptive placement, the placement shall be in accordance with this chapter, except when an Indian child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

NEW SECTION. **Sec. 18.** PLACEMENT PREFERENCES. (1) When an emergency removal, foster care placement, or preadoptive placement of an Indian child is necessary, a good faith effort will be made to place the Indian child:

(a) In the least restrictive setting;

(b) Which most approximates a family situation;

(c) Which is in reasonable proximity to the Indian child's home; and

(d) In which the Indian child's special needs, if any, will be met.

(2) In any foster care or preadoptive placement, a preference shall be given, in absence of good cause to the contrary, to the child's placement with one of the following:

(a) A member of the child's extended family.

(b) A foster home licensed, approved, or specified by the child's tribe.

(c) An Indian foster home licensed or approved by an authorized non-Indian licensing authority.

(d) A child foster care agency approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(e) A non-Indian child foster care agency approved by the child's tribe.

(f) A non-Indian family that is committed to:

(i) Promoting and allowing appropriate extended family visitation;

(ii) Establishing, maintaining, and strengthening the child's relationship with his or her tribe or tribes; and

(iii) Participating in the cultural and ceremonial events of the child's tribe.

(3) In the absence of good cause to the contrary, any adoptive or other permanent placement of an Indian child, preference shall be given to a placement with one of the following, in descending priority order:

(a) Extended family members;

(b) An Indian family of the same tribe as the child;

(c) An Indian family that is of a similar culture to the child's tribe;

(d) Another Indian family; or

(e) Any other family which can provide a suitable home for an Indian child, such suitability to be determined in consultation with the Indian child's tribe or, where the Indian child's tribe has not intervened or participated, the local Indian child welfare advisory committee.

(4) Notwithstanding the placement preferences listed in subsections (2) and (3) of this section, if a different order of placement preference is established by the child's tribe, the court or agency effecting the placement shall follow the order of preference established by the tribe so long as the placement is in the least restrictive setting appropriate to the particular needs of the child. Where appropriate, the preference of the Indian child or his or her parent shall be considered.

(5) The standards to be applied in meeting the preference requirements of this section shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family members of an Indian child reside, or with which the parent or extended family members maintain social and cultural ties.

(6) Nothing in this section shall prevent the department or the court from placing the child with a parent to effectuate a permanent plan regardless of the parent's relationship to the child's tribe.

NEW SECTION. **Sec. 19.** COMPLIANCE. (1) The department, in consultation with Indian tribes, shall establish standards and procedures for the department's review of cases subject to this chapter and methods for monitoring the department's compliance with provisions of the federal Indian child welfare act and this chapter. These standards and procedures and the monitoring methods shall also be integrated into the department's child welfare contracting and contract monitoring process.

(2) Any Indian child who is the subject of any action for foster care placement or termination of parental rights under chapter 13.34 or 26.33 RCW, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated provisions of this chapter or the federal Indian child welfare act.

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

Sec. 21. RCW 13.32A.152 and 2004 c 64 s 5 are each amended to read as follows:

(1) Whenever a child in need of services petition is filed by: (a) A youth pursuant to RCW 13.32A.150; (b) the child or the child's parent pursuant to RCW 13.32A.120; or (c) the department pursuant to RCW 13.32A.140, the filing party shall have a copy of the petition served on the parents of the youth. Service shall first be attempted in person and if unsuccessful, then by certified mail with return receipt.

(2) Whenever a child in need of services petition is filed by a youth or parent pursuant to RCW 13.32A.150, the court shall immediately notify the department that a petition has been filed.

(3)((~~(a) Whenever~~)) When a child in need of services petition is filed by the department, and the court or the petitioning party knows or has reason to know that an Indian child is involved, the ((~~petitioning party shall promptly provide notice to the child's parent or Indian custodian and to the agent designated by the child's Indian tribe to receive such notices. Notice shall be by certified mail with return receipt requested. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the secretary of the interior in the manner described in 25 C.F.R. 23.11. If the child may be a member of more than one tribe, the petitioning party shall send notice to all tribes the petitioner has reason to know may be affiliated with the child.~~

~~(b) The notice shall: (i) Contain a statement notifying the parent or custodian and the tribe of the pending proceeding; and (ii) notify the tribe of the tribe's right to intervene and/or request that the case be transferred to tribal court~~)) provisions of chapter 13.--- RCW (the new chapter created in section 34 of this act) apply.

Sec. 22. RCW 13.34.030 and 2010 1st sp.s. c 8 s 13, 2010 c 272 s 10, and 2010 c 94 s 6 are each reenacted and amended to read as follows:

For purposes of this chapter:

(1) "Abandoned" means when the child's parent, guardian, or other custodian has expressed, either by statement or conduct, an intent to forego, for an extended period, parental rights or responsibilities despite an ability to exercise such rights and responsibilities. If the court finds that the petitioner has exercised due diligence in attempting to locate the parent, no contact between the child and the child's parent, guardian, or other custodian for a period of three months creates a rebuttable presumption of abandonment, even if there is no expressed intent to abandon.

(2) "Child" and "juvenile" means any individual under the age of eighteen years.

(3) "Current placement episode" means the period of time that begins with the most recent date that the child was removed from the home of the parent, guardian, or legal custodian for purposes of placement in out-of-home care and continues until: (a) The child returns home; (b) an adoption decree, a permanent custody order, or guardianship order is entered; or (c) the dependency is dismissed, whichever occurs first.

(4) "Department" means the department of social and health services.

(5) "Dependency guardian" means the person, nonprofit corporation, or Indian tribe appointed by the court pursuant to this chapter for the limited purpose of assisting the court in the supervision of the dependency.

(6) "Dependent child" means any child who:

(a) Has been abandoned;

(b) Is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child; or

(c) Has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development.

(7) "Developmental disability" means a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary to be closely related to an intellectual disability or to require treatment similar to that required for individuals with intellectual disabilities, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial limitation to the individual.

(8) "Guardian" means the person or agency that: (a) Has been appointed as the guardian of a child in a legal proceeding, including a guardian appointed pursuant to chapter 13.36 RCW; and (b) has the legal right to custody of the child pursuant to such appointment. The term "guardian" does not include a "dependency guardian" appointed pursuant to a proceeding under this chapter.

(9) "Guardian ad litem" means a person, appointed by the court to represent the best interests of a child in a proceeding under this chapter, or in any matter which may be consolidated with a proceeding under this chapter. A "court-appointed special advocate" appointed by the court to be the guardian ad litem for the child, or to perform substantially the same duties and functions as a guardian ad litem, shall be deemed to be guardian ad litem for all purposes and uses of this chapter.

(10) "Guardian ad litem program" means a court-authorized volunteer program, which is or may be established by the superior court of the county in which such proceeding is filed, to manage all aspects of volunteer guardian ad litem representation for children alleged or found to be dependent. Such management shall include but is not limited to: Recruitment, screening, training, supervision, assignment, and discharge of volunteers.

(11) "Housing assistance" means appropriate referrals by the department or other supervising agencies to federal, state, local, or private agencies or organizations, assistance with forms, applications, or financial subsidies or other monetary assistance for housing. For purposes of this chapter, "housing assistance" is not a remedial service or time-limited family reunification service as described in RCW 13.34.025(2).

(12) "Indigent" means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, disability lifeline benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the federally established poverty level; or

(d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

(13) "Out-of-home care" means placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter 74.15 RCW.

(14) "Preventive services" means preservation services, as defined in chapter 74.14C RCW, and other reasonably available services, including housing assistance, capable of preventing the need for out-of-home placement while protecting the child.

(15) "Shelter care" means temporary physical care in a facility licensed pursuant to RCW 74.15.030 or in a home not required to be licensed pursuant to RCW 74.15.030.

(16) "Sibling" means a child's birth brother, birth sister, adoptive brother, adoptive sister, half-brother, or half-sister, or as defined by the law or custom of the Indian child's tribe for an Indian child as defined in ((~~25 U.S.C. Sec. 1903(4)~~)) section 4 of this act.

(17) "Social study" means a written evaluation of matters relevant to the disposition of the case and shall contain the following information:

(a) A statement of the specific harm or harms to the child that intervention is designed to alleviate;

(b) A description of the specific services and activities, for both the parents and child, that are needed in order to prevent serious harm to the child; the reasons why such services and activities are likely to be useful; the availability of any proposed services; and the agency's overall plan for ensuring that the services will be delivered. The description shall identify the services chosen and approved by the parent;

(c) If removal is recommended, a full description of the reasons why the child cannot be protected adequately in the home, including a description of any previous efforts to work with the parents and the child in the home; the in-home treatment programs that have been considered and rejected; the preventive services, including housing assistance, that have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home; and the parents' attitude toward placement of the child;

(d) A statement of the likely harms the child will suffer as a result of removal;

(e) A description of the steps that will be taken to minimize the harm to the child that may result if separation occurs including an assessment of the child's relationship and emotional bond with any siblings, and the agency's plan to provide ongoing contact between the child and the child's siblings if appropriate; and

(f) Behavior that will be expected before determination that supervision of the family or placement is no longer necessary.

(18) "Supervising agency" means an agency licensed by the state under RCW 74.15.090, or licensed by a federally recognized Indian tribe located in this state under RCW 74.15.190, that has entered into a performance-based contract with the department to provide case management for the delivery and documentation of child welfare services as defined in RCW 74.13.020.

Sec. 23. RCW 13.34.040 and 2004 c 64 s 3 are each amended to read as follows:

(1) Any person may file with the clerk of the superior court a petition showing that there is within the county, or residing within

the county, a dependent child and requesting that the superior court deal with such child as provided in this chapter. There shall be no fee for filing such petitions.

(2) In counties having paid probation officers, these officers shall, to the extent possible, first determine if a petition is reasonably justifiable. Each petition shall be verified and contain a statement of facts constituting a dependency, and the names and residence, if known to the petitioner, of the parents, guardian, or custodian of the alleged dependent child.

(3) Every petition filed in proceedings under this chapter shall contain a statement alleging whether the child is or may be an Indian child as defined in ((~~25 U.S.C. Sec. 1903~~)) section 4 of this act. If the child is an Indian child ((~~as defined under the Indian child welfare act, the provisions of the act~~)) chapter 13.--- RCW (the new chapter created in section 34 of this act) shall apply.

(4) Every order or decree entered under this chapter shall contain a finding that the federal Indian child welfare act or chapter 13.--- RCW (the new chapter created in section 34 of this act) does or does not apply. Where there is a finding that the federal Indian child welfare act or chapter 13.--- RCW (the new chapter created in section 34 of this act) does apply, the decree or order must also contain a finding that all notice requirements and evidentiary requirements under the federal Indian child welfare act and chapter 13.--- RCW (the new chapter created in section 34 of this act) have been satisfied.

Sec. 24. RCW 13.34.065 and 2009 c 520 s 22, 2009 c 491 s 1, 2009 c 477 s 3, and 2009 c 397 s 2 are each reenacted and amended to read as follows:

(1)(a) When a child is taken into custody, the court shall hold a shelter care hearing within seventy-two hours, excluding Saturdays, Sundays, and holidays. The primary purpose of the shelter care hearing is to determine whether the child can be immediately and safely returned home while the adjudication of the dependency is pending.

(b) Any parent, guardian, or legal custodian who for good cause is unable to attend the shelter care hearing may request that a subsequent shelter care hearing be scheduled. The request shall be made to the clerk of the court where the petition is filed prior to the initial shelter care hearing. Upon the request of the parent, the court shall schedule the hearing within seventy-two hours of the request, excluding Saturdays, Sundays, and holidays. The clerk shall notify all other parties of the hearing by any reasonable means.

(2)(a) If it is likely that the child will remain in shelter care longer than seventy-two hours, in those areas in which child welfare services are being provided by a supervising agency, the supervising agency shall assume case management responsibilities of the case. The department or supervising agency shall submit a recommendation to the court as to the further need for shelter care in all cases in which the child will remain in shelter care longer than the seventy-two hour period. In all other cases, the recommendation shall be submitted by the juvenile court probation counselor.

(b) All parties have the right to present testimony to the court regarding the need or lack of need for shelter care.

(c) Hearsay evidence before the court regarding the need or lack of need for shelter care must be supported by sworn testimony, affidavit, or declaration of the person offering such evidence.

(3)(a) At the commencement of the hearing, the court shall notify the parent, guardian, or custodian of the following:

(i) The parent, guardian, or custodian has the right to a shelter care hearing;

(ii) The nature of the shelter care hearing, the rights of the parents, and the proceedings that will follow; and

(iii) If the parent, guardian, or custodian is not represented by counsel, the right to be represented. If the parent, guardian, or custodian is indigent, the court shall appoint counsel as provided in RCW 13.34.090; and

(b) If a parent, guardian, or legal custodian desires to waive the shelter care hearing, the court shall determine, on the record and with the parties present, whether such waiver is knowing and voluntary. A parent may not waive his or her right to the shelter care hearing unless he or she appears in court and the court determines that the waiver is knowing and voluntary. Regardless of whether the court accepts the parental waiver of the shelter care hearing, the court must provide notice to the parents of their rights required under (a) of this subsection and make the finding required under subsection (4) of this section.

(4) At the shelter care hearing the court shall examine the need for shelter care and inquire into the status of the case. The paramount consideration for the court shall be the health, welfare, and safety of the child. At a minimum, the court shall inquire into the following:

(a) Whether the notice required under RCW 13.34.062 was given to all known parents, guardians, or legal custodians of the child. The court shall make an express finding as to whether the notice required under RCW 13.34.062 was given to the parent, guardian, or legal custodian. If actual notice was not given to the parent, guardian, or legal custodian and the whereabouts of such person is known or can be ascertained, the court shall order the department to make reasonable efforts to advise the parent, guardian, or legal custodian of the status of the case, including the date and time of any subsequent hearings, and their rights under RCW 13.34.090;

(b) Whether the child can be safely returned home while the adjudication of the dependency is pending;

(c) What efforts have been made to place the child with a relative. The court shall ask the parents whether the department discussed with them the placement of the child with a relative or other suitable person described in RCW 13.34.130(1)(b) and shall determine what efforts have been made toward such a placement;

(d) What services were provided to the family to prevent or eliminate the need for removal of the child from the child's home. If the dependency petition or other information before the court alleges that homelessness or the lack of suitable housing was a significant factor contributing to the removal of the child, the court shall inquire as to whether housing assistance was provided to the family to prevent or eliminate the need for removal of the child or children;

(e) Is the placement proposed by the department or supervising agency the least disruptive and most family-like setting that meets the needs of the child;

(f) Whether it is in the best interest of the child to remain enrolled in the school, developmental program, or child care the child was in prior to placement and what efforts have been made to maintain the child in the school, program, or child care if it would be in the best interest of the child to remain in the same school, program, or child care;

(g) Appointment of a guardian ad litem or attorney;

(h) Whether the child is or may be an Indian child as defined in ((~~25 U.S.C. Sec. 1903~~)) section 4 of this act, whether the provisions of the federal Indian child welfare act or chapter 13.--- RCW (the new chapter created in section 34 of this act) apply, and whether there is compliance with the federal Indian child welfare act and chapter 13.--- RCW (the new chapter created in section 34 of this act), including notice to the child's tribe;

(i) Whether, as provided in RCW 26.44.063, restraining orders, or orders expelling an allegedly abusive household member from the home of a nonabusive parent, guardian, or legal custodian, will allow the child to safely remain in the home;

(j) Whether any orders for examinations, evaluations, or immediate services are needed. The court may not order a parent to

undergo examinations, evaluation, or services at the shelter care hearing unless the parent agrees to the examination, evaluation, or service;

(k) The terms and conditions for parental, sibling, and family visitation.

(5)(a) The court shall release a child alleged to be dependent to the care, custody, and control of the child's parent, guardian, or legal custodian unless the court finds there is reasonable cause to believe that:

(i) After consideration of the specific services that have been provided, reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home; and

(ii)(A) The child has no parent, guardian, or legal custodian to provide supervision and care for such child; or

(B) The release of such child would present a serious threat of substantial harm to such child, notwithstanding an order entered pursuant to RCW 26.44.063; or

(C) The parent, guardian, or custodian to whom the child could be released has been charged with violating RCW 9A.40.060 or 9A.40.070.

(b) If the court does not release the child to his or her parent, guardian, or legal custodian, the court shall order placement with a relative or other suitable person as described in RCW 13.34.130(1)(b), unless there is reasonable cause to believe the health, safety, or welfare of the child would be jeopardized or that the efforts to reunite the parent and child will be hindered. The court must also determine whether placement with the relative or other suitable person is in the child's best interests. The relative or other suitable person must be willing and available to:

(i) Care for the child and be able to meet any special needs of the child;

(ii) Facilitate the child's visitation with siblings, if such visitation is part of the supervising agency's plan or is ordered by the court; and

(iii) Cooperate with the department or supervising agency in providing necessary background checks and home studies.

(c) If the child was not initially placed with a relative or other suitable person, and the court does not release the child to his or her parent, guardian, or legal custodian, the supervising agency shall make reasonable efforts to locate a relative or other suitable person pursuant to RCW 13.34.060(1). In determining placement, the court shall weigh the child's length of stay and attachment to the current provider in determining what is in the best interest of the child.

(d) If a relative or other suitable person is not available, the court shall order continued shelter care and shall set forth its reasons for the order. If the court orders placement of the child with a person not related to the child and not licensed to provide foster care, the placement is subject to all terms and conditions of this section that apply to relative placements.

(e) Any placement with a relative, or other suitable person approved by the court pursuant to this section, shall be contingent upon cooperation with the department's or supervising agency's case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts, sibling contacts, and any other conditions imposed by the court. Noncompliance with the case plan or court order is grounds for removal of the child from the home of the relative or other suitable person, subject to review by the court.

(f) Uncertainty by a parent, guardian, legal custodian, relative, or other suitable person that the alleged abuser has in fact abused the child shall not, alone, be the basis upon which a child is removed from the care of a parent, guardian, or legal custodian under (a) of this subsection, nor shall it be a basis, alone, to preclude placement with a relative or other suitable person under (b) of this subsection.

(6)(a) A shelter care order issued pursuant to this section shall include the requirement for a case conference as provided in RCW 13.34.067. However, if the parent is not present at the shelter care hearing, or does not agree to the case conference, the court shall not include the requirement for the case conference in the shelter care order.

(b) If the court orders a case conference, the shelter care order shall include notice to all parties and establish the date, time, and location of the case conference which shall be no later than thirty days before the fact-finding hearing.

(c) The court may order another conference, case staffing, or hearing as an alternative to the case conference required under RCW 13.34.067 so long as the conference, case staffing, or hearing ordered by the court meets all requirements under RCW 13.34.067, including the requirement of a written agreement specifying the services to be provided to the parent.

(7)(a) A shelter care order issued pursuant to this section may be amended at any time with notice and hearing thereon. The shelter care decision of placement shall be modified only upon a showing of change in circumstances. No child may be placed in shelter care for longer than thirty days without an order, signed by the judge, authorizing continued shelter care.

(b)(i) An order releasing the child on any conditions specified in this section may at any time be amended, with notice and hearing thereon, so as to return the child to shelter care for failure of the parties to conform to the conditions originally imposed.

(ii) The court shall consider whether nonconformance with any conditions resulted from circumstances beyond the control of the parent, guardian, or legal custodian and give weight to that fact before ordering return of the child to shelter care.

(8)(a) If a child is returned home from shelter care a second time in the case, or if the supervisor of the caseworker deems it necessary, the multidisciplinary team may be reconvened.

(b) If a child is returned home from shelter care a second time in the case a law enforcement officer must be present and file a report to the department.

Sec. 25. RCW 13.34.070 and 2004 c 64 s 4 are each amended to read as follows:

(1) Upon the filing of the petition, the clerk of the court shall issue a summons, one directed to the child, if the child is twelve or more years of age, and another to the parents, guardian, or custodian, and such other persons as appear to the court to be proper or necessary parties to the proceedings, requiring them to appear personally before the court at the time fixed to hear the petition. If the child is developmentally disabled and not living at home, the notice shall be given to the child's custodian as well as to the child's parent. The developmentally disabled child shall not be required to appear unless requested by the court. When the custodian is summoned, the parent or guardian or both shall also be served with a summons. The fact-finding hearing on the petition shall be held no later than seventy-five days after the filing of the petition, unless exceptional reasons for a continuance are found. The party requesting the continuance shall have the burden of proving by a preponderance of the evidence that exceptional circumstances exist. To ensure that the hearing on the petition occurs within the seventy-five day time limit, the court shall schedule and hear the matter on an expedited basis.

(2) A copy of the petition shall be attached to each summons.

(3) The summons shall advise the parties of the right to counsel. The summons shall also inform the child's parent, guardian, or legal custodian of his or her right to appointed counsel, if indigent, and of the procedure to use to secure appointed counsel.

(4) The summons shall advise the parents that they may be held responsible for the support of the child if the child is placed in out-of-home care.

(5) The judge may endorse upon the summons an order directing any parent, guardian, or custodian having the custody or control of the child to bring the child to the hearing.

(6) If it appears from affidavit or sworn statement presented to the judge that there is probable cause for the issuance of a warrant of arrest or that the child needs to be taken into custody pursuant to RCW 13.34.050, the judge may endorse upon the summons an order that an officer serving the summons shall at once take the child into custody and take him or her to the place of shelter designated by the court.

(7) If the person summoned as provided in this section is subject to an order of the court pursuant to subsection (5) or (6) of this section, and if the person fails to abide by the order, he or she may be proceeded against as for contempt of court. The order endorsed upon the summons shall conspicuously display the following legend:

NOTICE:
VIOLATION OF THIS ORDER
IS SUBJECT TO PROCEEDING
FOR CONTEMPT OF COURT
PURSUANT TO RCW 13.34.070.

(8) If a party to be served with a summons can be found within the state, the summons shall be served upon the party personally as soon as possible following the filing of the petition, but in no case later than fifteen court days before the fact-finding hearing, or such time as set by the court. If the party is within the state and cannot be personally served, but the party's address is known or can with reasonable diligence be ascertained, the summons may be served upon the party by mailing a copy by certified mail as soon as possible following the filing of the petition, but in no case later than fifteen court days before the hearing, or such time as set by the court. If a party other than the child is without the state but can be found or the address is known, or can with reasonable diligence be ascertained, service of the summons may be made either by delivering a copy to the party personally or by mailing a copy thereof to the party by certified mail at least ten court days before the fact-finding hearing, or such time as set by the court.

(9) Service of summons may be made under the direction of the court by any person eighteen years of age or older who is not a party to the proceedings or by any law enforcement officer, probation counselor, or department employee.

(10)((~~(a)~~)) Whenever the court or the petitioning party in a proceeding under this chapter knows or has reason to know that an Indian child as defined in section 4 of this act is involved, the petitioning party shall promptly provide notice to the child's parent or Indian custodian and to the agent designated by the child's Indian tribe to receive such notices. Notice shall ((~~be by certified mail with return receipt requested. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the secretary of the interior in the manner described in 25 C.F.R. 23.11. If the child may be a member of more than one tribe, the petitioning party shall send notice to all tribes the petitioner has reason to know may be affiliated with the child.~~

~~(b) The notice shall: (i) Contain a statement notifying the parent or custodian and the tribe of the pending proceeding; and (ii) notify the tribe of the tribe's right to intervene and/or request that the case be transferred to tribal court~~)) comply with section 7 of this act.

Sec. 26. RCW 13.34.105 and 2010 c 180 s 3 are each amended to read as follows:

(1) Unless otherwise directed by the court, the duties of the guardian ad litem for a child subject to a proceeding under this chapter, including an attorney specifically appointed by the court to serve as a guardian ad litem, include but are not limited to the following:

(a) To investigate, collect relevant information about the child's situation, and report to the court factual information regarding the best interests of the child;

(b) To meet with, interview, or observe the child, depending on the child's age and developmental status, and report to the court any views or positions expressed by the child on issues pending before the court;

(c) To monitor all court orders for compliance and to bring to the court's attention any change in circumstances that may require a modification of the court's order;

(d) To report to the court information on the legal status of a child's membership in any Indian tribe or band;

(e) Court-appointed special advocates and guardians ad litem may make recommendations based upon an independent investigation regarding the best interests of the child, which the court may consider and weigh in conjunction with the recommendations of all of the parties;

(f) To represent and be an advocate for the best interests of the child; ((~~and~~))

(g) To inform the child, if the child is twelve years old or older, of his or her right to request counsel and to ask the child whether he or she wishes to have counsel, pursuant to RCW 13.34.100(6). The guardian ad litem shall report to the court that the child was notified of this right and indicate the child's position regarding appointment of counsel. The guardian ad litem shall report to the court his or her independent recommendation as to whether appointment of counsel is in the best interest of the child; and

(h) In the case of an Indian child as defined in section 4 of this act, know, understand, and advocate the best interests of the Indian child.

(2) A guardian ad litem shall be deemed an officer of the court for the purpose of immunity from civil liability.

(3) Except for information or records specified in RCW 13.50.100(7), the guardian ad litem shall have access to all information available to the state or agency on the case. Upon presentation of the order of appointment by the guardian ad litem, any agency, hospital, school organization, division or department of the state, doctor, nurse, or other health care provider, psychologist, psychiatrist, police department, or mental health clinic shall permit the guardian ad litem to inspect and copy any records relating to the child or children involved in the case, without the consent of the parent or guardian of the child, or of the child if the child is under the age of thirteen years, unless such access is otherwise specifically prohibited by law.

(4) A guardian ad litem may release confidential information, records, and reports to the office of the family and children's ombudsman for the purposes of carrying out its duties under chapter 43.06A RCW.

(5) The guardian ad litem shall release case information in accordance with the provisions of RCW 13.50.100.

Sec. 27. RCW 13.34.130 and 2010 c 288 s 1 are each amended to read as follows:

If, after a fact-finding hearing pursuant to RCW 13.34.110, it has been proven by a preponderance of the evidence that the child is dependent within the meaning of RCW 13.34.030 after consideration of the social study prepared pursuant to RCW 13.34.110 and after a disposition hearing has been held pursuant to RCW 13.34.110, the court shall enter an order of disposition pursuant to this section.

(1) The court shall order one of the following dispositions of the case:

(a) Order a disposition other than removal of the child from his or her home, which shall provide a program designed to alleviate the

immediate danger to the child, to mitigate or cure any damage the child has already suffered, and to aid the parents so that the child will not be endangered in the future. In determining the disposition, the court should choose services to assist the parents in maintaining the child in the home, including housing assistance, if appropriate, that least interfere with family autonomy and are adequate to protect the child.

(b)(i) Order the child to be removed from his or her home and into the custody, control, and care of a relative or other suitable person, the department, or a supervising agency for supervision of the child's placement. The court may not order an Indian child, as defined in ((~~25 U.S.C. Sec. 1903~~)) section 4 of this act, to be removed from his or her home unless the court finds, by clear and convincing evidence including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(ii) The department or supervising agency has the authority to place the child, subject to review and approval by the court (A) with a relative as defined in RCW 74.15.020(2)(a), (B) in the home of another suitable person if the child or family has a preexisting relationship with that person, and the person has completed all required criminal history background checks and otherwise appears to the department or supervising agency to be suitable and competent to provide care for the child, or (C) in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW. Absent good cause, the department or supervising agency shall follow the wishes of the natural parent regarding the placement of the child in accordance with RCW 13.34.260. The department or supervising agency may only place a child with a person not related to the child as defined in RCW 74.15.020(2)(a) when the court finds that such placement is in the best interest of the child. Unless there is reasonable cause to believe that the health, safety, or welfare of the child would be jeopardized or that efforts to reunite the parent and child will be hindered, the child shall be placed with a person who is willing, appropriate, and available to care for the child, and who is: (I) Related to the child as defined in RCW 74.15.020(2)(a) with whom the child has a relationship and is comfortable; or (II) a suitable person as described in this subsection (1)(b). The court shall consider the child's existing relationships and attachments when determining placement.

(2) When placing an Indian child in out-of-home care, the department or supervising agency shall follow the placement preference characteristics in ((~~RCW 13.34.250 and in 25 U.S.C. Sec. 1915~~)) section 18 of this act.

(3) Placement of the child with a relative or other suitable person as described in subsection (1)(b) of this section shall be given preference by the court. An order for out-of-home placement may be made only if the court finds that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home, specifying the services, including housing assistance, that have been provided to the child and the child's parent, guardian, or legal custodian, and that preventive services have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home, and that:

(a) There is no parent or guardian available to care for such child;

(b) The parent, guardian, or legal custodian is not willing to take custody of the child; or

(c) The court finds, by clear, cogent, and convincing evidence, a manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home and an order under RCW 26.44.063 would not protect the child from danger.

(4) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court shall consider whether it is in a child's best interest to be placed with, have contact with, or have visits with siblings.

(a) There shall be a presumption that such placement, contact, or visits are in the best interests of the child provided that:

(i) The court has jurisdiction over all siblings subject to the order of placement, contact, or visitation pursuant to petitions filed under this chapter or the parents of a child for whom there is no jurisdiction are willing to agree; and

(ii) There is no reasonable cause to believe that the health, safety, or welfare of any child subject to the order of placement, contact, or visitation would be jeopardized or that efforts to reunite the parent and child would be hindered by such placement, contact, or visitation. In no event shall parental visitation time be reduced in order to provide sibling visitation.

(b) The court may also order placement, contact, or visitation of a child with a step-brother or step-sister provided that in addition to the factors in (a) of this subsection, the child has a relationship and is comfortable with the step-sibling.

(5) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section and placed into nonparental or nonrelative care, the court shall order a placement that allows the child to remain in the same school he or she attended prior to the initiation of the dependency proceeding when such a placement is practical and in the child's best interest.

(6) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court may order that a petition seeking termination of the parent and child relationship be filed if the requirements of RCW 13.34.132 are met.

(7) If there is insufficient information at the time of the disposition hearing upon which to base a determination regarding the suitability of a proposed placement with a relative or other suitable person, the child shall remain in foster care and the court shall direct the department or supervising agency to conduct necessary background investigations as provided in chapter 74.15 RCW and report the results of such investigation to the court within thirty days. However, if such relative or other person appears otherwise suitable and competent to provide care and treatment, the criminal history background check need not be completed before placement, but as soon as possible after placement. Any placements with relatives or other suitable persons, pursuant to this section, shall be contingent upon cooperation by the relative or other suitable person with the agency case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts, sibling contacts, and any other conditions imposed by the court. Noncompliance with the case plan or court order shall be grounds for removal of the child from the relative's or other suitable person's home, subject to review by the court.

Sec. 28. RCW 13.34.132 and 2000 c 122 s 16 are each amended to read as follows:

A court may order that a petition seeking termination of the parent and child relationship be filed if the following requirements are met:

(1) The court has removed the child from his or her home pursuant to RCW 13.34.130;

(2) Termination is recommended by the supervising agency;

(3) Termination is in the best interests of the child; and

(4) Because of the existence of aggravated circumstances, reasonable efforts to unify the family are not required. Notwithstanding the existence of aggravated circumstances, reasonable efforts may be required if the court or department determines it is in the best interests of the child. In determining whether aggravated circumstances exist by clear, cogent, and

convincing evidence, the court shall consider one or more of the following:

(a) Conviction of the parent of rape of the child in the first, second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and 9A.44.079;

(b) Conviction of the parent of criminal mistreatment of the child in the first or second degree as defined in RCW 9A.42.020 and 9A.42.030;

(c) Conviction of the parent of one of the following assault crimes, when the child is the victim: Assault in the first or second degree as defined in RCW 9A.36.011 and 9A.36.021 or assault of a child in the first or second degree as defined in RCW 9A.36.120 or 9A.36.130;

(d) Conviction of the parent of murder, manslaughter, or homicide by abuse of the child's other parent, sibling, or another child;

(e) Conviction of the parent of attempting, soliciting, or conspiring to commit a crime listed in (a), (b), (c), or (d) of this subsection;

(f) A finding by a court that a parent is a sexually violent predator as defined in RCW 71.09.020;

(g) Failure of the parent to complete available treatment ordered under this chapter or the equivalent laws of another state, where such failure has resulted in a prior termination of parental rights to another child and the parent has failed to effect significant change in the interim. In the case of a parent of an Indian child, as defined in ((~~the Indian Child Welfare Act, P.L. 95-608 (25 U.S.C. Sec. 1903)~~)) section 4 of this act, the court shall also consider tribal efforts to assist the parent in completing treatment and make it possible for the child to return home;

(h) An infant under three years of age has been abandoned;

(i) Conviction of the parent, when a child has been born of the offense, of: (A) A sex offense under chapter 9A.44 RCW; or (B) incest under RCW 9A.64.020.

Sec. 29. RCW 13.34.136 and 2009 c 520 s 28 and 2009 c 234 s 5 are each reenacted and amended to read as follows:

(1) Whenever a child is ordered removed from the home, a permanency plan shall be developed no later than sixty days from the time the supervising agency assumes responsibility for providing services, including placing the child, or at the time of a hearing under RCW 13.34.130, whichever occurs first. The permanency planning process continues until a permanency planning goal is achieved or dependency is dismissed. The planning process shall include reasonable efforts to return the child to the parent's home.

(2) The agency supervising the dependency shall submit a written permanency plan to all parties and the court not less than fourteen days prior to the scheduled hearing. Responsive reports of parties not in agreement with the department's or supervising agency's proposed permanency plan must be provided to the department or supervising agency, all other parties, and the court at least seven days prior to the hearing.

The permanency plan shall include:

(a) A permanency plan of care that shall identify one of the following outcomes as a primary goal and may identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal custodian; adoption, including a tribal customary adoption as defined in section 4 of this act; guardianship; permanent legal custody; long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider; successful completion of a responsible living skills program; or independent living, if appropriate and if the child is age sixteen or older. The department or supervising agency shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW;

(b) Unless the court has ordered, pursuant to RCW 13.34.130(((~~(5)~~))) (6), that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to return the child home, what steps the supervising agency or the department will take to promote existing appropriate sibling relationships and/or facilitate placement together or contact in accordance with the best interests of each child, and what actions the department or supervising agency will take to maintain parent-child ties. All aspects of the plan shall include the goal of achieving permanence for the child.

(i) The department's or supervising agency's plan shall specify what services the parents will be offered to enable them to resume custody, what requirements the parents must meet to resume custody, and a time limit for each service plan and parental requirement.

(ii) Visitation is the right of the family, including the child and the parent, in cases in which visitation is in the best interest of the child. Early, consistent, and frequent visitation is crucial for maintaining parent-child relationships and making it possible for parents and children to safely reunify. The supervising agency or department shall encourage the maximum parent and child and sibling contact possible, when it is in the best interest of the child, including regular visitation and participation by the parents in the care of the child while the child is in placement. Visitation shall not be limited as a sanction for a parent's failure to comply with court orders or services where the health, safety, or welfare of the child is not at risk as a result of the visitation. Visitation may be limited or denied only if the court determines that such limitation or denial is necessary to protect the child's health, safety, or welfare. The court and the department or supervising agency should rely upon community resources, relatives, foster parents, and other appropriate persons to provide transportation and supervision for visitation to the extent that such resources are available, and appropriate, and the child's safety would not be compromised.

(iii) A child shall be placed as close to the child's home as possible, preferably in the child's own neighborhood, unless the court finds that placement at a greater distance is necessary to promote the child's or parents' well-being.

(iv) The plan shall state whether both in-state and, where appropriate, out-of-state placement options have been considered by the department or supervising agency.

(v) Unless it is not in the best interests of the child, whenever practical, the plan should ensure the child remains enrolled in the school the child was attending at the time the child entered foster care.

(vi) The supervising agency or department shall provide all reasonable services that are available within the department or supervising agency, or within the community, or those services which the department has existing contracts to purchase. It shall report to the court if it is unable to provide such services; and

(c) If the court has ordered, pursuant to RCW 13.34.130(((~~(5)~~))) (6), that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to achieve permanency for the child, services to be offered or provided to the child, and, if visitation would be in the best interests of the child, a recommendation to the court regarding visitation between parent and child pending a fact-finding hearing on the termination petition. The department or supervising agency shall not be required to develop a plan of services for the parents or provide services to the parents if the court orders a termination petition be filed. However, reasonable efforts to ensure visitation and contact between siblings shall be made unless there is reasonable cause to believe the best interests of the child or siblings would be jeopardized.

(3) Permanency planning goals should be achieved at the earliest possible date. If the child has been in out-of-home care for fifteen of the most recent twenty-two months, the court shall require

the department or supervising agency to file a petition seeking termination of parental rights in accordance with RCW 13.34.145(3)(b)(vi). In cases where parental rights have been terminated, the child is legally free for adoption, and adoption has been identified as the primary permanency planning goal, it shall be a goal to complete the adoption within six months following entry of the termination order.

(4) If the court determines that the continuation of reasonable efforts to prevent or eliminate the need to remove the child from his or her home or to safely return the child home should not be part of the permanency plan of care for the child, reasonable efforts shall be made to place the child in a timely manner and to complete whatever steps are necessary to finalize the permanent placement of the child.

(5) The identified outcomes and goals of the permanency plan may change over time based upon the circumstances of the particular case.

(6) The court shall consider the child's relationships with the child's siblings in accordance with RCW 13.34.130((~~(3)~~)) (4). Whenever the permanency plan for a child is adoption, the court shall encourage the prospective adoptive parents, birth parents, foster parents, kinship caregivers, and the department or other supervising agency to seriously consider the long-term benefits to the child adoptee and his or her siblings of providing for and facilitating continuing postadoption contact between the siblings. To the extent that it is feasible, and when it is in the best interests of the child adoptee and his or her siblings, contact between the siblings should be frequent and of a similar nature as that which existed prior to the adoption. If the child adoptee or his or her siblings are represented by an attorney or guardian ad litem in a proceeding under this chapter or in any other child custody proceeding, the court shall inquire of each attorney and guardian ad litem regarding the potential benefits of continuing contact between the siblings and the potential detriments of severing contact. This section does not require the department of social and health services or other supervising agency to agree to any specific provisions in an open adoption agreement and does not create a new obligation for the department to provide supervision or transportation for visits between siblings separated by adoption from foster care.

(7) For purposes related to permanency planning:

(a) "Guardianship" means a dependency guardianship or a legal guardianship pursuant to chapter 11.88 RCW or equivalent laws of another state or a federally recognized Indian tribe.

(b) "Permanent custody order" means a custody order entered pursuant to chapter 26.10 RCW.

(c) "Permanent legal custody" means legal custody pursuant to chapter 26.10 RCW or equivalent laws of another state or a federally recognized Indian tribe.

Sec. 30. RCW 13.34.190 and 2010 c 288 s 2 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, after hearings pursuant to RCW 13.34.110 or 13.34.130, the court may enter an order terminating all parental rights to a child only if the court finds that:

(a)(i) The allegations contained in the petition as provided in RCW 13.34.180(1) are established by clear, cogent, and convincing evidence; or

(ii) The provisions of RCW 13.34.180(1) (a), (b), (e), and (f) are established beyond a reasonable doubt and if so, then RCW 13.34.180(1) (c) and (d) may be waived. When an infant has been abandoned, as defined in RCW 13.34.030, and the abandonment has been proved beyond a reasonable doubt, then RCW 13.34.180(1) (c) and (d) may be waived; or

(iii) The allegation under RCW 13.34.180(2) is established beyond a reasonable doubt. In determining whether RCW 13.34.180(1) (e) and (f) are established beyond a reasonable doubt, the court shall consider whether one or more of the aggravated circumstances listed in RCW 13.34.132 exist; or

(iv) The allegation under RCW 13.34.180(3) is established beyond a reasonable doubt; and

(b) Such an order is in the best interests of the child.

(2) The provisions of chapter 13.--- RCW (the new chapter created in section 34 of this act) must be followed in any proceeding under this chapter for termination of the parent-child relationship of an Indian child as defined in ((~~25 U.S.C. Sec. 1903, no termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child~~)) section 4 of this act.

Sec. 31. RCW 26.10.034 and 2004 c 64 s 1 are each amended to read as follows:

(1)(((~~(a)~~))) Every petition filed in proceedings under this chapter shall contain a statement alleging whether the child is or may be an Indian child as defined in ((~~25 U.S.C. Sec. 1903~~)) section 4 of this act. If the child is an Indian child ((~~as defined under the Indian child welfare act, the provisions of the act~~)), chapter 13.--- RCW (the new chapter created in section 34 of this act) shall apply.

(((~~(b) Whenever the court or the petitioning party in a proceeding under this chapter knows or has reason to know that an Indian child is involved, the petitioning party shall promptly provide notice to the child's parent or Indian custodian and to the agent designated by the child's Indian tribe to receive such notices. Notice shall be by certified mail with return receipt requested. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the secretary of the interior in the manner described in 25 C.F.R. 23.11. If the child may be a member of more than one tribe, the petitioning party shall send notice to all tribes the petitioner has reason to know may be affiliated with the child.~~

~~(c) The notice shall: (i) Contain a statement notifying the parent or custodian and the tribe of the pending proceeding; and (ii) notify the tribe of the tribe's right to intervene and/or request that the case be transferred to tribal court.~~))

(2) Every order or decree entered in any proceeding under this chapter shall contain a finding that the federal Indian child welfare act or chapter 13.--- RCW (the new chapter created in section 34 of this act) does or does not apply. Where there is a finding that the federal Indian child welfare act or chapter 13.--- RCW (the new chapter created in section 34 of this act) does apply, the decree or order must also contain a finding that all notice ((~~requirements~~)) and evidentiary requirements under the federal Indian child welfare act and chapter 13.--- RCW (the new chapter created in section 34 of this act) have been satisfied.

Sec. 32. RCW 26.33.040 and 2004 c 64 s 2 are each amended to read as follows:

(1)(a) Every petition filed in proceedings under this chapter shall contain a statement alleging whether the child is or may be an Indian child as defined in ((~~25 U.S.C. Sec. 1903~~)) section 4 of this act. If the child is an Indian child ((~~as defined under the Indian child welfare act, the provisions of the act~~)), chapter 13.--- RCW (the new chapter created in section 34 of this act) shall apply.

(b) Every order or decree entered in any proceeding under this chapter shall contain a finding that the federal Indian child welfare act or chapter 13.--- RCW (the new chapter created in section 34 of this act) does or does not apply. Where there is a finding that the federal Indian child welfare act or chapter 13.--- RCW (the new chapter created in section 34 of this act) does apply, the decree or order must also contain a finding that all notice requirements and evidentiary requirements under the federal Indian child welfare act

and chapter 13.--- RCW (the new chapter created in section 34 of this act) have been satisfied.

(c) In proceedings under this chapter, the adoption facilitator shall file a sworn statement documenting efforts to determine whether an Indian child ((~~as defined under the Indian child welfare act, 25 U.S.C. Sec. 1903,~~)) is involved.

(d) Whenever the court or the petitioning party knows or has reason to know that an Indian child is involved in any termination, relinquishment, or placement proceeding under this chapter, the petitioning party shall promptly provide notice to the child's parent or Indian custodian and to the agent designated by the child's Indian tribe to receive such notices. Notice shall be by certified mail with return receipt requested. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the secretary of the interior in the manner described in 25 C.F.R. 23.11. If the child may be a member of more than one tribe, the petitioning party shall send notice to all tribes the petitioner has reason to know may be affiliated with the child.

(e) The notice shall: (i) Contain a statement notifying the parent or custodian and the tribe of the pending proceeding; and (ii) notify the tribe of the tribe's right to intervene and/or request that the case be transferred to tribal court.

(f) No termination, relinquishment, or placement proceeding shall be held until at least ten days after receipt of notice by the tribe. If the tribe requests, the court shall grant the tribe up to twenty additional days to prepare for such proceeding.

(2) Every petition filed in proceedings under this chapter shall contain a statement alleging whether the Soldiers and Sailors Civil Relief Act of 1940, 50 U.S.C. Sec. 501 et seq. applies to the proceeding. Every order or decree entered in any proceeding under this chapter shall contain a finding that the Soldiers and Sailors Civil Relief Act of 1940 does or does not apply.

Sec. 33. RCW 74.13.350 and 2004 c 183 s 4 are each amended to read as follows:

It is the intent of the legislature that parents are responsible for the care and support of children with developmental disabilities. The legislature recognizes that, because of the intense support required to care for a child with developmental disabilities, the help of an out-of-home placement may be needed. It is the intent of the legislature that, when the sole reason for the out-of-home placement is the child's developmental disability, such services be offered by the department to these children and their families through a voluntary placement agreement. In these cases, the parents shall retain legal custody of the child.

As used in this section, "voluntary placement agreement" means a written agreement between the department and a child's parent or legal guardian authorizing the department to place the child in a licensed facility. Under the terms of this agreement, the parent or legal guardian shall retain legal custody and the department shall be responsible for the child's placement and care. The agreement shall at a minimum specify the legal status of the child and the rights and obligations of the parent or legal guardian, the child, and the department while the child is in placement. The agreement must be signed by the child's parent or legal guardian and the department to be in effect, except that an agreement regarding an Indian child shall not be valid unless executed ((~~in writing before the court and filed with the court as provided in RCW 13.34.245~~)) in accordance with section 15 of this act. Any party to a voluntary placement agreement may terminate the agreement at any time. Upon termination of the agreement, the child shall be returned to the care of the child's parent or legal guardian unless the child has been taken into custody pursuant to RCW 13.34.050 or 26.44.050, placed in shelter care pursuant to RCW 13.34.060, or placed in foster care pursuant to RCW 13.34.130.

As used in this section, "out-of-home placement" and "out-of-home care" mean the placement of a child in a foster family home or group care facility licensed under chapter 74.15 RCW.

Whenever the department places a child in out-of-home care under a voluntary placement pursuant to this section, the department shall have the responsibility for the child's placement and care. The department shall develop a permanency plan of care for the child no later than sixty days from the date that the department assumes responsibility for the child's placement and care. Within the first one hundred eighty days of the placement, the department shall obtain a judicial determination pursuant to RCW 13.04.030(1)(j) and 13.34.270 that the placement is in the best interests of the child. If the child's out-of-home placement ends before one hundred eighty days have elapsed, no judicial determination under RCW 13.04.030(1)(b) is required. The permanency planning hearings shall review whether the child's best interests are served by continued out-of-home placement and determine the future legal status of the child.

The department shall provide for periodic administrative reviews as required by federal law. A review may be called at any time by either the department, the parent, or the legal guardian.

Nothing in this section shall prevent the department from filing a dependency petition if there is reason to believe that the child is a dependent child as defined in RCW 13.34.030.

The department shall adopt rules providing for the implementation of chapter 386, Laws of 1997 and the transfer of responsibility for out-of-home placements from the dependency process under chapter 13.34 RCW to the process under this chapter.

It is the intent of the legislature that the department undertake voluntary out-of-home placement in cases where the child's developmental disability is such that the parent, guardian, or legal custodian is unable to provide the necessary care for the child, and the parent, guardian, or legal custodian has determined that the child would benefit from placement outside of the home. If the department does not accept a voluntary placement agreement signed by the parent, a petition may be filed and an action pursued under chapter 13.34 RCW. The department shall inform the parent, guardian, or legal custodian in writing of their right to civil action under chapter 13.34 RCW.

Nothing in this section prohibits the department from seeking support from parents of a child, including a child with a developmental disability if the child has been placed into care as a result of an action under chapter 13.34 RCW, when state or federal funds are expended for the care and maintenance of that child or when the department receives an application for services from the physical custodian of the child, unless the department finds that there is good cause not to pursue collection of child support against the parent or parents.

NEW SECTION. **Sec. 34.** Sections 1 through 20 of this act constitute a new chapter in Title 13 RCW.

NEW SECTION. **Sec. 35.** RCW 13.34.250 (Preference characteristics when placing Indian child in foster care home) and 1979 c 155 s 53 are each repealed."

Senator Hargrove spoke in favor of adoption of the striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Hargrove and Stevens to Substitute Senate Bill No. 5656.

The motion by Senator Hargrove 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 "welfare act;" strike the remainder of the title and insert "amending RCW 13.32A.152, 13.34.040, 13.34.070, 13.34.105, 13.34.130, 13.34.132, 13.34.190, 26.10.034, 26.33.040, and 74.13.350; reenacting and amending RCW 13.34.030, 13.34.065, and 13.34.136; adding a new chapter to Title 13 RCW; and repealing RCW 13.34.250."

MOTION

On motion of Senator Hargrove, the rules were suspended, Engrossed Substitute Senate Bill No. 5656 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Hargrove and Stevens spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 5656.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 5656 and the bill passed the Senate by the following vote: Yeas, 46; Nays, 1; Absent, 0; Excused, 2.

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, Prentice, Pridemore, Ranker, Regala, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

Voting nay: Senator Honeyford

Excused: Senators Pflug and Roach

ENGROSSED SUBSTITUTE SENATE BILL NO. 5656, 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

SENATE BILL NO. 5740, by Senators Kastama, Chase and Roach

Preventing predatory guardianships of incapacitated adults.

MOTION

On motion of Senator Kastama, Substitute Senate Bill No. 5740 was substituted for Senate Bill No. 5740 and the substitute bill was placed on the second reading and read the second time.

MOTION

Senator Kastama moved that the following striking amendment by Senator Kastama and others be adopted:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 11.88.030 and 2009 c 521 s 36 are each amended to read as follows:

(1) Any person or entity may petition for the appointment of a qualified person, trust company, national bank, or nonprofit corporation authorized in RCW 11.88.020 as the guardian or limited guardian of an incapacitated person. No liability for filing a petition for guardianship or limited guardianship shall attach to a petitioner acting in good faith and upon reasonable basis. A petition for guardianship or limited guardianship shall state:

(a) The name, age, residence, and post office address of the alleged incapacitated person;

(b) The nature of the alleged incapacity in accordance with RCW 11.88.010;

(c) The approximate value and description of property, including any compensation, pension, insurance, or allowance, to which the alleged incapacitated person may be entitled;

(d) Whether there is, in any state, a guardian or limited guardian, or pending guardianship action for the person or estate of the alleged incapacitated person;

(e) The residence and post office address of the person whom petitioner asks to be appointed guardian or limited guardian;

(f) The names and addresses, and nature of the relationship, so far as known or can be reasonably ascertained, of the persons most closely related by blood, marriage, or state registered domestic partnership to the alleged incapacitated person;

(g) The name and address of the person or facility having the care and custody of the alleged incapacitated person;

(h) The reason why the appointment of a guardian or limited guardian is sought and the interest of the petitioner in the appointment, and whether the appointment is sought as guardian or limited guardian of the person, the estate, or both;

(i) A description of any alternate arrangements previously made by the alleged incapacitated person, such as trusts or powers of attorney, including identifying any guardianship nominations contained in a power of attorney, and why a guardianship is nevertheless necessary;

(j) The nature and degree of the alleged incapacity and the specific areas of protection and assistance requested and the limitation of rights requested to be included in the court's order of appointment;

(k) The requested term of the limited guardianship to be included in the court's order of appointment;

(l) Whether the petitioner is proposing a specific individual to act as guardian ad litem and, if so, the individual's knowledge of or relationship to any of the parties, and why the individual is proposed.

(2)(a) The attorney general may petition for the appointment of a guardian or limited guardian in any case in which there is cause to believe that a guardianship is necessary and no private party is able and willing to petition.

(b) Prepayment of a filing fee shall not be required in any guardianship or limited guardianship brought by the attorney general. Payment of the filing fee shall be ordered from the estate of the incapacitated person at the hearing on the merits of the petition, unless in the judgment of the court, such payment would impose a hardship upon the incapacitated person, in which case the filing shall be waived.

(3) No filing fee shall be charged by the court for filing either a petition for guardianship or a petition for limited guardianship if the petition alleges that the alleged incapacitated person has total assets of a value of less than three thousand dollars.

(4)(a) Notice that a guardianship proceeding has been commenced shall be personally served upon the alleged incapacitated person and the guardian ad litem along with a copy of the petition for appointment of a guardian. Such notice shall be served not more than five court days after the petition has been filed.

(b) Notice under this subsection shall include a clear and easily readable statement of the legal rights of the alleged incapacitated person that could be restricted or transferred to a guardian by a guardianship order as well as the right to counsel of choice and to a jury trial on the issue of incapacity. Such notice shall be in

substantially the following form and shall be in capital letters, double-spaced, and in a type size not smaller than ten-point type:

IMPORTANT NOTICE PLEASE READ CAREFULLY

A PETITION TO HAVE A GUARDIAN APPOINTED FOR YOU HAS BEEN FILED IN THE ..... COUNTY SUPERIOR COURT BY ..... IF A GUARDIAN IS APPOINTED, YOU COULD LOSE ONE OR MORE OF THE FOLLOWING RIGHTS:

(1) TO MARRY, DIVORCE, OR ENTER INTO OR END A STATE REGISTERED DOMESTIC PARTNERSHIP;

(2) TO VOTE OR HOLD AN ELECTED OFFICE;

(3) TO ENTER INTO A CONTRACT OR MAKE OR REVOKE A WILL;

(4) TO APPOINT SOMEONE TO ACT ON YOUR BEHALF;

(5) TO SUE AND BE SUED OTHER THAN THROUGH A GUARDIAN;

(6) TO POSSESS A LICENSE TO DRIVE;

(7) TO BUY, SELL, OWN, MORTGAGE, OR LEASE PROPERTY;

(8) TO CONSENT TO OR REFUSE MEDICAL TREATMENT;

(9) TO DECIDE WHO SHALL PROVIDE CARE AND ASSISTANCE;

(10) TO MAKE DECISIONS REGARDING SOCIAL ASPECTS OF YOUR LIFE.

UNDER THE LAW, YOU HAVE CERTAIN RIGHTS.

YOU HAVE THE RIGHT TO BE REPRESENTED BY A LAWYER OF YOUR OWN CHOOSING. THE COURT WILL APPOINT A LAWYER TO REPRESENT YOU IF YOU ARE UNABLE TO PAY OR PAYMENT WOULD RESULT IN A SUBSTANTIAL HARDSHIP TO YOU.

YOU HAVE THE RIGHT TO ASK FOR A JURY TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN TO HELP YOU.

YOU HAVE THE RIGHT TO BE PRESENT IN COURT AND TESTIFY WHEN THE HEARING IS HELD TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN. IF A GUARDIAN AD LITEM IS APPOINTED, YOU HAVE THE RIGHT TO REQUEST THE COURT TO REPLACE THAT PERSON.

(5) All petitions filed under the provisions of this section shall be heard within sixty days unless an extension of time is requested by a party or the guardian ad litem within such sixty day period and granted for good cause shown. If an extension is granted, the court shall set a new hearing date.

(6) The court must provide a person filing a petition under this section information regarding professional and lay guardians. The purpose of the information is to provide family members of incapacitated adults with information detailing: What a guardian is, the different types of guardianships in Washington, the powers granted to a guardian, an explanation of how professional guardian fees are approved by the court and how professional guardians may bill for their services, a description of the process to modify a guardianship or to remove a guardian, and information about the certified professional guardian board and program. Failure to provide the information set forth in this subsection shall not constitute the sole cause for discharge of a guardian or delay of a guardianship hearing.

Sec. 2. RCW 11.88.040 and 2008 c 6 s 803 are each amended to read as follows:

(1) Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be served personally upon the alleged incapacitated person, if over fourteen years of age, and served upon the guardian ad litem.

(2) Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ((~~ten~~)) fifteen days after service thereof, ((~~shall~~)) the name of the person who the court or guardian ad litem proposes to be appointed as guardian or limited guardian, a copy of the petition for appointment of guardian, and the statement of the legal rights of the alleged incapacitated person that could be restricted or transferred to a guardian by a guardianship order must be given by registered or certified mail to the last known address requesting a return receipt signed by the addressee or an agent appointed by the addressee, or by personal service in the manner provided for services of summons, but duplicates of information already provided under RCW 11.88.030 or other applicable statutes or rules need not be given, to the following:

(((~~(1)~~))) (a) The alleged incapacitated person, or minor, if under fourteen years of age;

(((~~(2)~~))) (b) A parent, if the alleged incapacitated person is a minor, all known children not residing with a notified person, and the spouse or domestic partner of the alleged incapacitated person if any;

(((~~(3)~~))) (c) Any other person who has been appointed as guardian or limited guardian, or the person with whom the alleged incapacitated person resides. No notice need be given to those persons named in ((~~subsections (2) and (3)~~)) (a) and (b) of this subsection if they have signed the petition for the appointment of the guardian or limited guardian or have waived notice of the hearing.

(((~~(4)~~))) (3) If the petition is by a parent asking for appointment as guardian or limited guardian of a minor child under the age of fourteen years, or if the petition is accompanied by the written consent of a minor of the age of fourteen years or upward, who consents to the appointment of the guardian or limited guardian asked for, or if the petition is by a nonresident guardian of any minor or incapacitated person, then the court may appoint the guardian without notice of the hearing. The court for good cause may reduce the number of days of notice, but in every case, at least three days notice shall be given.

(4) The alleged incapacitated person shall be present in court at the final hearing on the petition((~~: PROVIDED, That~~)). However, this requirement may be waived at the discretion of the court for good cause other than mere inconvenience shown in the report to be provided by the guardian ad litem pursuant to RCW 11.88.090 as now or hereafter amended, or if no guardian ad litem is required to be appointed pursuant to RCW 11.88.090, as now or hereafter amended, at the discretion of the court for good cause shown by a party. Alternatively, the court may remove itself to the place of residence of the alleged incapacitated person and conduct the final hearing in the presence of the alleged incapacitated person. Final hearings on the petition may be held in closed court without admittance of any person other than those necessary to the action or proceeding.

(5) If presence of the alleged incapacitated person is waived and the court does not remove itself to the place of residence of such person, the guardian ad litem shall appear in person at the final hearing on the petition.

Sec. 3. RCW 11.88.120 and 1991 c 289 s 7 are each amended to read as follows:

(1) At any time after establishment of a guardianship or appointment of a guardian, the court may, upon the death of the guardian or limited guardian, or, for other good reason, modify or terminate the guardianship or replace the guardian or limited guardian.

(2) Any person, including an incapacitated person, may apply to the court for an order to modify or terminate a guardianship or to replace a guardian or limited guardian.

(a) If applicants are represented by counsel, counsel shall move for an order to show cause why the relief requested should not be granted.

(b) If applicants are not represented by counsel, they may move for an order to show cause, or they may deliver a written request to the clerk of the court, which must be considered by the court as the equivalent of a motion for an order to show cause.

(3) By the next judicial day after receipt of ((~~an unrepresented~~)) a person's request to modify or terminate a guardianship order, or to replace a guardian or limited guardian, the clerk shall deliver the request to the court. The court ((~~may (a)~~)) must direct the clerk to schedule a hearing((~~, (b)~~)) on the request and mail notice to the guardian, the incapacitated person, the applicant, all counsel of record, and any other person entitled to receive notice of proceedings in the matter, except that the court may deny the application without scheduling a hearing, if it appears based on documents in the court file that the application is frivolous. The court may appoint a guardian ad litem to investigate the issues raised by the application or to take any emergency action the court deems necessary to protect the incapacitated person until a hearing can be held((~~, or (c) deny the application without scheduling a hearing, if it appears based on documents in the court file that the application is frivolous~~)). Any denial of an application without a hearing shall be in writing with the reasons for the denial explained. A copy of the order shall be mailed by the clerk to the applicant, to the guardian, and to any other person entitled to receive notice of proceedings in the matter. ((~~Unless within thirty days after receiving the request from the clerk the court directs otherwise, the clerk shall schedule a hearing on the request and mail notice to the guardian, the incapacitated person, the applicant, all counsel of record, and any other person entitled to receive notice of proceedings in the matter.~~))

(4) In a hearing on an application to modify or terminate a guardianship, or to replace a guardian or limited guardian, the court may grant such relief as it deems just and in the best interest of the incapacitated person. If there is a professional guardian, and the applicant makes a prima facie showing that the guardian has breached a fiduciary, professional, or ethical duty with respect to the guardianship as proscribed by the certified professional guardian board, the burden of proof shall shift to the guardian to establish that his or her conduct was appropriate.

(5) The court may order persons who have been removed as guardians to deliver any property or records belonging to the incapacitated person in accordance with the court's order. Similarly, when guardians have died or been removed and property or records of an incapacitated person are being held by any other person, the court may order that person to deliver it in accordance with the court's order. Disobedience of an order to deliver shall be punishable as contempt of court.

Sec. 4. RCW 11.88.090 and 2008 c 6 s 804 are each amended to read as follows:

(1) Nothing contained in RCW 11.88.080 through 11.88.120, 11.92.010 through 11.92.040, 11.92.060 through 11.92.120, 11.92.170, and 11.92.180 shall affect or impair the power of any court to appoint a guardian ad litem to defend the interests of any incapacitated person interested in any suit or matter pending therein, or to commence and prosecute any suit in his or her behalf.

(2) Prior to the appointment of a guardian or a limited guardian, whenever it appears that the incapacitated person or incapacitated person's estate could benefit from mediation and such mediation would likely result in overall reduced costs to the estate, upon the motion of the alleged incapacitated person or the guardian ad litem, or subsequent to such appointment, whenever it appears that the incapacitated person or incapacitated person's estate could benefit from mediation and such mediation would likely result in overall reduced costs to the estate, upon the motion of any interested person, the court may:

(a) Require any party or other person subject to the jurisdiction of the court to participate in mediation;

(b) Establish the terms of the mediation; and

(c) Allocate the cost of the mediation ((~~pursuant to RCW 11.96.140~~)).

(3)(a) Upon receipt of a petition for appointment of guardian or limited guardian, except as provided herein, the court shall appoint a guardian ad litem to represent the best interests of the alleged incapacitated person, who shall be a person found or known by the court to:

((~~(a)~~)) (i) Be free of influence from anyone interested in the result of the proceeding; and

((~~(b)~~)) (ii) Have the requisite knowledge, training, or expertise to perform the duties required by this section.

(b) The guardian ad litem shall within five days of receipt of notice of appointment file with the court and serve, either personally or by certified mail with return receipt, each party with a statement including: His or her training relating to the duties as a guardian ad litem; his or her criminal history as defined in RCW 9.94A.030 for the period covering ten years prior to the appointment; his or her hourly rate, if compensated; whether the guardian ad litem has had any contact with a party to the proceeding prior to his or her appointment; and whether he or she has an apparent conflict of interest. Within three days of the later of the actual service or filing of the guardian ad litem's statement, any party may set a hearing and file and serve a motion for an order to show cause why the guardian ad litem should not be removed for one of the following three reasons: (i) Lack of expertise necessary for the proceeding; (ii) an hourly rate higher than what is reasonable for the particular proceeding; or (iii) a conflict of interest. Notice of the hearing shall be provided to the guardian ad litem and all parties. If, after a hearing, the court enters an order replacing the guardian ad litem, findings shall be included, expressly stating the reasons for the removal. If the guardian ad litem is not removed, the court has the authority to assess to the moving party, attorneys' fees and costs related to the motion. The court shall assess attorneys' fees and costs for frivolous motions.

(c) No guardian ad litem need be appointed when a parent is petitioning for a guardian or a limited guardian to be appointed for his or her minor child and the minority of the child, as defined by RCW 11.92.010, is the sole basis of the petition. The order appointing the guardian ad litem shall recite the duties set forth in subsection (5) of this section. The appointment of a guardian ad litem shall have no effect on the legal competency of the alleged incapacitated person and shall not overcome the presumption of competency or full legal and civil rights of the alleged incapacitated person.

(4)(a) The superior court of each county shall develop and maintain a registry of persons who are willing and qualified to serve as guardians ad litem in guardianship matters. The court shall choose as guardian ad litem a person whose name appears on the registry in a system of consistent rotation, except in extraordinary circumstances such as the need for particular expertise. The court shall develop procedures for periodic review of the persons on the registry and for probation, suspension, or removal of persons on the registry for failure to perform properly their duties as guardian ad litem. In the event the court does not select the person next on the list, it shall include in the order of appointment a written reason for its decision.

(b) To be eligible for the registry a person shall:

(i) Present a written statement outlining his or her background and qualifications. The background statement shall include, but is not limited to, the following information:

(A) Level of formal education;

(B) Training related to the guardian ad litem's duties;

(C) Number of years' experience as a guardian ad litem;

(D) Number of appointments as a guardian ad litem and the county or counties of appointment;

(E) Criminal history, as defined in RCW 9.94A.030; and

(F) Evidence of the person's knowledge, training, and experience in each of the following: Needs of impaired elderly people, physical disabilities, mental illness, developmental disabilities, and other areas relevant to the needs of incapacitated persons, legal procedure, and the requirements of chapters 11.88 and 11.92 RCW.

The written statement of qualifications shall include the names of any counties in which the person was removed from a guardian ad litem registry pursuant to a grievance action, and the name of the court and the cause number of any case in which the court has removed the person for cause; and

(ii) Complete the training as described in (e) of this subsection. The training is not applicable to guardians ad litem appointed pursuant to special proceeding Rule 98.16W.

(c) Superior court shall remove any person from the guardian ad litem registry who misrepresents his or her qualifications pursuant to a grievance procedure established by the court.

(d) The background and qualification information shall be updated annually.

(e) The department of social and health services shall convene an advisory group to develop a model guardian ad litem training program and shall update the program biennially. The advisory group shall consist of representatives from consumer, advocacy, and professional groups knowledgeable in developmental disabilities, neurological impairment, physical disabilities, mental illness, domestic violence, aging, legal, court administration, the Washington state bar association, and other interested parties.

(f) The superior court shall require utilization of the model program developed by the advisory group as described in (e) of this subsection, to assure that candidates applying for registration as a qualified guardian ad litem shall have satisfactorily completed training to attain these essential minimum qualifications to act as guardian ad litem.

(5) The guardian ad litem appointed pursuant to this section ((~~shall have~~)) has the following duties:

(a) To meet and consult with the alleged incapacitated person as soon as practicable following appointment and explain, in language which such person can reasonably be expected to understand, the substance of the petition, the nature of the resultant proceedings, the person's right to contest the petition, the identification of the proposed guardian or limited guardian, the right to a jury trial on the issue of his or her alleged incapacity, the right to independent legal counsel as provided by RCW 11.88.045, and the right to be present in court at the hearing on the petition;

(b) To obtain a written report according to RCW 11.88.045; and such other written or oral reports from other qualified professionals as are necessary to permit the guardian ad litem to complete the report required by this section;

(c) To meet with the person whose appointment is sought as guardian or limited guardian and ascertain:

(i) The proposed guardian's knowledge of the duties, requirements, and limitations of a guardian; and

(ii) The steps the proposed guardian intends to take or has taken to identify and meet the needs of the alleged incapacitated person;

(d) To consult as necessary to complete the investigation and report required by this section with those known relatives, friends, or other persons the guardian ad litem determines have had a significant, continuing interest in the welfare of the alleged incapacitated person;

(e) To investigate alternate arrangements made, or which might be created, by or on behalf of the alleged incapacitated person, such as revocable or irrevocable trusts, durable powers of attorney, or blocked accounts; whether good cause exists for any such arrangements to be discontinued; and why such arrangements should not be continued or created in lieu of a guardianship;

(f) To provide the court with a written report which shall include the following:

(i) A description of the nature, cause, and degree of incapacity, and the basis upon which this judgment was made;

(ii) A description of the needs of the incapacitated person for care and treatment, the probable residential requirements of the alleged incapacitated person and the basis upon which these findings were made;

(iii) An evaluation of the appropriateness of the guardian or limited guardian whose appointment is sought and a description of the steps the proposed guardian has taken or intends to take to identify and meet current and emerging needs of the incapacitated person;

(iv) A description of any alternative arrangements previously made by the alleged incapacitated person or which could be made, and whether and to what extent such alternatives should be used in lieu of a guardianship, and if the guardian ad litem is recommending discontinuation of any such arrangements, specific findings as to why such arrangements are contrary to the best interest of the alleged incapacitated person;

(v) A description of the abilities of the alleged incapacitated person and a recommendation as to whether a guardian or limited guardian should be appointed. If appointment of a limited guardian is recommended, the guardian ad litem shall recommend the specific areas of authority the limited guardian should have and the limitations and disabilities to be placed on the incapacitated person;

(vi) An evaluation of the person's mental ability to rationally exercise the right to vote and the basis upon which the evaluation is made;

(vii) Any expression of approval or disapproval made by the alleged incapacitated person concerning the proposed guardian or limited guardian or guardianship or limited guardianship;

(viii) Identification of persons with significant interest in the welfare of the alleged incapacitated person who should be advised of their right to request special notice of proceedings pursuant to RCW 11.92.150; and

(ix) Unless independent counsel has appeared for the alleged incapacitated person, an explanation of how the alleged incapacitated person responded to the advice of the right to jury trial, to independent counsel and to be present at the hearing on the petition.

Within forty-five days after notice of commencement of the guardianship proceeding has been served upon the guardian ad litem, and at least fifteen days before the hearing on the petition, unless an extension or reduction of time has been granted by the court for good cause, the guardian ad litem shall file its report and send a copy to the alleged incapacitated person and his or her counsel, spouse or domestic partner, all children not residing with a notified person, those persons described in (f)(viii) of this subsection, and persons who have filed a request for special notice pursuant to RCW 11.92.150. If the guardian ad litem needs additional time to finalize his or her report, then the guardian ad litem shall petition the court for a postponement of the hearing or, with the consent of all other parties, an extension or reduction of time for filing the report. If the hearing does not occur within sixty days of filing the petition, then upon the two-month anniversary of filing the petition and on or before the same day of each following month until the hearing, the guardian ad litem shall file interim reports summarizing his or her activities on the proceeding during that time period as well as fees and costs incurred;

(g) To advise the court of the need for appointment of counsel for the alleged incapacitated person within five court days after the meeting described in (a) of this subsection unless (i) counsel has appeared, (ii) the alleged incapacitated person affirmatively communicated a wish not to be represented by counsel after being advised of the right to representation and of the conditions under which court-provided counsel may be available, or (iii) the alleged incapacitated person was unable to communicate at all on the subject, and the guardian ad litem is satisfied that the alleged incapacitated person does not affirmatively desire to be represented by counsel;

(h) To disclose in writing to the court any prior or existing relationship, or other circumstance that would cause the appearance of a conflict of interest in the guardian ad litem's recommendation when the guardian ad litem is making a recommendation of appointment of a particular person or persons as a guardian to a court. Such disclosure must also be provided to persons receiving copies of the report as required in (f)(ix) of this subsection (5).

(6) If the petition is brought by an interested person or entity requesting the appointment of some other qualified person or entity and a prospective guardian or limited guardian cannot be found, the court shall order the guardian ad litem to investigate the availability of a possible guardian or limited guardian and to include the findings in a report to the court pursuant to subsection (5)(f) of this section.

(7) The parties to the proceeding may file responses to the guardian ad litem report with the court and deliver such responses to the other parties and the guardian ad litem at any time up to the second day prior to the hearing. If a guardian ad litem fails to file his or her report in a timely manner, the hearing shall be continued to give the court and the parties at least fifteen days before the hearing to review the report. At any time during the proceeding upon motion of any party or on the court's own motion, the court may remove the guardian ad litem for failure to perform his or her duties as specified in this chapter, provided that the guardian ad litem shall have five days' notice of any motion to remove before the court enters such order. In addition, the court in its discretion may reduce a guardian ad litem's fee for failure to carry out his or her duties.

(8) The court appointed guardian ad litem shall have the authority, in the event that the alleged incapacitated person is in need of emergency life-saving medical services, and is unable to consent to such medical services due to incapacity pending the hearing on the petition to give consent for such emergency life-saving medical services on behalf of the alleged incapacitated person.

(9) The court-appointed guardian ad litem shall have the authority to move for temporary relief under chapter 7.40 RCW to protect the alleged incapacitated person from abuse, neglect, abandonment, or exploitation, as those terms are defined in RCW 74.34.020, or to address any other emergency needs of the alleged incapacitated person. Any alternative arrangement executed before filing the petition for guardianship shall remain effective unless the court grants the relief requested under chapter 7.40 RCW, or unless, following notice and a hearing at which all parties directly affected by the arrangement are present, the court finds that the alternative arrangement should not remain effective.

(10) The guardian ad litem shall receive a fee determined by the court. The fee shall be charged to the alleged incapacitated person unless the court finds that such payment would result in substantial hardship upon such person, in which case the county shall be responsible for such costs: PROVIDED, That the court may charge such fee to the petitioner, the alleged incapacitated person, or any person who has appeared in the action; or may allocate the fee, as it deems just. If the petition is found to be frivolous or not brought in good faith, the guardian ad litem fee shall be charged to the petitioner. The court shall not be required to provide for the payment of a fee to any salaried employee of a public agency.

(11) Upon the presentation of the guardian ad litem report and the entry of an order either dismissing the petition for appointment of guardian or limited guardian or appointing a guardian or limited guardian, the guardian ad litem shall be dismissed and shall have no further duties or obligations unless otherwise ordered by the court. If the court orders the guardian ad litem to perform further duties or obligations, they shall not be performed at county expense.

(12) The guardian ad litem shall appear in person at all hearings on the petition unless all parties provide a written waiver of the requirement to appear.

(13) At any hearing the court may consider whether any person who makes decisions regarding the alleged incapacitated person or estate has breached a statutory or fiduciary duty.

NEW SECTION. **Sec. 5.** A new section is added to chapter 2.56 RCW to read as follows:

The administrator for the courts must publish on its web site information regarding professional and lay guardians. The purpose of the publication is to provide family members of incapacitated adults with information detailing: What a guardian is, the different types of guardianships in Washington, the powers granted to a guardian, an explanation of how professional guardian fees are approved by the court and how professional guardians may bill for their services, a description of the process to modify a guardianship or to remove a guardian, and information about the certified professional guardian board and program.

Sec. 6. RCW 43.190.060 and 1999 c 133 s 1 are each amended to read as follows:

(1) A long-term care ombudsman ((~~shall~~)) must:

(((~~(1)~~))) (a) Identify, investigate, and resolve complaints made by or on behalf of residents of long-term care facilities relating to administrative action, inaction, or decisions which may adversely affect the health, safety, welfare, and rights of these individuals;

(((~~(2)~~))) (b) Monitor the development and implementation of federal, state, and local laws, rules, regulations, and policies with respect to long-term care facilities in this state;

(((~~(3)~~))) (c) Provide information as appropriate to residents, resident representatives, and others regarding the rights of residents, and to public agencies regarding the problems of individuals residing in long-term care facilities; and

(((~~(4)~~))) (d) Provide for training volunteers and promoting the development of citizen organizations to participate in the ombudsman program. A trained volunteer long-term care ombudsman, in accordance with the policies and procedures established by the state long-term care ombudsman program, shall inform residents, their representatives, and others about the rights of residents, and may identify, investigate, and resolve complaints made by or on behalf of residents of long-term care facilities relating to action, inaction, or decisions, that may adversely affect the health, safety, welfare, and rights of these individuals.

(2) Publish on a web site, or otherwise make available to residents, families of residents, and the public information regarding professional and lay guardians. The purpose of the publication is to provide family members of incapacitated adults with information detailing: What a guardian is, the different types of guardianships in Washington, the powers granted to a guardian, an explanation of how professional guardian fees are approved by the court and how professional guardians may bill for their services, a description of the process to modify a guardianship or to remove a guardian, and information about the certified professional guardian board and program.

(3) Nothing in ((~~chapter 133, Laws of 1999 shall~~)) this section or RCW 43.190.065 may be construed to empower the state

long-term care ombudsman or any local long-term care ombudsman with statutory or regulatory licensing or sanctioning authority."

Senator Kastama 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 Senator Kastama and others to Substitute Senate Bill No. 5740.

The motion by Senator Kastama 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 2 of the title, after "adults;" strike the remainder of the title and insert "amending RCW 11.88.030, 11.88.040, 11.88.120, 11.88.090, and 43.190.060; and adding a new section to chapter 2.56 RCW."

MOTION

On motion of Senator Kastama, the rules were suspended, Engrossed Substitute Senate Bill No. 5740 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Kastama and Stevens spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 5740.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 5740 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, Prentice, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

Excused: Senator Pflug

ENGROSSED SUBSTITUTE SENATE BILL NO. 5740, 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

SENATE BILL NO. 5068, by Senators Conway, Prentice and Kohl-Welles

Addressing the abatement of violations of the Washington industrial safety and health act during an appeal.

MOTION

On motion of Senator Conway, Substitute Senate Bill No. 5068 was substituted for Senate Bill No. 5068 and the substitute bill was placed on the second reading and read the second time.

MOTION

Senator Conway moved that the following striking amendment by Senators Conway and Holmquist Newbry be adopted:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 49.17.140 and 1994 c 61 s 1 are each amended to read as follows:

(1) If after an inspection or investigation the director or the director's authorized representative issues a citation under the authority of RCW 49.17.120 or 49.17.130, the department, within a reasonable time after the termination of such inspection or investigation, shall notify the employer by certified mail of the penalty to be assessed under the authority of RCW 49.17.180 and shall state that the employer has fifteen working days within which to notify the director that the employer wishes to appeal the citation or assessment of penalty. If, within fifteen working days from the communication of the notice issued by the director the employer fails to notify the director that the employer intends to appeal the citation or assessment penalty, and no notice is filed by any employee or representative of employees under subsection (3) of this section within such time, the citation and the assessment shall be deemed a final order of the department and not subject to review by any court or agency.

(2) If the director has reason to believe that an employer has failed to correct a violation for which ((~~a citation has been issued within the period permitted in the citation for its correction, which period shall not begin to run until the entry of a final order in the case of any appeal proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalties~~)) the employer was previously cited and which has become a final order, the director shall notify the employer by certified mail of such failure to correct the violation and of the penalty to be assessed under RCW 49.17.180 by reason of such failure, and shall state that the employer has fifteen working days from the communication of such notification and assessment of penalty to notify the director that the employer wishes to appeal the director's notification of the assessment of penalty. If, within fifteen working days from the receipt of notification issued by the director the employer fails to notify the director that the employer intends to appeal the notification of assessment of penalty, the notification and assessment of penalty shall be deemed a final order of the department and not subject to review by any court or agency.

(3) If any employer notifies the director that the employer intends to appeal the citation issued under either RCW 49.17.120 or 49.17.130 or notification of the assessment of a penalty issued under subsections (1) or (2) of this section, or if, within fifteen working days from the issuance of a citation under either RCW 49.17.120 or 49.17.130 any employee or representative of employees files a notice with the director alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the director may reassume jurisdiction over the entire matter, or any portion thereof upon which notice of intention to appeal has been filed with the director pursuant to this subsection. If the director reassumes jurisdiction of all or any portion of the matter upon which notice of appeal has been filed with the director, any redetermination shall be completed and corrective notices of assessment of penalty, citations, or revised periods of abatement completed within a period of thirty working days. The thirty-working-day redetermination period may be extended up to fifteen additional working days upon agreement of all parties to the appeal. The redetermination shall then become final subject to direct appeal to the board of industrial insurance appeals within fifteen working days of such redetermination with service of notice of appeal upon the director. In the event that the director does not reassume jurisdiction as

provided in this subsection, the director shall promptly notify the state board of industrial insurance appeals of all notifications of intention to appeal any such citations, any such notices of assessment of penalty and any employee or representative of employees notice of intention to appeal the period of time fixed for abatement of a violation and in addition certify a full copy of the record in such appeal matters to the board. The director shall adopt rules of procedure for the reassumption of jurisdiction under this subsection affording employers, employees, and employee representatives notice of the reassumption of jurisdiction by the director, and an opportunity to object or support the reassumption of jurisdiction, either in writing or orally at an informal conference to be held prior to the expiration of the redetermination period. Except as otherwise provided under subsection (4) of this section, a notice of appeal filed under this section shall stay the effectiveness of any citation or notice of the assessment of a penalty pending review by the board of industrial insurance appeals, but such appeal shall not stay the effectiveness of any order of immediate restraint issued by the director under the authority of RCW 49.17.130. The board of industrial insurance appeals shall afford an opportunity for a hearing in the case of each such appellant and the department shall be represented in such hearing by the attorney general and the board shall in addition provide affected employees or authorized representatives of affected employees an opportunity to participate as parties to hearings under this subsection. The board shall thereafter make disposition of the issues in accordance with procedures relative to contested cases appealed to the state board of industrial insurance appeals.

Upon application by an employer showing that a good faith effort to comply with the abatement requirements of a citation has been made and that the abatement has not been completed because of factors beyond the employer's control, the director after affording an opportunity for a hearing shall issue an order affirming or modifying the abatement requirements in such citation.

(4) An appeal of any violation classified and cited as serious, willful, repeated serious violation, or failure to abate a serious violation does not stay abatement dates and requirements except as follows:

(a) An employer may request a stay of abatement for any serious, willful, repeated serious violation, or failure to abate a serious violation in a notice of appeal under subsection (3) of this section;

(b) When the director reassumes jurisdiction of an appeal under subsection (3) of this section, it will include the stay of abatement request. The issued redetermination decision will include a decision on the stay of abatement request. The department shall stay the abatement for any serious, willful, repeated serious violation, or failure to abate a serious violation where the department cannot determine that the preliminary evidence shows a substantial probability of death or serious physical harm to workers. The decision on stay of abatement will be final unless the employer renews the request for a stay of abatement in any direct appeal of the redetermination to the board of industrial insurance appeals under subsection (3) of this section;

(c) The board of industrial insurance appeals shall adopt rules necessary for conducting an expedited review on any stay of abatement requests identified in the employer's notice of appeal, and shall issue a final decision within forty-five working days of the board's notice of filing of appeal. This rule making shall be initiated in 2011;

(d) Affected employees or their representatives must be afforded an opportunity to participate as parties in an expedited review for stay of abatement;

(e) The board shall grant a stay of an abatement for a serious, willful, repeated serious violation, or failure to abate a serious violation where there is good cause for a stay unless based on the preliminary evidence it is more likely than not that a stay would result in death or serious physical harm to a worker;

(f) As long as a motion to stay abatement is pending all abatement requirements will be stayed.

(5) When the board of industrial insurance appeals denies a stay of abatement and abatement is required while the appeal is adjudicated, the abatement process must be the same process as the process required for abatement upon a final order.

(6) The department shall develop rules necessary to implement subsections (4) and (5) of this section. In an application for a stay of abatement, the department will not grant a stay when it can determine that the preliminary evidence shows a substantial probability of death or serious physical harm to workers. The board will not grant a stay where based on the preliminary evidence it is more likely than not that a stay would result in death or serious physical harm to a worker. This rule making shall be initiated in 2011."

Senators Conway and Holmquist Newbry 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 Conway and Holmquist Newbry to Substitute Senate Bill No. 5068.

The motion by Senator Conway 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 2 of the title, after "appeal;" strike the remainder of the title and insert "and amending RCW 49.17.140."

MOTION

On motion of Senator Conway, the rules were suspended, Engrossed Substitute Senate Bill No. 5068 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Conway spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 5068.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 5068 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 2; 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, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

Voting nay: Senators Honeyford and Schoesler

ENGROSSED SUBSTITUTE SENATE BILL NO. 5068, 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

SENATE BILL NO. 5834, by Senators Murray, Litzow, McAuliffe, Nelson, Hill, White, Kohl-Welles, Fain and Eide

Permitting counties to direct an existing portion of local lodging taxes to programs for arts and heritage.

MOTIONS

On motion of Senator Murray, Substitute Senate Bill No. 5834 was substituted for Senate Bill No. 5834 and the substitute bill was placed on the second reading and read the second time.

On motion of Senator Murray, the rules were suspended, Substitute Senate Bill No. 5834 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Murray, Kohl-Welles, Keiser and McAuliffe spoke in favor of passage of the bill.

Senators Carrell, Zarelli and Benton spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5834.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5834 and the bill passed the Senate by the following vote: Yeas, 35; Nays, 14; Absent, 0; Excused, 0.

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

Voting nay: Senators Baumgartner, Baxter, Benton, Carrell, Delvin, Ericksen, Hewitt, Morton, Pflug, Prentice, Roach, Schoesler, Sheldon and Stevens

SUBSTITUTE SENATE BILL NO. 5834, 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 advanced to the seventh order of business.

THIRD READING

ENGROSSED SUBSTITUTE SENATE BILL NO. 5039, by Senate Committee on Health & Long-Term Care (originally sponsored by Senators Murray, Keiser, Hatfield, Pridemore, Conway and Chase).

Concerning insurance coverage of tobacco cessation treatment in the preventative benefit required under the federal law.

The bill was read on Third Reading.

Senators Murray, Keiser, Pridemore and Pflug spoke in favor of passage of the bill.

Senators Schoesler, Becker and Honeyford spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 5039.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 5039 and the bill passed the Senate by the following vote: Yeas, 28; Nays, 21; Absent, 0; Excused, 0.

Voting yea: Senators Brown, Chase, Conway, Eide, Fraser, Hargrove, Harper, Hatfield, Haugen, Hill, Hobbs, Kastama, Keiser, Kilmer, Kline, Kohl-Welles, McAuliffe, Murray, Nelson, Pflug, Prentice, Pridemore, Ranker, Regala, Rockefeller, Shin, Tom and White

Voting nay: Senators Baumgartner, Baxter, Becker, Benton, Carrell, Delvin, Ericksen, Fain, Hewitt, Holmquist Newbry, Honeyford, King, Litzow, Morton, Parlette, Roach, Schoesler, Sheldon, Stevens, Swecker and Zarelli

ENGROSSED SUBSTITUTE SENATE BILL NO. 5039, 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

SENATE BILL NO. 5352, by Senators Honeyford, Regala and Swecker

Regarding providing eyeglasses to medicaid enrollees.

MOTIONS

On motion of Senator Honeyford, Substitute Senate Bill No. 5352 was substituted for Senate Bill No. 5352 and the substitute bill was placed on the second reading and read the second time.

On motion of Senator Honeyford, the rules were suspended, Substitute Senate Bill No. 5352 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

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

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5352.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5352 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 SENATE BILL NO. 5352, 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

SENATE BILL NO. 5020, by Senators Murray, Regala, Kohl-Welles, Prentice and Chase

Protecting consumers by assuring persons using the title of social worker have graduated with a degree in social work from an educational program accredited by the council on social work education.

MOTION

On motion of Senator Hargrove, Substitute Senate Bill No. 5020 was substituted for Senate Bill No. 5020 and the substitute bill was placed on the second reading and read the second time.

MOTION

Senator Hargrove moved that the following amendment by Senators Hargrove, Stevens and Murray be adopted:

Beginning on page 2, after line 32, strike all material through "(b)" on page 3, line 3 and insert the following:

"(a) Persons employed in Washington on the effective date of this section under the job title of social worker so long as the person continues to be employed by the same agency as on the effective date of this section;

(b) Persons employed by the state of Washington on the effective date of this section under the job title of social worker so long as the person continues to be employed by the state and who shall continue to have the same layoff, reversion, transfer, and promotional opportunities as were available to the employee on the effective date of this section;

(c)"

Reletter the remaining subsection consecutively and correct any internal references accordingly

Senator Hargrove spoke in favor of adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Hargrove, Stevens and Murray on page 2, after line 32 to Substitute Senate Bill No. 5020.

The motion by Senator Hargrove carried and the amendment was adopted by voice vote.

MOTION

On motion of Senator Hargrove, the rules were suspended, Engrossed Substitute Senate Bill No. 5020 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Hargrove and Stevens spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 5020.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 5020 and the bill passed the Senate by the following vote: Yeas, 44; Nays, 5; Absent, 0; Excused, 0.

Voting yea: Senators Baxter, Becker, Brown, Carrell, Chase, Conway, Delvin, 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, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and White

Voting nay: Senators Baumgartner, Benton, Ericksen, Holmquist Newbry and Zarelli

ENGROSSED SUBSTITUTE SENATE BILL NO. 5020, 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

SENATE BILL NO. 5239, by Senators Honeyford, Morton, Swecker and Becker

Allocating federal forest revenue to public schools based on resident students. Revised for 1st Substitute: Requiring a definition of "resident" for purposes of the allocation method used to distribute federal forest revenue to schools.

MOTIONS

On motion of Senator Honeyford, Substitute Senate Bill No. 5239 was substituted for Senate Bill No. 5239 and the substitute bill was placed on the second reading and read the second time.

On motion of Senator Honeyford, the rules were suspended, Substitute Senate Bill No. 5239 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Honeyford spoke in favor of passage of the bill.

MOTION

On motion of Senator White, Senator Prentice was excused.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5239.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5239 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, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

Excused: Senator Prentice

SUBSTITUTE SENATE BILL NO. 5239, 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

SENATE BILL NO. 5595, by Senator Parlette

Concerning distribution of the public utility district privilege tax. Revised for 2nd Substitute: Concerning the distribution of the public utility district privilege tax.

MOTIONS

On motion of Senator Parlette, Second Substitute Senate Bill No. 5595 was substituted for Senate Bill No. 5595 and the second substitute bill was placed on the second reading and read the second time.

On motion of Senator Parlette, the rules were suspended, Second Substitute Senate Bill No. 5595 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Parlette spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Second Substitute Senate Bill No. 5595.

ROLL CALL

The Secretary called the roll on the final passage of Second Substitute Senate Bill No. 5595 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, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

Excused: Senator Prentice

SECOND SUBSTITUTE SENATE BILL NO. 5595, 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

SENATE BILL NO. 5242, by Senators Hargrove, Pflug, Kline, Regala, Harper, Carrell, Keiser, Nelson, Sheldon, Conway and Shin

Addressing motorcycle profiling.

The measure was read the second time.

MOTION

Senator Hargrove moved that the following striking amendment by Senator Hargrove and others be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** A new section is added to chapter 43.101 RCW to read as follows:

(1) The criminal justice training commission shall ensure that issues related to motorcycle profiling are addressed in basic law enforcement training and offered to in-service law enforcement officers in conjunction with existing training regarding profiling.

(2) Local law enforcement agencies shall add a statement condemning motorcycle profiling to existing policies regarding profiling.

(3) For the purposes of this section, "motorcycle profiling" means the illegal use of the fact that a person rides a motorcycle or wears motorcycle-related paraphernalia as a factor in deciding to stop and question, take enforcement action, arrest, or search a person or vehicle with or without a legal basis under the United States Constitution or Washington state Constitution."

Senator Hargrove 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 Senator Hargrove and others to Senate Bill No. 5242.

The motion by Senator Hargrove 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 "profiling;" strike the remainder of the title and insert "and adding a new section to chapter 43.101 RCW."

MOTION

On motion of Senator Hargrove, the rules were suspended, Engrossed Senate Bill No. 5242 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Hargrove and Pflug spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Senate Bill No. 5242.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Senate Bill No. 5242 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, Pridemore, Ranker, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom, White and Zarelli

Excused: Senator Prentice

ENGROSSED SENATE BILL NO. 5242, 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

SENATE BILL NO. 5516, by Senators Tom, Hill, Becker, Kilmer, White and Shin

Allowing advance payments for equipment maintenance services for institutions of higher education.

The measure was read the second time.

MOTION

On motion of Senator Tom, the rules were suspended, Senate Bill No. 5516 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Tom and Hill 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. 5516.

ROLL CALL

The Secretary called the roll on the final passage of Senate Bill No. 5516 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

SENATE BILL NO. 5516, 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 10:55 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 1:33 p.m. by President Owen.

MOTION

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

MESSAGE FROM THE HOUSE

March 4, 2011

MR. PRESIDENT:
The House has passed:
ENGROSSED SUBSTITUTE HOUSE BILL NO. 1009,
HOUSE BILL NO. 1184,
ENGROSSED SUBSTITUTE HOUSE BILL NO. 1220,
ENGROSSED SUBSTITUTE HOUSE BILL NO. 1311,
SUBSTITUTE HOUSE BILL NO. 1431,
ENGROSSED HOUSE BILL NO. 1517,
SUBSTITUTE HOUSE BILL NO. 1560,
SUBSTITUTE HOUSE BILL NO. 1563,
SUBSTITUTE HOUSE BILL NO. 1575,
ENGROSSED SUBSTITUTE HOUSE BILL NO. 1737,
ENGROSSED SUBSTITUTE HOUSE BILL NO. 1740,
SUBSTITUTE HOUSE BILL NO. 1782,
ENGROSSED SUBSTITUTE HOUSE BILL NO. 1790,
SUBSTITUTE HOUSE BILL NO. 1858,
ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1901,
HOUSE BILL NO. 1953,
ENGROSSED SUBSTITUTE HOUSE CONCURRENT RESOLUTION NO. 4404.
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

March 4, 2011

MR. PRESIDENT:
The House has passed:
ENGROSSED SUBSTITUTE HOUSE BILL NO. 1041,
ENGROSSED SUBSTITUTE HOUSE BILL NO. 1094,
HOUSE BILL NO. 1381,
HOUSE BILL NO. 1412,
ENGROSSED SUBSTITUTE HOUSE BILL NO. 1469,
ENGROSSED SUBSTITUTE HOUSE BILL NO. 1478,
ENGROSSED SUBSTITUTE HOUSE BILL NO. 1509,
ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1634,
HOUSE BILL NO. 1649,
SECOND SUBSTITUTE HOUSE BILL NO. 1662,
ENGROSSED SUBSTITUTE HOUSE BILL NO. 1701,
ENGROSSED HOUSE BILL NO. 1702,
ENGROSSED SUBSTITUTE HOUSE BILL NO. 1708,
ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1792,
SECOND SUBSTITUTE HOUSE BILL NO. 1803,
HOUSE BILL NO. 1875,
ENGROSSED HOUSE BILL NO. 1969,
SUBSTITUTE HOUSE BILL NO. 1997.
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

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

SECOND READING

SENATE BILL NO. 5647, by Senators Fraser, Honeyford, Rockefeller, Morton, Shin and Chase

Modifying the Columbia river basin management program.

The measure was read the second time.

MOTION

Senator Fraser moved that the following amendment by Senator Rockefeller be adopted:

On page 7, line 34, after "of" strike "aggregate"

On page 7, line 36, after "of" strike "aggregate"

On page 8, beginning on line 4, after "populations." strike all material through "account." on line 9

On page 9, beginning on line 6, strike all of section 6

Renumber the remaining sections consecutively and correct any internal references accordingly.

On page 13, after line 17, insert the following:

"NEW SECTION. **Sec. 8.** The department of ecology shall, within existing resources and in consultation with stakeholders, evaluate options for aggregating projects to achieve the instream and out-of-stream allocation under RCW 90.90.020. The department shall report its findings to the legislature, consistent with RCW 43.01.035, by September 15, 2011."

Senator Fraser spoke in favor of adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Rockefeller on page 7, line 34 to Senate Bill No. 5647.

The motion by Senator Fraser carried and the 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 "90.90.010" strike ", 90.90.020, and 90.90.040" and insert "and 90.90.020"

On page 1, line 4 of the title, after "43.84.092;" strike "and"

On page 1, line 4 of the title, after "90.90 RCW" insert "; and creating a new section"

MOTION

On motion of Senator Fraser, the rules were suspended, Engrossed Senate Bill No. 5647 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Fraser and Parlette spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Senate Bill No. 5647.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Senate Bill No. 5647 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 SENATE BILL NO. 5647, 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

SENATE BILL NO. 5618, by Senators Chase, Kline and Hobbs

Limiting private activity bond issues by out-of-state issuers.

MOTIONS

On motion of Senator Chase, Substitute Senate Bill No. 5618 was substituted for Senate Bill No. 5618 and the substitute bill was placed on the second reading and read the second time.

On motion of Senator Chase, the rules were suspended, Substitute Senate Bill No. 5618 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Chase spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 5618.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 5618 and the bill failed the Senate by the following vote: Yeas, 21; Nays, 28; Absent, 0; Excused, 0.

Voting yea: Senators Brown, Chase, Conway, Eide, Fraser, Hargrove, Harper, Kastama, Keiser, Kilmer, Kline, Kohl-Welles, McAuliffe, Murray, Nelson, Prentice, Pridemore, Ranker, Regala, Rockefeller and White

Voting nay: Senators Baumgartner, Baxter, Becker, Benton, Carrell, Delvin, Ericksen, Fain, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, King, Litzow, Morton, Parlette, Pflug, Roach, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

SUBSTITUTE SENATE BILL NO. 5618, having failed to receive the constitutional majority, was declared lost.

SECOND READING

SENATE BILL NO. 5566, by Senators Kohl-Welles and Kline

Concerning long-term disability for injured workers and costs to the workers' compensation program.

The measure was read the second time.

MOTION

Senator Holmquist Newbry moved that the following striking amendment by Senators Holmquist Newbry and Kilmer be adopted:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** A new section is added to chapter 51.04 RCW to read as follows:

(1)(a) Notwithstanding RCW 51.04.060 or any other provision of this title, beginning September 1, 2011, the parties to an allowed claim for benefits may enter into a voluntary settlement agreement as provided in this section with respect to one or more allowed claims for benefits under this title. All voluntary settlement agreements must be approved by the board of industrial insurance appeals. The voluntary settlement agreement may:

(i) Bind the parties with regard to any or all aspects of an allowed claim including, but not limited to, monetary payment, vocational services, and claim closure;

(ii) Not subject any employer who is not a signatory to the agreement to any responsibility or burden under any claim; and

(iii) Not be submitted to the board under subsection (2) or (3) of this section within twelve weeks of the date of injury or disease manifestation.

(b) For purposes of this section, "parties" means:

(i) For a self-insured claim, the worker and the employer; and

(ii) For a state fund claim, the worker, the employer, and the department.

(c) For state fund claims, the department shall negotiate the settlement with the worker. Any voluntary settlement agreement entered into under this section must be signed by the parties or their representatives and must clearly state that the parties understand and agree to the terms of the voluntary settlement agreement. Unless one of the parties revokes consent to the agreement, as provided in subsection (3) of this section, the voluntary settlement agreement

becomes final and binding thirty days after approval of the agreement by the board of industrial insurance appeals.

(d) A voluntary settlement agreement that has become final and binding as provided in this section is binding on the department and on all parties to the agreement as to its terms and the injuries and occupational diseases to which the voluntary settlement applies. A voluntary settlement agreement that has become final and binding is not subject to appeal.

(2)(a) If a worker is not represented by an attorney at the time of signing a voluntary settlement agreement, the parties must forward a copy of the signed settlement agreement to the board with a request for a conference with a settlement officer. Unless one of the parties requests a later date, the settlement officer must convene a conference within fourteen days after receipt of the request for the limited purpose of receiving the voluntary settlement agreement of the parties, explaining to the worker the benefits generally available under this title, and explaining that a voluntary settlement agreement may alter the benefits payable on a claim. In no event may a settlement officer render legal advice to any party.

(b) Before approving the settlement agreement, the settlement officer shall ensure that the worker has an adequate understanding of the settlement proposal and its consequences to the worker.

(c)(i) The settlement officer may approve a settlement agreement only if the officer finds that the settlement is in the best interest of the worker. When determining whether the settlement is in the best interest of the worker, the settlement officer shall consider the following factors, taken as a whole, with no individual factor being determinative:

(A) The nature and extent of the injuries and disabilities of the worker;

(B) The age and life expectancy of the injured worker;

(C) Whether the injured worker has any health, disability, or related insurance;

(D) Any other benefits the injured worker is receiving or is entitled to receive and the effect a settlement agreement might have on those benefits;

(E) The marital status of the injured worker; and

(F) The number of dependents of the injured worker.

(ii) Within seven days after the conference, the settlement officer shall issue an order allowing or rejecting the voluntary settlement agreement. There is no appeal from the settlement officer's decision.

(d) If the settlement officer issues an order allowing the voluntary settlement agreement, the order must be submitted to the board.

(3) If a worker is represented by an attorney at the time of signing a voluntary settlement agreement, the parties may submit the agreement directly to the board without the conference described in this section.

(4) Upon receiving the voluntary settlement agreement, the board shall approve the agreement within thirty working days of receipt unless it finds that the parties have not entered into the agreement knowingly and willingly. If the board approves the agreement, it shall provide notice to the department of the binding terms of the agreement and provide for placement of the agreement in the applicable claim files.

(5) A party may revoke consent to the voluntary settlement agreement by providing written notice to the other parties and the board within thirty days after the date the agreement is approved by the board.

(6) To the extent the worker is found to be entitled to temporary total disability or permanent total disability benefits while a voluntary settlement agreement is being negotiated, or during the revocation period of an agreement, the benefits must be paid until the agreement becomes final.

(7) When future liability for medical benefits is released or otherwise relinquished in a settlement agreement under this section, any monetary compensation for medical benefits must be dispensed pursuant to a schedule of payments as established in the settlement agreement. The schedule of payments must be reasonably calculated to provide the injured worker with periodic payments throughout the expected time during which the worker will need medical treatment.

(8) A claim closed pursuant to a voluntary settlement agreement can be reopened only upon a showing of worsening of the related medical conditions under RCW 51.32.160 for medical treatment only. Further temporary total, temporary partial, permanent partial, or permanent total benefits are not payable under the same claim for which a voluntary settlement has been approved by the board.

NEW SECTION. **Sec. 2.** A new section is added to chapter 51.04 RCW to read as follows:

(1) In calendar years 2016, 2021, and 2026, the department shall contract for an independent study of voluntary settlement agreements approved by the board under this section. The study must be performed by a researcher that has experience in workers' compensation systems. When selecting the independent researcher, the department shall consult with the workers' compensation advisory committee. The study must evaluate the quality and effectiveness of settlement agreements of state fund and self-insured claims, provide information on the impact of settlement agreements to the state fund and to self-insured employers, and evaluate the outcomes of workers who have settled their claims. The study must be submitted to the appropriate committees of the legislature.

(2) The department shall contract with an independent entity with research experience in workers' compensation systems nationwide to study the nature, incidence, and cost of occupational disease claims in the Washington workers' compensation system. When selecting the independent researcher the department shall consult with the workers' compensation advisory committee. The study shall include, but not be limited to, an examination of the frequency and severity of occupational disease claims for state fund and self-insured employers, both currently and with respect to historical trends; the impact of occupational disease claims on long-term disability and pension trends; consideration of the statutory definition of occupational disease, and interpretation of it by courts, the board, and the department, how it compares to definitions in other states' systems and whether as applied it clearly delineates conditions caused by occupational exposures and those caused by nonoccupational exposures; consideration of the statute of limitation for filing occupational disease claims, and its interpretation by courts, and whether as applied it functions as an appropriate limitation on the filing of state claims; issues related to the apportionment of occupational diseases between workers and employers; and a comparison of other states and their definitions of occupational disease. The study must be submitted to the appropriate committees of the legislature by September 1, 2012.

(3) The department shall contract for an independent study of the return to work provisions under RCW 51.32.090. The study must be performed by a researcher that has experience in workers' compensation systems. When selecting the independent researcher, the department shall consult with the workers' compensation advisory committee. The study must evaluate the quality and effectiveness of the return to work program and whether the program is being utilized by employers, and evaluate the outcomes of workers participating in the program. The study must be submitted to the appropriate committees of the legislature by December 2016.

NEW SECTION. **Sec. 3.** A new section is added to chapter 51.04 RCW to read as follows:

The department must maintain copies of all voluntary settlement agreements entered into between the parties and develop processes under RCW 51.28.070 to furnish copies of such agreements to any party contemplating any subsequent voluntary settlement agreement with the worker on any claim. The department shall also furnish claims histories that include all prior permanent disability awards received by the worker on any claims by body part and category or percentage rating, as applicable. Copies of such agreements and claims histories shall be furnished within ten working days of a written request. An employer may not consider a prior settlement agreement or claims history when making a decision about hiring or the terms or conditions of employment.

NEW SECTION. **Sec. 4.** A new section is added to chapter 51.04 RCW to read as follows:

If a worker has received a prior award of, or entered into a voluntary settlement for, total or partial permanent disability benefits, it shall be conclusively presumed that the medical condition causing the prior permanent disability exists and is disabling at the time of any subsequent industrial injury or occupational disease. Except in the case of total permanent disability, the accumulation of all permanent disability awards issued with respect to any one part of the body in favor of the worker may not exceed one hundred percent over the worker's lifetime. When entering into a voluntary settlement agreement under this chapter, the department or self-insured employer may exclude amounts paid to settle claims for prior portions of a worker's permanent total or partial disability.

Sec. 5. RCW 51.32.090 and 2007 c 284 s 3 and 2007 c 190 s 1 are each reenacted and amended to read as follows:

(1) When the total disability is only temporary, the schedule of payments contained in RCW 51.32.060 (1) and (2) shall apply, so long as the total disability continues.

(2) Any compensation payable under this section for children not in the custody of the injured worker as of the date of injury shall be payable only to such person as actually is providing the support for such child or children pursuant to the order of a court of record providing for support of such child or children.

(3)(a) As soon as recovery is so complete that the present earning power of the worker, at any kind of work, is restored to that existing at the time of the occurrence of the injury, the payments shall cease. If and so long as the present earning power is only partially restored, the payments shall:

(i) For claims for injuries that occurred before May 7, 1993, continue in the proportion which the new earning power shall bear to the old; or

(ii) For claims for injuries occurring on or after May 7, 1993, equal eighty percent of the actual difference between the worker's present wages and earning power at the time of injury, but: (A) The total of these payments and the worker's present wages may not exceed one hundred fifty percent of the average monthly wage in the state as computed under RCW 51.08.018; (B) the payments may not exceed one hundred percent of the entitlement as computed under subsection (1) of this section; and (C) the payments may not be less than the worker would have received if (a)(i) of this subsection had been applicable to the worker's claim.

(b) No compensation shall be payable under this subsection (3) unless the loss of earning power shall exceed five percent.

(c) The prior closure of the claim or the receipt of permanent partial disability benefits shall not affect the rate at which loss of earning power benefits are calculated upon reopening the claim.

(4)(a) ((~~Whenever~~)) The legislature finds that long-term disability and the cost of injuries is significantly reduced when injured workers remain at work following their injury. To encourage employers at the time of injury to provide light duty or transitional work for their workers, wage subsidies and other incentives are made available to employers insured with the department.

(b) The employer of injury ((~~requests that~~)) may provide light duty or transitional work to a worker who is entitled to temporary total disability under this chapter ((~~be certified by a physician or licensed advanced registered nurse practitioner as able to perform available work other than his or her usual work,~~)). The employer or the department shall obtain from the physician or licensed advanced registered nurse practitioner a statement confirming the light duty or transitional work is consistent with the worker's medical restrictions related to the injury. This statement should be obtained before the start of the light duty or transitional work unless the worker has already returned to work with the employer of injury in which case the statement may be obtained following the start date of the job. The employer shall furnish to the physician or licensed advanced registered nurse practitioner, with a copy to the worker, a statement describing the work ((~~available~~)) with the employer of injury in terms that will enable the physician or licensed advanced registered nurse practitioner to relate the physical activities of the job to the worker's disability. The physician or licensed advanced registered nurse practitioner shall ((~~then determine~~)) confirm whether the worker is physically able to perform the work described. The worker's temporary total disability payments shall ((~~continue until the worker is released by his or her physician or licensed advanced registered nurse practitioner for the work, and begins the work with the employer of injury. If~~)) stop effective the date the light duty or transitional job starts. Temporary total disability payments shall resume if the work ((~~thereafter~~)) comes to an end before the worker's recovery is sufficient in the judgment of his or her physician or licensed advanced registered nurse practitioner to permit him or her to return to his or her usual job, or to perform other available work offered by the employer of injury((~~, the worker's temporary total disability payments shall be resumed~~)). Should the available work described, once undertaken by the worker, impede his or her recovery to the extent that in the judgment of his or her physician or licensed advanced registered nurse practitioner he or she should not continue to work, the worker's temporary total disability payments shall be resumed when the worker ceases such work at the direction of the physician or licensed advanced registered nurse practitioner.

(((~~b~~))) (c) To further encourage employers to maintain the employment of their injured workers, an employer insured with the department and that offers work to a worker pursuant to this subsection (4) shall be eligible for reimbursement of the injured worker's wages for light duty or transitional work equal to fifty percent of the basic, gross wages paid for that work, for a maximum of sixty-six work days within a consecutive twenty-four month period. In no event may the wage subsidies paid to an employer on a claim exceed ten thousand dollars. Wage subsidies shall be calculated using the worker's basic hourly wages or basic salary, and no subsidy shall be paid for any other form of compensation or payment to the worker such as tips, commissions, bonuses, board, housing, fuel, health care, dental care, vision care, per diem, reimbursements for work-related expenses, or any other payments. An employer may not, under any circumstances, receive a wage subsidy for a day in which the worker did not actually perform any work, regardless of whether or not the employer paid the worker wages for that day.

(d) If an employer offers a worker work pursuant to this subsection (4) and the worker must be provided with training or instruction to be qualified to perform the offered work, the employer shall be eligible for a reimbursement from the department for any tuition, books, fees, and materials required for that training or instruction, up to a maximum of one thousand dollars. Reimbursing an employer for the costs of such training or instruction does not constitute a determination by the department that the worker is eligible for vocational services authorized by

RCW 51.32.095 and 51.32.099.

(e) If an employer offers a worker work pursuant to this subsection (4), and the employer provides the worker with clothing that is necessary to allow the worker to perform the offered work, the employer shall be eligible for reimbursement for such clothing from the department, up to a maximum of four hundred dollars: PROVIDED, HOWEVER, That an employer shall not receive reimbursement for any clothing it provided to the worker that it normally provides to its workers. The clothing purchased for the worker shall become the worker's property once the work comes to an end.

(f) If an employer offers a worker work pursuant to this subsection (4) and the worker must be provided with tools or equipment to perform the offered work, the employer shall be eligible for a reimbursement from the department for such tools and equipment and related costs as determined by department rule, up to a maximum of two thousand five hundred dollars. An employer shall not be reimbursed for any tools or equipment purchased prior to offering the work to the worker pursuant to this subsection (4). An employer shall not be reimbursed for any tools or equipment that it normally provides to its workers. The tools and equipment shall be the property of the employer.

(g) An employer may offer work to a worker pursuant to this subsection (4) more than once, but in no event may the employer receive wage subsidies for more than sixty-six days of work in a consecutive twenty-four month period under one claim. An employer may continue to offer work pursuant to this subsection (4) after the worker has performed sixty-six days of work, but the employer shall not be eligible to receive wage subsidies for such work.

(h) An employer shall not receive any wage subsidies or reimbursement of any expenses pursuant to this subsection (4) unless the employer has completed and submitted the reimbursement request on forms developed by the department, along with all related information required by department rules. No wage subsidy or reimbursement shall be paid to an employer who fails to submit a form for such payment within one year of the date the work was performed. In no event shall an employer receive wage subsidy payments or reimbursements of any expenses pursuant to this subsection (4) unless the worker's physician or licensed advanced registered nurse practitioner has restricted him or her from performing his or her usual work and the worker's physician or licensed advanced registered nurse practitioner has released him or her to perform the work offered.

(i) Payments made under (b) through (g) of this subsection are subject to penalties under RCW 51.32.240(5) in cases where the funds were obtained through willful misrepresentation.

(j) Once the worker returns to work under the terms of this subsection (4), he or she shall not be assigned by the employer to work other than the available work described without the ((~~worker's written consent, or without prior review and~~)) approval ((~~by~~)) of the worker's physician or licensed advanced registered nurse practitioner. An employer who directs a claimant to perform work other than that approved by the attending physician and without the approval of the worker's physician or licensed advanced registered nurse practitioner shall not receive any wage subsidy or other reimbursements for such work.

(((~~c~~))) (k) If the worker returns to work under this subsection (4), any employee health and welfare benefits that the worker was receiving at the time of injury shall continue or be resumed at the level provided at the time of injury. Such benefits shall not be continued or resumed if to do so is inconsistent with the terms of the benefit program, or with the terms of the collective bargaining agreement currently in force.

(((~~d~~))) (l) In the event of any dispute as to the validity of the work offered or as to the worker's ability to perform the available work offered by the employer, the department shall make the final determination pursuant to an order that contains the notice required by RCW 51.52.060 and that is subject to appeal subject to RCW 51.52.050.

(5) An employer's experience rating shall not be affected by the employer's request for or receipt of wage subsidies.

(6) The department shall create a Washington stay-at-work account which shall be funded by assessments of employers insured through the state fund for the costs of the payments authorized by subsection (4) of this section and for the cost of creating a reserve for anticipated liabilities. Employers may collect up to one-half the fund assessment from workers.

(7) No worker shall receive compensation for or during the day on which injury was received or the three days following the same, unless his or her disability shall continue for a period of fourteen consecutive calendar days from date of injury: PROVIDED, That attempts to return to work in the first fourteen days following the injury shall not serve to break the continuity of the period of disability if the disability continues fourteen days after the injury occurs.

(((~~6~~))) (8) Should a worker suffer a temporary total disability and should his or her employer at the time of the injury continue to pay him or her the wages which he or she was earning at the time of such injury, such injured worker shall not receive any payment provided in subsection (1) of this section during the period his or her employer shall so pay such wages: PROVIDED, That holiday pay, vacation pay, sick leave, or other similar benefits shall not be deemed to be payments by the employer for the purposes of this subsection.

(((~~7~~))) (9) In no event shall the monthly payments provided in this section:

(a) Exceed the applicable percentage of the average monthly wage in the state as computed under the provisions of RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

(b) For dates of injury or disease manifestation after July 1, 2008, be less than fifteen percent of the average monthly wage in the state as computed under RCW 51.08.018 plus an additional ten dollars per month if the worker is married and an additional ten dollars per month for each child of the worker up to a maximum of five children. However, if the monthly payment computed under this subsection (((~~7~~))) (9)(b) is greater than one hundred percent of the wages of the worker as determined under RCW 51.08.178, the monthly payment due to the worker shall be equal to the greater of the monthly wages of the worker or the minimum benefit set forth in this section on June 30, 2008.

(((~~8~~))) (10) If the supervisor of industrial insurance determines that the worker is voluntarily retired and is no longer attached to the workforce, benefits shall not be paid under this section.

NEW SECTION. **Sec. 6.** The department of labor and industries may adopt rules to implement this act.

NEW SECTION. **Sec. 7.** 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 Holmquist Newbry spoke in favor of adoption of the striking amendment.

MOTION

Senator Nelson moved that the following amendment by Senator Nelson and others to the striking amendment be adopted:

On page 1, line 3, strike all of section 1 and insert the following:

"NEW SECTION. **Sec. 1.** A new section is added to chapter 51.04 RCW to read as follows:

The legislature finds that Washington's workers' compensation system is a complex system that has several unique features not commonly found in the workers' compensation systems of other governments. The legislature acknowledges that there have been calls for systematic reform of Washington's workers' compensation system in order to reduce short term and long term pension costs, and bring the system more in line with the systems of other states. However, the legislature finds it is critical that proposals to reduce costs be balanced against the fundamental purpose of the workers' compensation system, which is to provide sure and certain relief for workers injured in the course of their employment. The legislature finds that proposals for significant systematic workers compensation reform need deliberate, collaborative, and thoughtful evaluation in order to ensure changes have no adverse impact on worker outcomes, accountability, system efficiency, or cost predictability. The legislature therefore establishes a joint select committee on workers compensation to review and recommend proposals to reduce short term and long term pension costs while protecting the rights and outcomes of injured workers, including an examination of voluntary settlement agreements, programs to encourage and facilitate light duty and transitional work, and an evaluation of occupational diseases.

The joint select committee shall consist of eight members, including the chair and ranking minority member of the Senate labor, commerce, and consumer protection committee and the chair and ranking minority member of the House labor and workforce development committee. Two of the remaining members shall be appointed by the leaders of the two largest caucuses in the Senate; and two shall be appointed by the leaders of the two largest caucuses in the House of Representatives. Members of the committee must be reimbursed for travel expenses in accordance with RCW 44.04.120; expenses of the committee must be paid jointly by the Senate and the House of Representatives; and committee expenditures are subject to approval by the Senate facilities and operations committee and the House of Representatives executive rules committee, or their successor committees. The committee shall choose its co-chairs from among its membership, with the chair of the Senate labor, commerce, and consumer protection committee and the chair of the House labor and workforce development committee convening the initial meeting of the committee.

The committee must report its findings and recommendations to the appropriate committees of the legislature by December 1, 2011.

This section expires January 1, 2012."

On page 4, line 4, strike all of section 2.

On page 5, line 14, strike all of section 3.

On page 5, line 28, strike all of section 4.

Renumber the remaining sections.

On page 12, line 7 of the title amendment, strike everything after "authorization" and insert "creation of a joint select committee to review and evaluate proposals to reduce short term and long term costs while protecting the rights and outcomes of injured workers and creation of a return to work subsidy program; reenacting and amending RCW 51.32.090; adding a new section to chapter 51.04 RCW; and creating a new section."

Senators Nelson, Keiser, Conway and Kohl-Welles spoke in favor of adoption of the amendment to the striking amendment.

Senators Holmquist Newbry, Hobbs, Zarelli, King, Schoesler and Kastama spoke against adoption of the amendment to the striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Nelson and others on page 1, line 3 to the striking amendment to Senate Bill No. 5566.

The motion by Senator Nelson failed and the amendment to the striking amendment was not adopted by voice vote.

WITHDRAWAL OF AMENDMENT

On motion of Senator Hargrove, the amendment by Senator Hargrove on page 1, line 6 to the striking amendment to Senate Bill No. 5566 was withdrawn.

Senator Hargrove spoke on adoption of the amendment.

The President declared the question before the Senate to be the adoption of the striking amendment by Senators Holmquist Newbry and Kilmer to Senate Bill No. 5566.

The motion by Senator Holmquist Newbry 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 "Relating to" strike the remainder of the title and insert "workers' compensation reform through authorization of voluntary settlements, creation of a return to work subsidy program, and authorization of a study of occupational disease; reenacting and amending RCW 51.32.090; adding new sections to chapter 51.04 RCW; and creating a new section."

MOTION

On motion of Senator Holmquist Newbry, the rules were suspended, Engrossed Senate Bill No. 5566 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Holmquist Newbry, Pridemore, Kilmer and King spoke in favor of passage of the bill.

Senators Nelson, Kline, Conway, Kohl-Welles and Keiser spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Senate Bill No. 5566.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Senate Bill No. 5566 and the bill passed the Senate by the following vote: Yeas, 34; Nays, 15; Absent, 0; Excused, 0.

Voting yea: Senators Baumgartner, Baxter, Becker, Benton, Brown, Carrell, Delvin, Ericksen, Fain, Hargrove, Hatfield, Haugen, Hewitt, Hill, Hobbs, Holmquist Newbry, Honeyford, Kastama, Kilmer, King, Litzow, Morton, Parlette, Pflug, Pridemore, Roach, Rockefeller, Schoesler, Sheldon, Shin, Stevens, Swecker, Tom and Zarelli

Voting nay: Senators Chase, Conway, Eide, Fraser, Harper, Keiser, Kline, Kohl-Welles, McAuliffe, Murray, Nelson, Prentice, Ranker, Regala and White

ENGROSSED SENATE BILL NO. 5566, 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 2:44 p.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

The Senate was called to order at 3:53 p.m. by President Owen.

SECOND READING

SENATE BILL NO. 5769, by Senators Rockefeller, Pridemore, Kohl-Welles, White, Chase, Murray, Ranker, Regala, Fraser, Shin and Kline

Regarding coal-fired electric generation facilities.

MOTION

On motion of Senator Rockefeller, Second Substitute Senate Bill No. 5769 was substituted for Senate Bill No. 5769 and the second substitute bill was placed on the second reading and read the second time.

MOTION

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

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 101.** (1) The legislature finds that generating electricity from the combustion of coal produces large amounts of harmful pollutants, including ammonia, arsenic, lead, mercury, hydrochloric acid, nitrogen oxides, sulfuric acid, sulfur dioxide, particulate matter, and several toxic heavy metals, all of which have been determined by medical science to be harmful to human health and safety. In addition, the emissions from the combustion of coal in the state impact visibility in eight class I areas in the state. While the emission of many of these pollutants continues to be addressed through application of federal and state air quality laws, the emission of greenhouse gases resulting from the combustion of coal has not been addressed. Furthermore, these harmful by-products may be damaging the cultural history of Washington and its people by eroding ancient native American petroglyphs and pictographs and by accumulating in the soil and waters of the usual and accustomed areas for tribal hunting, fishing, gathering, and grazing.

(2) The legislature has previously found that greenhouse gas emissions contribute to climate change and has found that Washington is especially vulnerable to climate change. The legislature now finds that coal-fired electricity generation is one of the largest sources of greenhouse gas emissions in the state, and is the largest source of such emissions from the generation of electricity in the state.

(3) The legislature finds coal-fired electric generation may provide baseload power that is necessary in the near-term for the stability and reliability of the electrical transmission grid and that contributes to the availability of affordable power in the state. The legislature further finds that efforts to transition power to other fuels requires a reasonable period of time to ensure grid stability and to maintain affordable electricity resources.

(4) The legislature finds that coal-fired baseload electric generation facilities are a significant contributor to family-wage jobs and economic health in parts of the state and that transition of these facilities must address the economic future and the preservation of jobs in affected communities.

(5) The legislature finds that coal-fired baseload electric generation facilities are large industrial facilities that require substantial planning and funding for closure and postclosure to ensure that the site is fully restored and free of contamination.

(6) Therefore, it is the purpose of this act to provide for the reduction of greenhouse gas emissions from large coal-fired baseload electric power generation facilities, to effect an orderly transition to cleaner fuels in a manner that ensures reliability of the state's electrical grid, to ensure appropriate cleanup and site restoration upon decommissioning of any of these facilities in the state, and to provide assistance to host communities planning for new economic development and mitigating the economic impacts of the closure of these facilities.

Sec. 102. RCW 80.80.010 and 2009 c 565 s 54 and 2009 c 448 s 1 are each reenacted and amended to read as follows:

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

(1) "Attorney general" means the Washington state office of the attorney general.

(2) "Auditor" means: (a) The Washington state auditor's office or its designee for consumer-owned utilities under its jurisdiction; or (b) an independent auditor selected by a consumer-owned utility that is not under the jurisdiction of the state auditor.

(3) "Average available greenhouse gas emissions output" means the level of greenhouse gas emissions as surveyed and determined by the energy policy division of the department of commerce under RCW 80.80.050.

(4) "Baseload electric generation" means electric generation from a power plant that is designed and intended to provide electricity at an annualized plant capacity factor of at least sixty percent.

(5) "Cogeneration facility" means a power plant in which the heat or steam is also used for industrial or commercial heating or cooling purposes and that meets federal energy regulatory commission standards for qualifying facilities under the public utility regulatory policies act of 1978 (16 U.S.C. Sec. 824a-3), as amended.

(6) "Combined-cycle natural gas thermal electric generation facility" means a power plant that employs a combination of one or more gas turbines and steam turbines in which electricity is produced in the steam turbine from otherwise lost waste heat exiting from one or more of the gas turbines.

(7) "Commission" means the Washington utilities and transportation commission.

(8) "Consumer-owned utility" means a municipal utility formed under Title 35 RCW, a public utility district formed under Title 54 RCW, an irrigation district formed under chapter 87.03 RCW, a cooperative formed under chapter 23.86 RCW, a mutual corporation or association formed under chapter 24.06 RCW, or port district within which an industrial district has been established as authorized by Title 53 RCW, that is engaged in the business of distributing electricity to more than one retail electric customer in the state.

(9) "Department" means the department of ecology.

(10) "Distributed generation" means electric generation connected to the distribution level of the transmission and distribution grid, which is usually located at or near the intended place of use.

(11) "Electric utility" means an electrical company or a consumer-owned utility.

(12) "Electrical company" means a company owned by investors that meets the definition of RCW 80.04.010.

(13) "Governing board" means the board of directors or legislative authority of a consumer-owned utility.

(14) "Greenhouse ((~~gases~~)) gas" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(15) "Long-term financial commitment" means:

(a) Either a new ownership interest in baseload electric generation or an upgrade to a baseload electric generation facility; or

(b) A new or renewed contract for baseload electric generation with a term of five or more years for the provision of retail power or wholesale power to end-use customers in this state.

(16) "Plant capacity factor" means the ratio of the electricity produced during a given time period, measured in kilowatt-hours, to the electricity the unit could have produced if it had been operated at its rated capacity during that period, expressed in kilowatt-hours.

(17) "Power plant" means a facility for the generation of electricity that is permitted as a single plant by a jurisdiction inside or outside the state.

(18) "Upgrade" means any modification made for the primary purpose of increasing the electric generation capacity of a baseload electric generation facility. "Upgrade" does not include routine or necessary maintenance, installation of emission control equipment, installation, replacement, or modification of equipment that improves the heat rate of the facility, or installation, replacement, or modification of equipment for the primary purpose of maintaining reliable generation output capability that does not increase the heat input or fuel usage as specified in existing generation air quality permits as of July 22, 2007, but may result in incidental increases in generation capacity.

(19) "Coal transition power" means the output of a coal-fired electric generation facility located in Washington that is subject to RCW 80.80.040(3)(c).

(20) "Memorandum of agreement" or "memorandum" means a binding and enforceable contract entered into pursuant to section 106 of this act between the governor on behalf of the state and an owner of a baseload electric generation facility in the state that produces coal transition power.

Sec. 103. RCW 80.80.040 and 2009 c 448 s 2 are each amended to read as follows:

(1) Beginning July 1, 2008, the greenhouse gas emissions performance standard for all baseload electric generation for which electric utilities enter into long-term financial commitments on or after such date is the lower of:

(a) One thousand one hundred pounds of greenhouse gases per megawatt-hour; or

(b) The average available greenhouse gas emissions output as determined under RCW 80.80.050.

(2) This chapter does not apply to long-term financial commitments with the Bonneville power administration.

(3)(a) Except as provided in (c) of this subsection, all baseload electric generation facilities in operation as of June 30, 2008, are deemed to be in compliance with the greenhouse gas emissions performance standard established under this section until the facilities are the subject of long-term financial commitments.

(b) All baseload electric generation that commences operation after June 30, 2008, and is located in Washington, must comply with the greenhouse gas emissions performance standard established in subsection (1) of this section.

(c)(i) A coal-fired baseload electric generation facility in Washington that emitted more than one million tons of greenhouse gases in calendar year 2005 must comply with the lower of the following greenhouse gas emissions performance standard such that one generating boiler is in compliance by December 31, 2020, and any other generating boiler is in compliance by December 31, 2025:

(A) One thousand one hundred pounds of greenhouse gases per megawatt-hour; or

(B) The average available greenhouse gas emissions output as determined under RCW 80.80.050.

(ii) This subsection (3)(c) does not apply to a coal-fired baseload electric generating facility in the event the department determines as a requirement of state or federal law or regulation that selective catalytic reduction technology must be installed on any of its boilers.

(4) All electric generation facilities or power plants powered exclusively by renewable resources, as defined in RCW 19.280.020, are deemed to be in compliance with the greenhouse gas emissions performance standard established under this section.

(5) All cogeneration facilities in the state that are fueled by natural gas or waste gas or a combination of the two fuels, and that are in operation as of June 30, 2008, are deemed to be in compliance with the greenhouse gas emissions performance standard established under this section until the facilities are the subject of a new ownership interest or are upgraded.

(6) In determining the rate of emissions of greenhouse gases for baseload electric generation, the total emissions associated with producing electricity shall be included.

(7) In no case shall a long-term financial commitment be determined to be in compliance with the greenhouse gas emissions performance standard if the commitment includes more than twelve percent of electricity from unspecified sources.

(8) For a long-term financial commitment with multiple power plants, each specified power plant must be treated individually for the purpose of determining the annualized plant capacity factor and net emissions, and each power plant must comply with subsection (1) of this section, except as provided in subsections (3) through (5) of this section.

(9) The department shall establish an output-based methodology to ensure that the calculation of emissions of greenhouse gases for a cogeneration facility recognizes the total usable energy output of the process, and includes all greenhouse gases emitted by the facility in the production of both electrical and thermal energy. In developing and implementing the greenhouse gas emissions performance standard, the department shall consider and act in a manner consistent with any rules adopted pursuant to the public utilities regulatory policy act of 1978 (16 U.S.C. Sec. 824a-3), as amended.

(10) The following greenhouse gas emissions produced by baseload electric generation owned or contracted through a long-term financial commitment shall not be counted as emissions of the power plant in determining compliance with the greenhouse gas emissions performance standard:

(a) Those emissions that are injected permanently in geological formations;

(b) Those emissions that are permanently sequestered by other means approved by the department; and

(c) Those emissions sequestered or mitigated as approved under subsection (16) of this section.

(11) In adopting and implementing the greenhouse gas emissions performance standard, the department of ((~~community, trade, and economic development~~)) commerce energy policy division, in consultation with the commission, the department, the Bonneville power administration, the western electricity ((~~coordination [coordinating]~~)) coordinating council, the energy facility site evaluation council, electric utilities, public interest representatives, and consumer representatives, shall consider the effects of the greenhouse gas emissions performance standard on system reliability and overall costs to electricity customers.

(12) In developing and implementing the greenhouse gas emissions performance standard, the department shall, with assistance of the commission, the department of ((~~community, trade, and economic development~~)) commerce energy policy division, and electric utilities, and to the extent practicable, address long-term purchases of electricity from unspecified sources in a manner consistent with this chapter.

(13) The directors of the energy facility site evaluation council and the department shall each adopt rules under chapter 34.05 RCW in coordination with each other to implement and enforce the greenhouse gas emissions performance standard. The rules necessary to implement this section shall be adopted by June 30, 2008.

(14) In adopting the rules for implementing this section, the energy facility site evaluation council and the department shall include criteria to be applied in evaluating the carbon sequestration plan, for baseload electric generation that will rely on subsection (10) of this section to demonstrate compliance, but that will commence sequestration after the date that electricity is first produced. The rules shall include but not be limited to:

(a) Provisions for financial assurances, as a condition of plant operation, sufficient to ensure successful implementation of the carbon sequestration plan, including construction and operation of necessary equipment, and any other significant costs;

(b) Provisions for geological or other approved sequestration commencing within five years of plant operation, including full and sufficient technical documentation to support the planned sequestration;

(c) Provisions for monitoring the effectiveness of the implementation of the sequestration plan;

(d) Penalties for failure to achieve implementation of the plan on schedule;

(e) Provisions for an owner to purchase emissions reductions in the event of the failure of a sequestration plan under subsection (16) of this section; and

(f) Provisions for public notice and comment on the carbon sequestration plan.

(15)(a) Except as provided in (b) of this subsection, as part of its role enforcing the greenhouse gas emissions performance standard, the department shall determine whether sequestration or a plan for sequestration will provide safe, reliable, and permanent protection against the greenhouse gases entering the atmosphere from the power plant and all ancillary facilities.

(b) For facilities under its jurisdiction, the energy facility site evaluation council shall contract for review of sequestration or the carbon sequestration plan with the department consistent with the conditions under (a) of this subsection, consider the adequacy of sequestration or the plan in its adjudicative proceedings conducted under RCW 80.50.090(3), and incorporate specific findings regarding adequacy in its recommendation to the governor under RCW 80.50.100.

(16) A project under consideration by the energy facility site evaluation council by July 22, 2007, is required to include all of the requirements of subsection (14) of this section in its carbon sequestration plan submitted as part of the energy facility site evaluation council process. A project under consideration by the energy facility site evaluation council by July 22, 2007, that receives final site certification agreement approval under chapter 80.50 RCW shall make a good faith effort to implement the sequestration plan. If the project owner determines that implementation is not feasible, the project owner shall submit documentation of that determination to the energy facility site evaluation council. The documentation shall demonstrate the steps taken to implement the sequestration plan and evidence of the technological and economic barriers to successful implementation. The project owner shall then provide to the energy facility site evaluation council notification that they shall implement the plan that requires the project owner to meet the greenhouse gas emissions performance standard by purchasing verifiable greenhouse gas emissions reductions from an electric ((~~generating~~)) generation facility located within the western interconnection, where the reduction would not have occurred otherwise or absent this contractual agreement, such that the sum of the emissions reductions purchased and the facility's emissions meets the standard for the life of the facility.

Sec. 104. RCW 80.80.060 and 2009 c 448 s 3 and 2009 c 147 s 1 are each reenacted and amended to read as follows:

(1) No electrical company may enter into a long-term financial commitment unless the baseload electric generation supplied under such a long-term financial commitment complies with the greenhouse ((~~gases [gas]~~)) gas emissions performance standard established under RCW 80.80.040.

(2) In order to enforce the requirements of this chapter, the commission shall review in a general rate case or as provided in subsection (5) of this section any long-term financial commitment entered into by an electrical company after June 30, 2008, to determine whether the baseload electric generation to be supplied under that long-term financial commitment complies with the greenhouse ((~~gases [gas]~~)) gas emissions performance standard established under RCW 80.80.040.

(3) In determining whether a long-term financial commitment is for baseload electric generation, the commission shall consider the design of the power plant and its intended use, based upon the electricity purchase contract, if any, permits necessary for the operation of the power plant, and any other matter the commission determines is relevant under the circumstances.

(4) Upon application by an electric utility, the commission may provide a case-by-case exemption from the greenhouse ((~~gases [gas]~~)) gas emissions performance standard to address: (a) Unanticipated electric system reliability needs; (b) extraordinary cost impacts on utility ratepayers; or (c) catastrophic events or threat of significant financial harm that may arise from unforeseen circumstances.

(5) Upon application by an electrical company, the commission shall determine whether the company's proposed decision to acquire electric generation or enter into a power purchase agreement for electricity complies with the greenhouse ((~~gases [gas]~~)) gas emissions performance standard established under RCW 80.80.040. The commission shall not decide in a proceeding under this subsection (5) issues involving the actual costs to construct and operate the selected resource, cost recovery, or other issues reserved by the commission for decision in a general rate case or other proceeding for recovery of the resource or contract costs.

(6) An electrical company may account for and defer for later consideration by the commission costs incurred in connection with a long-term financial commitment, including operating and maintenance costs, depreciation, taxes, and cost of invested capital. The deferral begins with the date on which the power plant begins commercial operation or the effective date of the power purchase agreement and continues for a period not to exceed twenty-four months; provided that if during such period the company files a general rate case or other proceeding for the recovery of such costs, deferral ends on the effective date of the final decision by the commission in such proceeding. Creation of such a deferral account does not by itself determine the actual costs of the long-term financial commitment, whether recovery of any or all of these costs is appropriate, or other issues to be decided by the commission in a general rate case or other proceeding for recovery of these costs. For the purpose of this subsection (6) only, the term "long-term financial commitment" also includes an electric company's ownership or power purchase agreement with a term of five or more

years associated with an eligible renewable resource as defined in RCW 19.285.030.

(7) The commission shall consult with the department to apply the procedures adopted by the department to verify the emissions of greenhouse gases from baseload electric generation under RCW 80.80.040. The department shall report to the commission whether baseload electric generation will comply with the greenhouse ((~~gases [gas]~~)) gas emissions performance standard for the duration of the period the baseload electric generation is supplied to the electrical company.

(8) The commission shall adopt rules for the enforcement of this section with respect to electrical companies and adopt procedural rules for approving costs incurred by an electrical company under subsection (4) of this section.

(9) This section does not apply to a long-term financial commitment for the purchase of coal transition power with termination dates consistent with the applicable dates in RCW 80.80.040(3)(c).

(10) The commission shall adopt rules necessary to implement this section by December 31, 2008.

Sec. 105. RCW 80.80.070 and 2007 c 307 s 9 are each amended to read as follows:

(1) No consumer-owned utility may enter into a long-term financial commitment unless the baseload electric generation supplied under such a long-term financial commitment complies with the greenhouse ((~~gases~~)) gas emissions performance standard established under RCW 80.80.040.

(2) The governing board shall review and make a determination on any long-term financial commitment by the utility, pursuant to this chapter and after consultation with the department, to determine whether the baseload electric generation to be supplied under that long-term financial commitment complies with the greenhouse ((~~gases~~)) gas emissions performance standard established under RCW 80.80.040. No consumer-owned utility may enter into a long-term financial commitment unless the baseload electric generation to be supplied under that long-term financial commitment complies with the greenhouse ((~~gases~~)) gas emissions performance standard established under RCW 80.80.040.

(3) In confirming that a long-term financial commitment is for baseload electric generation, the governing board shall consider the design of the power plant and the intended use of the power plant based upon the electricity purchase contract, if any, permits necessary for the operation of the power plant, and any other matter the governing board determines is relevant under the circumstances.

(4) The governing board may provide a case-by-case exemption from the greenhouse ((~~gases~~)) gas emissions performance standard to address: (a) Unanticipated electric system reliability needs; or (b) catastrophic events or threat of significant financial harm that may arise from unforeseen circumstances.

(5) The governing board shall apply the procedures adopted by the department to verify the emissions of greenhouse gases from baseload electric generation under RCW 80.80.040, and may request assistance from the department in doing so.

(6) For consumer-owned utilities, the auditor is responsible for auditing compliance with this chapter and rules adopted under this chapter that apply to those utilities and the attorney general is responsible for enforcing that compliance.

(7) This section does not apply to long-term financial commitments for the purchase of coal transition power with termination dates consistent with the applicable dates in RCW 80.80.040(3)(c).

NEW SECTION. **Sec. 106.** A new section is added to chapter 80.80 RCW to read as follows:

(1) By January 1, 2012, the governor on behalf of the state shall enter into a memorandum of agreement with the owners of a coal-fired baseload facility in Washington that emitted more than one million tons of greenhouse gases in calendar year 2005.

(2) The memorandum of agreement must:

(a) Incorporate by reference RCW 80.80.040, 80.80.060, and 80.80.070 as of the effective date of this section;

(b) Incorporate binding commitments to install selective noncatalytic reduction pollution control technology in any coal-fired generating boilers by January 1, 2013, after discussing the proper use of ammonia in this technology.

(3)(a) The memorandum of agreement must include provisions by which the facility owner will provide financial assistance:

(i) To the affected community for economic development and energy efficiency and weatherization; and

(ii) For energy technologies with the potential to create considerable energy, economic development, and air quality, haze, or other environmental benefits.

(b) Except as described in (c) of this subsection, the financial assistance in (a)(i) of this subsection must be in the amount of thirty million dollars and the financial assistance in (a)(ii) of this subsection must be in the amount of twenty-five million dollars, with investments beginning January 1, 2012, and consisting of equal annual investments through December 31, 2023, or until the full amount has been provided. Only funds for energy efficiency and weatherization may be spent prior to December 31, 2015.

(c) If the tax exemptions provided under RCW 82.08.811 or 82.12.811 are repealed, any remaining financial assistance required by this section is no longer required.

(4) The memorandum of agreement must:

(a) Specify that the investments in subsection (3) of this section be held in independent accounts at an appropriate financial institution; and

(b) Identify individuals to approve expenditures from the accounts. Individuals must have relevant expertise and must include members representing the community, employees at the facility, and the facility owner.

(5) The memorandum of agreement must include a provision that allows for the termination of the memorandum of agreement in the event the department determines as a requirement of federal law or regulation that selective catalytic reduction technology must be installed on any of its boilers.

(6) The memorandum of agreement must include enforcement provisions to ensure implementation of the agreement by the parties.

(7) If the memorandum of agreement is not signed by January 1, 2012, the governor must implement the provisions in subsection (2)(b) of this section.

NEW SECTION. **Sec. 107.** A new section is added to chapter 80.80 RCW to read as follows:

No state agency or political subdivision of the state may adopt or impose a greenhouse gas emission performance standard, or other operating or financial requirement or limitation relating to greenhouse gas emissions, on a coal-fired electric generation facility located in Washington or upon an electric utility's long-term purchase of coal transition power, that is inconsistent with or additional to the provisions of RCW 80.80.040 or the memorandum of agreement entered into under section 106 of this act.

NEW SECTION. **Sec. 108.** A new section is added to chapter 80.80 RCW to read as follows:

(1) A memorandum of agreement entered into pursuant to section 106 of this act may include provisions to assist in the financing of emissions reductions that exceed those required by RCW 80.80.040(3)(c) by providing for the recognition of such reductions in applicable state policies and programs relating to greenhouse gas emissions, and by encouraging and advocating for the recognition of the reductions in all established and emerging emission reduction frameworks at the regional, national, or international level.

(2) The governor may recommend actions by the legislature to strengthen implementation of an agreement or a proposed

agreement relating to recognition of investments in early emissions reductions.

Sec. 109. RCW 80.50.100 and 1989 c 175 s 174 are each amended to read as follows:

(1) The council shall report to the governor its recommendations as to the approval or rejection of an application for certification within twelve months of receipt by the council of such an application, or such later time as is mutually agreed by the council and the applicant. In the case of an application filed prior to December 31, 2025, for certification of an energy facility proposed for construction, modification, or expansion for the purpose of providing generating facilities that meet the requirements of RCW 80.80.040 and are located in a county with a coal-fired electric generating facility subject to RCW 80.80.040(3)(c), the council shall expedite the processing of the application pursuant to RCW 80.50.075 and shall report its recommendations to the governor within one hundred eighty days of receipt by the council of such an application, or a later time as is mutually agreed by the council and the applicant. If the council recommends approval of an application for certification, it shall also submit a draft certification agreement with the report. The council shall include conditions in the draft certification agreement to implement the provisions of this chapter, including, but not limited to, conditions to protect state or local governmental or community interests affected by the construction or operation of the energy facility, and conditions designed to recognize the purpose of laws or ordinances, or rules or regulations promulgated thereunder, that are preempted or superseded pursuant to RCW 80.50.110 as now or hereafter amended.

(2)(a) Within sixty days of receipt of the council's report the governor shall take one of the following actions:

(((~~(a)~~))) (i) Approve the application and execute the draft certification agreement; or

(((~~(b)~~))) (ii) Reject the application; or

(((~~(c)~~))) (iii) Direct the council to reconsider certain aspects of the draft certification agreement.

(b) The council shall reconsider such aspects of the draft certification agreement by reviewing the existing record of the application or, as necessary, by reopening the adjudicative proceeding for the purposes of receiving additional evidence. Such reconsideration shall be conducted expeditiously. The council shall resubmit the draft certification to the governor incorporating any amendments deemed necessary upon reconsideration. Within sixty days of receipt of such draft certification agreement, the governor shall either approve the application and execute the certification agreement or reject the application. The certification agreement shall be binding upon execution by the governor and the applicant.

(3) The rejection of an application for certification by the governor shall be final as to that application but shall not preclude submission of a subsequent application for the same site on the basis of changed conditions or new information.

NEW SECTION. **Sec. 201.** The legislature finds that very large coal-fired baseload electric generation facilities are major industrial facilities whose closure, removal of structures, and site reclamation requires significant planning and funding. In order to ensure that the site of these facilities after closure is fully cleaned up, it is necessary to require that the facility owner demonstrate during the facility's operation that sufficient funding will be available for closure and postclosure activities. Since the degree of cleanup depends, in part, on the proposed future uses of a site, the closure and postclosure requirements must consider the land use designations and economic development plans of the host community. It is the intent of the legislature to facilitate the transition of these facilities by requiring facility decommissioning and site restoration plans that are coordinated and consistent with economic development plans of affected communities.

NEW SECTION. **Sec. 202.** (1) A facility subject to closure under RCW 80.80.040(3)(c), or a memorandum of agreement under section 106 of this act, must provide the department of ecology with a plan for the closure and postclosure of the facility at least twenty-four months prior to its closure. This plan must be consistent with the rules established by the energy facility site evaluation council for site restoration and preservation applicable to facilities subject to a site certification agreement under chapter 80.50 RCW and include but not be limited to:

(a) A detailed estimate of the cost to implement the plan based on the cost of hiring a third party to conduct all activities;

(b) Demonstrating financial assurance to fund the closure and postclosure of the facility and providing methods by which this assurance may be demonstrated;

(c) Methods for estimating closure costs, including full site reclamation under all applicable federal and state clean-up standards; and

(d) A decommissioning and site restoration plan that addresses restoring physical topography, cleanup of all hazardous substances on the site, potential future uses of the site following restoration, and coordination with local and community plans for economic development in the vicinity of the site.

(2) All cost estimates in the plan must be in current dollars and may not include a net present value adjustment or offsets for salvage value of wastes or other property.

(3) Adoption of the plan and significant revisions to the plan must be approved by the department of ecology.

NEW SECTION. **Sec. 203.** (1) A facility subject to closure under RCW 80.80.040(3)(c), or a memorandum of agreement under section 106 of this act, must guarantee funds are available to perform all activities specified in the decommissioning plan developed under section 202 of this act. The amount must equal the cost estimates specified in the decommissioning plan and must be updated annually for inflation. All guarantees under this section must be assumed by any successor owner, parent company, or holding company.

(2) The guarantee required under subsection (1) of this section may be accomplished by letter of credit, surety bond, or other means acceptable to the department of ecology.

(3) The issuing institution of the letter of credit must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated by a federal or state agency.

(4) A qualifying facility that uses a letter of credit to satisfy the requirements of this act must also establish a standby trust fund as a means to hold any funds issued from the letter of credit. Under the terms of the letter of credit, all amounts paid pursuant to a draft from the department of ecology must be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the department of ecology. This standby trust fund must be approved by the department of ecology.

(5) The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least one hundred twenty days before the current expiration date, the issuing institution notifies both the qualifying facility and the department of ecology of a decision not to extend the expiration date. Under the terms of the letter of credit, the one hundred twenty days will begin on the date when both the qualifying plant and the department of ecology have received the notice, as evidenced by certified mail return receipts or by overnight courier delivery receipts.

(6) If the qualifying facility does not establish an alternative method of guaranteeing decommissioning funds are available

within ninety days after receipt by both the qualifying facility plant and the department of ecology of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the department of ecology must draw on the letter of credit. The department of ecology must approve any replacement or substitute guarantee method before the expiration of the ninety-day period.

(7) If a qualifying facility elects to use a letter of credit as the sole method for guaranteeing decommissioning funds are available, the face value of the letter of credit must meet or exceed the current inflation-adjusted cost estimate.

(8) A qualifying facility must adjust the decommissioning costs and financial guarantees annually for inflation and may use an amendment to increase the face value of a letter of credit each year to account for this inflation. A qualifying facility is not required to obtain a new letter of credit to cover annual inflation adjustments.

NEW SECTION. **Sec. 204.** Sections 201 through 203 of this act constitute a new chapter in Title 80 RCW.

NEW SECTION. **Sec. 301.** It is in the public interest to assist local communities in which very large energy generating facilities may be closed, in order to plan for future economic uses of the site and in the community surrounding the site.

Sec. 302. RCW 43.160.076 and 2008 c 327 s 8 are each amended to read as follows:

(1) Except as authorized to the contrary under subsection (2) of this section, from all funds available to the board for financial assistance in a biennium under this chapter, the board shall approve at least seventy-five percent of the first twenty million dollars of funds available and at least fifty percent of any additional funds for financial assistance for projects in rural counties.

(2) If at any time during the last six months of a biennium the board finds that the actual and anticipated applications for qualified projects in rural counties are clearly insufficient to use up the allocations under subsection (1) of this section, then the board shall estimate the amount of the insufficiency and during the remainder of the biennium may use that amount of the allocation for financial assistance to projects not located in rural counties.

(3) The board shall solicit qualifying projects to plan, design, and construct public facilities needed to attract new industrial and commercial activities in areas impacted by the closure or potential closure of large coal-fired electric generation facilities, which for the purposes of this section means a facility that emitted more than one million tons of greenhouse gases in calendar year 2005. The projects should be consistent with any applicable plans for major industrial activity on lands formerly used or designated for surface coal mining and supporting uses under RCW 36.70A.368. When the board receives timely and eligible project applications from a political subdivision of the state for financial assistance for such projects, the board from available funds shall provide a priority for funding projects at the following levels:

(a) For the 2011-2013 biennium, at least two hundred fifty thousand dollars;

(b) For the 2013-2015 biennium, at least two hundred fifty thousand dollars;

(c) For the 2015-2017 biennium, at least one million dollars;

(d) For the 2017-2019 biennium, at least one million dollars;

(e) For the 2019-2021 biennium, at least two million dollars; and

(f) For the 2021-2023 biennium, at least two million dollars.

NEW SECTION. **Sec. 303.** A new section is added to chapter 43.155 RCW to read as follows:

The board shall solicit qualifying projects to plan, design, and construct public works projects needed to attract new industrial and commercial activities in areas impacted by the closure or potential closure of large coal-fired electric generation facilities, which for the purposes of this section means a facility that emitted more than one million tons of greenhouse gases in calendar year 2005. The projects should be consistent with any applicable plans for major industrial activity on lands formerly used or designated for surface coal mining and supporting uses under RCW 36.70A.368. When the board receives timely and eligible project applications from a political subdivision of the state for financial assistance for such projects, the board from available funds shall provide a priority for funding projects at the following levels:

(1) For the 2011-2013 biennium, at least two hundred fifty thousand dollars;

(2) For the 2013-2015 biennium, at least two hundred fifty thousand dollars;

(3) For the 2015-2017 biennium, at least one million dollars;

(4) For the 2017-2019 biennium, at least one million dollars;

(5) For the 2019-2021 biennium, at least two million dollars; and

(6) For the 2021-2023 biennium, at least two million dollars.

NEW SECTION. **Sec. 304.** A new section is added to chapter 80.80 RCW to read as follows:

The legislature finds that an electrical company's acquisition of coal transition power helps to achieve the state's greenhouse gas emission reduction goals by effecting an orderly transition to cleaner fuels and supports the state's public policy.

NEW SECTION. **Sec. 305.** A new section is added to chapter 80.04 RCW to read as follows:

(1) On the petition of an electrical company, the commission shall approve or disapprove a purchase power agreement for acquisition of coal transition power, as defined in RCW 80.80.010, and the recovery of related acquisition costs. No agreement for an electrical company's acquisition of coal transition power takes effect until it is approved by the commission.

(2) When a petition is filed, the commission shall provide notice to the public and potentially affected parties and expedite the hearing of that petition. The hearing of such a petition is not considered a general rate case. However, the commission may require the utility to file supporting testimony and exhibits. An administrative law judge of the commission may enter an initial order including findings of fact and conclusions of law, as provided in RCW 80.01.060(3). The commission shall issue a final order that approves or disapproves the acquisition of coal transition power within one hundred eighty days after an electrical company files the petition.

(3) The commission must approve the acquisition of coal transition power if it determines the resource is needed by the electrical company to serve its ratepayers and the resource meets the need in a cost-effective manner as determined under the lowest reasonable cost resource standards under chapter 19.280 RCW. As part of these determinations, the commission shall consider, among other factors:

(a) The long-term economic benefit to the electrical company and its ratepayers of such a long-term purchase; and

(b) The environmental benefits attributable to the orderly transition away from coal-fired electric generation power.

(4) If the commission has not issued a final order within one hundred eighty days from the date the petition is filed, or if the commission disapproves the petition, the agreement for purchase of coal transition power is null and void. In the event the commission approves the agreement upon conditions other than those set forth in the petition, the electrical company has the right to reject the agreement.

(5) Upon commission approval of an electrical company's acquisition of coal transition power in accordance with this section, the electrical company is allowed to earn its equity component of its authorized rate of return in the same manner as if it had purchased or built an equivalent plant plus the cost of the coal transition power contract. For purposes of this section, the initial value of an

equivalent plant is a purchased or self-built electric generation plant with equivalent capacity costs as compared to the electrical company's integrated resource plan in effect at the time the petition is filed. The equivalent plant determined in the approval process will be amortized on a straight line calculation over the life of the coal transition power contract for the determination of the equity return in future proceedings. This recovery must be determined and approved in the process set forth in subsections (1) and (2) of this section.

(6) An electrical company that purchases coal transition power, as defined in RCW 80.80.010, under an agreement approved by the commission pursuant to this section, may acquire other flexible capacity resources, including for the purpose of integrating renewable resources, and the purchase of coal transition power does not prohibit the electrical company from acquiring other flexible capacity resources. The commission shall not include the electric company's purchase of coal transition power when considering the electrical company's purchase of other flexible capacity resources.

Sec. 306. RCW 19.280.020 and 2009 c 565 s 19 are each amended to read as follows:

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

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

(2) "Conservation and efficiency resources" means any reduction in electric power consumption that results from increases in the efficiency of energy use, production, transmission, or distribution.

(3) "Consumer-owned utility" includes a municipal electric utility formed under Title 35 RCW, a public utility district formed under Title 54 RCW, an irrigation district formed under chapter 87.03 RCW, a cooperative formed under chapter 23.86 RCW, a mutual corporation or association formed under chapter 24.06 RCW, a port district formed under Title 53 RCW, or a water-sewer district formed under Title 57 RCW, that is engaged in the business of distributing electricity to one or more retail electric customers in the state.

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

(5) "Electric utility" means a consumer-owned or investor-owned utility.

(6) "Full requirements customer" means an electric utility that relies on the Bonneville power administration for all power needed to supply its total load requirement other than that served by nondispatchable generating resources totaling no more than six megawatts or renewable resources.

(7) "Governing body" means the elected board of directors, city council, commissioners, or board of any consumer-owned utility.

(8) "High efficiency cogeneration" means the sequential production of electricity and useful thermal energy from a common fuel source, where, under normal operating conditions, the facility has a useful thermal energy output of no less than thirty-three percent of the total energy output.

(9) "Integrated resource plan" means an analysis describing the mix of generating resources and conservation and efficiency resources that will meet current and projected needs at the lowest reasonable cost to the utility and its ratepayers and that complies with the requirements specified in RCW 19.280.030(1).

(10) "Investor-owned utility" means a corporation owned by investors that meets the definition in RCW 80.04.010 and is engaged in distributing electricity to more than one retail electric customer in the state.

(11) "Lowest reasonable cost" means the lowest cost mix of generating resources and conservation and efficiency resources determined through a detailed and consistent analysis of a wide range of commercially available resources. At a minimum, this analysis must consider resource cost, market-volatility risks, demand-side resource uncertainties, resource dispatchability, resource effect on system operation, the risks imposed on the utility and its ratepayers, public policies regarding resource preference adopted by Washington state or the federal government, and the cost of risks associated with environmental effects including emissions of carbon dioxide. The analysis also must consider public policies adopted by Washington state to reduce greenhouse gases from thermal electric generation facilities in the long term by temporarily exempting certain of those facilities from the provisions of RCW 80.80.060 and 80.80.070.

(12) "Plan" means either an "integrated resource plan" or a "resource plan."

(13) "Renewable resources" means electricity generation facilities fueled by: (a) Water; (b) wind; (c) solar energy; (d) geothermal energy; (e) landfill gas; (f) biomass energy utilizing animal waste, solid organic fuels from wood, forest, or field residues or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; (g) by-products of pulping or wood manufacturing processes, including but not limited to bark, wood chips, sawdust, and lignin in spent pulping liquors; (h) ocean thermal, wave, or tidal power; or (i) gas from sewage treatment facilities.

(14) "Resource plan" means an assessment that estimates electricity loads and resources over a defined period of time and complies with the requirements in RCW 19.280.030(2).

Sec. 307. RCW 19.280.030 and 2006 c 195 s 3 are each amended to read as follows:

Each electric utility must develop a plan consistent with this section.

(1) Utilities with more than twenty-five thousand customers that are not full requirements customers shall develop or update an integrated resource plan by September 1, 2008. At a minimum, progress reports reflecting changing conditions and the progress of the integrated resource plan must be produced every two years thereafter. An updated integrated resource plan must be developed at least every four years subsequent to the 2008 integrated resource plan. The integrated resource plan, at a minimum, must include:

(a) A range of forecasts, for at least the next ten years, of projected customer demand which takes into account econometric data and customer usage;

(b) An assessment of commercially available conservation and efficiency resources. Such assessment may include, as appropriate, high efficiency cogeneration, demand response and load management programs, and currently employed and new policies and programs needed to obtain the conservation and efficiency resources;

(c) An assessment of commercially available, utility scale renewable and nonrenewable generating technologies including a comparison of the benefits and risks of purchasing power from existing resources or building new resources;

(d) A comparative evaluation of renewable and nonrenewable generating resources, including transmission and distribution delivery costs, and conservation and efficiency resources using "lowest reasonable cost" as a criterion;

(e) The integration of the demand forecasts and resource evaluations into a long-range assessment describing the mix of supply side generating resources and conservation and efficiency resources that will meet current and projected needs at the lowest reasonable cost and risk to the utility and its ratepayers; and

(f) A short-term plan identifying the specific actions to be taken by the utility consistent with the long-range integrated resource plan.

(2) All other utilities may elect to develop a full integrated resource plan as set forth in subsection (1) of this section or, at a minimum, shall develop a resource plan that:

(a) Estimates loads for the next five and ten years;

(b) Enumerates the resources that will be maintained and/or acquired to serve those loads; and

(c) Explains why the resources in (b) of this subsection were chosen and, if the resources chosen are not renewable resources or conservation and efficiency resources, why such a decision was made.

(3) An electric utility that is required to develop a resource plan under this section must complete its initial plan by September 1, 2008.

(4) Resource plans developed under this section must be updated on a regular basis, at a minimum on intervals of two years.

(5) Plans shall not be a basis to bring legal action against electric utilities.

(6) Each electric utility shall publish its final plan either as part of an annual report or as a separate document available to the public. The report may be in an electronic form.

NEW SECTION. **Sec. 308.** No civil liability may be imposed by any court on the state, its officers, employees, instrumentalities, or subdivisions under section 101, 201, or 301 of this act.

NEW SECTION. **Sec. 309.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

Senators Rockefeller and Swecker spoke in favor of adoption of the striking amendment.

MOTION

Senator Honeyford moved that the following amendment by Senators Honeyford, Rockefeller and Swecker to the striking amendment be adopted:

On page 13, line 1 of the amendment after "the" strike "community," and insert "Lewis Economic Development Council, local elected officials,"

Senator Honeyford spoke in favor of adoption of the amendment to the striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Honeyford, Rockefeller and Swecker on page 13, line 1 to the striking amendment to Second Substitute Senate Bill No. 5769.

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

MOTION

Senator Honeyford moved that the following amendment by Senators Honeyford, Rockefeller and Swecker to the striking amendment be adopted:

On page 24, after line 27 of the amendment, insert the following:

"NEW SECTION. **Sec. 308.** A new section is added to chapter 80.70 RCW to read as follows:

An applicant for a natural gas-fired generation plant to be constructed in a county with a coal-fired electric generation facility subject to RCW 80.80.040(3)(c) is exempt from this chapter if the application is filed before December 31, 2025."

Renumber the remaining sections consecutively and correct any internal references accordingly.

Senators Honeyford and Rockefeller spoke in favor of adoption of the amendment to the striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Honeyford, Rockefeller and Swecker on page 24, after line 27 to the striking amendment as amended to Second Substitute Senate Bill No. 5769.

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

The President declared the question before the Senate to be the adoption of the striking amendment by Senators Rockefeller and Swecker to Second Substitute Senate Bill No. 5769 as amended.

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

MOTION

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

On page 1, line 1 of the title, after "facilities;" strike the remainder of the title and insert "amending RCW 80.80.040, 80.80.070, 80.50.100, 43.160.076, 19.280.020, and 19.280.030; reenacting and amending RCW 80.80.010 and 80.80.060; adding new sections to chapter 80.80 RCW; adding a new section to chapter 43.155 RCW; adding a new section to chapter 80.04 RCW; adding a new chapter to Title 80 RCW; and creating new sections."

On page 25, line 6 of the title amendment, after "80.04 RCW;" insert "adding a new section to chapter 80.70 RCW;"

MOTION

On motion of Senator Rockefeller, the rules were suspended, Engrossed Second Substitute Senate Bill No. 5769 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Rockefeller, Swecker, Nelson and Brown spoke in favor of passage of the bill.

Senators Delvin, Sheldon, Schoesler and Stevens spoke against passage of the bill.

Senator Honeyford spoke on final passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Second Substitute Senate Bill No. 5769.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute Senate Bill No. 5769 and the bill passed the Senate by the following vote: Yeas, 36; Nays, 13; Absent, 0; Excused, 0.

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

Voting nay: Senators Baxter, Becker, Carrell, Delvin, Ericksen, Hewitt, Holmquist Newbry, Honeyford, King, Schoesler, Sheldon, Stevens and Zarelli

ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 5769, 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 Pridemore and without objection, the motion by Senator Pridemore to adopt the amendment by Senators Benton and White on page 15, line 32 to the striking amendment was withdrawn.

MOTION FOR IMMEDIATE RECONSIDERATION

Having voted on the prevailing side, Senator Pridemore moved that the vote by which the striking amendment by Senator Pridemore to Substitute Senate Bill No. 5171 was adopted on the previous day be immediately reconsidered.

The President declared the question before the Senate to be the motion by Senator Pridemore to immediately reconsider the vote by which the striking amendment by Senator Pridemore to Substitute Senate Bill No. 5171 was adopted on the previous day.

The motion by Senator Pridemore carried and the vote by which the striking amendment by Senator Pridemore to Substitute Senate Bill No. 5171 was adopted was immediately reconsidered by voice vote.

MOTION

At 4:26 p.m., on motion of Senator Eide, the Senate adjourned until 9:00 a.m. Monday, March 7, 2011.

BRAD OWEN, President of the Senate

THOMAS HOEMANN, Secretary of the Senate