

---

## FIFTY SEVENTH DAY

---

House Chamber, Olympia, Monday, March 8, 2010

The House was called to order at 10:00 a.m. by the Speaker (Representative Moeller presiding). The Clerk called the roll and a quorum was present.

ENGROSSED SUBSTITUTE SENATE BILL 5543  
SUBSTITUTE SENATE BILL 6208  
SENATE BILL 6379

and the same are herewith transmitted.

Thomas Hoemann, Secretary

The flags were escorted to the rostrum by a Sergeant at Arms Color Guard, Pages Grayson Pennell and David Moore. The Speaker (Representative Moeller presiding) led the Chamber in the Pledge of Allegiance. The prayer was offered by Pastor Barney Rinkel, Bethany Lutheran Church, Longview.

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

### INTRODUCTIONS AND FIRST READING

ESSB 6143 by Senate Committee on Ways & Means (originally sponsored by Senator Prentice)

AN ACT Relating to modifying excise tax laws to preserve funding for public schools, colleges, and universities, as well as other public systems essential for the safety, health, and security of all Washingtonians; amending RCW 82.04.220, 82.04.2907, 82.04.460, 82.04.080, 82.32.090, 82.12.020, 82.45.033, 82.45.070, 82.45.080, 82.45.100, 82.45.220, 43.07.390, 82.04.423, 82.04.4266, 82.04.250, 82.04.250, 82.04.298, 82.04.334, 82.04.4463, 82.08.806, 82.32.545, 82.32.550, 82.32.630, 82.32.632, 82.45.195, 35.102.150, 48.14.080, 82.45.010, 82.45.080, 82.32.145, 82.60.020, 82.62.010, 82.04.4282, 82.08.037, 82.12.037, 82.16.110, 82.08.890, 82.12.890, 54.28.011, 82.08.962, 82.12.962, 82.08.0293, 82.12.0293, 82.04.4451, 82.32.045, 82.08.020, 82.08.020, 44.04.120, 82.08.0206, 36.100.040, 67.28.181, and 82.14.410; reenacting and amending RCW 82.45.010, 82.04.260, 82.04.261, 82.04.440, 82.04.360, and 82.08.064; adding new sections to chapter 82.04 RCW; adding new sections to chapter 82.32 RCW; adding new sections to chapter 82.12 RCW; creating new sections; repealing RCW 82.04.44525, 82.08.811, 82.12.811, and 82.04.394; providing effective dates; providing expiration dates; and declaring an emergency.

### MESSAGES FROM THE SENATE

March 7, 2010

Mr. Speaker:

The Senate concurred in the House amendments to the following bills and passed the bills as amended by the House:

ENGROSSED SENATE BILL 6261  
SENATE BILL 6364

and the same are herewith transmitted.

Thomas Hoemann, Secretary

March 7, 2010

Mr. Speaker:

The Senate concurred in the House amendments to the following bills and passed the bills as amended by the House:

SUBSTITUTE SENATE BILL 6356  
ENGROSSED SUBSTITUTE SENATE BILL 6359

and the same are herewith transmitted.

Thomas Hoemann, Secretary

March 7, 2010

Mr. Speaker:

The Senate has passed SUBSTITUTE SENATE BILL 6874 and the same is herewith transmitted.

Thomas Hoemann, Secretary

March 7, 2010

Mr. Speaker:

The Senate has passed ENGROSSED SUBSTITUTE SENATE BILL 6143 and the same is herewith transmitted.

Thomas Hoemann, Secretary

March 6, 2010

Mr. Speaker:

The Senate concurred in the House amendment to the following bills and passed the bills as amended by the House:

SSB 6874 by Senate Committee on Ways & Means (originally sponsored by Senators Tom, Keiser and Kohl-Welles)

AN ACT Relating to providing funding for the basic health plan by increasing the taxes on cigarettes and facilitating the funding within the state expenditure limit; amending RCW 82.24.020, 82.24.026, and 43.135.035; adding a new section to chapter 82.24 RCW; adding a new section to chapter 70.47 RCW; repealing RCW 82.24.027 and 82.24.028; making an appropriation; providing an effective date; and declaring an emergency.

Referred to Committee on Rules.

There being no objection, the bills listed on the day's introduction sheet under the fourth order of business were referred to the committees so designated, with the exception of ENGROSSED SUBSTITUTE SENATE BILL NO. 6143 which was read the first time, and under suspension of the rules, was placed on the second reading calendar.

## MESSAGE FROM THE SENATE

March 4, 2010

Mr. Speaker:

The Senate has passed ENGROSSED SUBSTITUTE HOUSE BILL NO. 2424 with the following amendment:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 9.68A.001 and 2007 c 368 s 1 are each amended to read as follows:

The legislature finds that the prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance. The care of children is a sacred trust and should not be abused by those who seek commercial gain or personal gratification based on the exploitation of children.

The legislature further finds that the protection of children from sexual exploitation can be accomplished without infringing on a constitutionally protected activity. The definition of "sexually explicit conduct" and other operative definitions demarcate a line between protected and prohibited conduct and should not inhibit legitimate scientific, medical, or educational activities.

The legislature further finds that children engaged in sexual conduct for financial compensation are frequently the victims of sexual abuse. Approximately eighty to ninety percent of children engaged in sexual activity for financial compensation have a history of sexual abuse victimization. It is the intent of the legislature to encourage these children to engage in prevention and intervention services and to hold those who pay to engage in the sexual abuse of children accountable for the trauma they inflict on children.

The legislature further finds that due to the changing nature of technology, offenders are now able to access child pornography in different ways and in increasing quantities. By amending current statutes governing depictions of a minor engaged in sexually explicit conduct, it is the intent of the legislature to ensure that intentional viewing of and dealing in child pornography over the internet is subject to a criminal penalty without limiting the scope of existing prohibitions on the possession of or dealing in child pornography, including the possession of electronic depictions of a minor engaged in sexually explicit conduct. It is also the intent of the legislature to clarify, in response to *State v. Sutherby*, 204 P.3d 916 (2009), the unit of prosecution for the statutes governing possession of and dealing in depictions of a minor engaged in sexually explicit conduct. It is the intent of the legislature that the first degree offenses under RCW 9.68A.050, 9.68A.060, and 9.68A.070 have a per depiction or image unit of prosecution, while the second degree offenses under RCW 9.68A.050, 9.68A.060, and 9.68A.070 have a per incident unit of prosecution as established in *State v. Sutherby*, 204 P.3d 916 (2009). Furthermore, it is the intent of the legislature to set a different unit of prosecution for the new offense of viewing of depictions of a minor engaged in sexually explicit conduct such that each separate session of intentionally viewing over the internet of visual depictions or images of a minor engaged in sexually explicit conduct constitutes a separate offense.

**NEW SECTION. Sec. 2.** A new section is added to chapter 9.68A RCW to read as follows:

This chapter does not apply to lawful conduct between spouses.

**Sec. 3.** RCW 9.68A.011 and 2002 c 70 s 1 are each amended to read as follows:

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

(1) An "internet session" means a period of time during which an internet user, using a specific internet protocol address, visits or is logged into an internet site for an uninterrupted period of time.

(2) To "photograph" means to make a print, negative, slide, digital image, motion picture, or videotape. A "photograph" means anything tangible or intangible produced by photographing.

~~((2))~~ (3) "Visual or printed matter" means any photograph or other material that contains a reproduction of a photograph.

~~((3))~~ (4) "Sexually explicit conduct" means actual or simulated:

(a) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals;

(b) Penetration of the vagina or rectum by any object;

(c) Masturbation;

(d) Sadomasochistic abuse ~~((for the purpose of sexual stimulation of the viewer));~~

~~((e))~~ (e) ((Exhibition of the genitals or unclothed pubic or rectal areas of any minor, or the unclothed breast of a female minor, for the purpose of sexual stimulation of the viewer;

~~((f))~~ Defecation or urination for the purpose of sexual stimulation of the viewer;

(f) Depiction of the genitals or unclothed pubic or rectal areas of any minor, or the unclothed breast of a female minor, for the purpose of sexual stimulation of the viewer. For the purposes of this subsection (4)(f), it is not necessary that the minor know that he or she is participating in the described conduct, or any aspect of it; and

(g) Touching of a person's clothed or unclothed genitals, pubic area, buttocks, or breast area for the purpose of sexual stimulation of the viewer.

~~((4))~~ (5) "Minor" means any person under eighteen years of age.

~~((5))~~ (6) "Live performance" means any play, show, skit, dance, or other exhibition performed or presented to or before an audience of one or more, with or without consideration.

**Sec. 4.** RCW 9.68A.050 and 1989 c 32 s 3 are each amended to read as follows:

~~((A person who:))~~

(1)(a) A person commits the crime of dealing in depictions of a minor engaged in sexually explicit conduct in the first degree when he or she:

(i) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells ~~((any))~~ a visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e); or

~~((2))~~ (ii) Possesses with intent to develop, duplicate, publish, print, disseminate, exchange, or sell any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e).

(b) Dealing in depictions of a minor engaged in sexually explicit conduct in the first degree is ~~((guilty of))~~ a class ~~((C))~~ B felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each depiction or image of visual or printed matter constitutes a separate offense.

(2)(a) A person commits the crime of dealing in depictions of a minor engaged in sexually explicit conduct in the second degree when he or she:

(i) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g); or

(ii) Possesses with intent to develop, duplicate, publish, print, disseminate, exchange, or sell any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g).

(b) Dealing in depictions of a minor engaged in sexually explicit conduct in the second degree is a class C felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each incident of dealing in one or more depictions or images of visual or printed matter constitutes a separate offense.

**Sec. 5.** RCW 9.68A.060 and 1989 c 32 s 4 are each amended to read as follows:

(1)(a) A person (~~(who)~~) commits the crime of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the first degree when he or she knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, (~~(any)~~) a visual or printed matter that depicts a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e).

(b) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the first degree is (~~(guilty of)~~) a class (~~(C)~~) B felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each depiction or image of visual or printed matter constitutes a separate offense.

(2)(a) A person commits the crime of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the second degree when he or she knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, any visual or printed matter that depicts a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g).

(b) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct in the second degree is a class C felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each incident of sending or bringing into the state one or more depictions or images of visual or printed matter constitutes a separate offense.

**Sec. 6.** RCW 9.68A.070 and 2006 c 139 s 3 are each amended to read as follows:

(1)(a) A person (~~(who)~~) commits the crime of possession of depictions of a minor engaged in sexually explicit conduct in the first degree when he or she knowingly possesses a visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e).

(b) Possession of depictions of a minor engaged in sexually explicit conduct in the first degree is (~~(guilty of)~~) a class B felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each depiction or image of visual or printed matter constitutes a separate offense.

(2)(a) A person commits the crime of possession of depictions of a minor engaged in sexually explicit conduct in the second degree when he or she knowingly possesses any visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g).

(b) Possession of depictions of a minor engaged in sexually explicit conduct in the second degree is a class C felony punishable under chapter 9A.20 RCW.

(c) For the purposes of determining the unit of prosecution under this subsection, each incident of possession of one or more depictions or images of visual or printed matter constitutes a separate offense.

**NEW SECTION. Sec. 7.** A new section is added to chapter 9.68A RCW to read as follows:

(1) A person who intentionally views over the internet visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (e) is guilty of viewing depictions of a minor engaged in sexually explicit conduct in the first degree, a class B felony punishable under chapter 9A.20 RCW.

(2) A person who intentionally views over the internet visual or printed matter depicting a minor engaged in sexually explicit conduct as defined in RCW 9.68A.011(4) (f) or (g) is guilty of viewing

depictions of a minor engaged in sexually explicit conduct in the second degree, a class C felony punishable under chapter 9A.20 RCW.

(3) For the purposes of determining whether a person intentionally viewed over the internet a visual or printed matter depicting a minor engaged in sexually explicit conduct in subsection (1) or (2) of this section, the trier of fact shall consider the title, text, and content of the visual or printed matter, as well as the internet history, search terms, thumbnail images, downloading activity, expert computer forensic testimony, number of visual or printed matter depicting minors engaged in sexually explicit conduct, defendant's access to and control over the electronic device and its contents upon which the visual or printed matter was found, or any other relevant evidence. The state must prove beyond a reasonable doubt that the viewing was initiated by the user of the computer where the viewing occurred.

(4) For the purposes of this section, each separate internet session of intentionally viewing over the internet visual or printed matter depicting a minor engaged in sexually explicit conduct constitutes a separate offense.

**Sec. 8.** RCW 9.68A.110 and 2007 c 368 s 3 are each amended to read as follows:

(1) In a prosecution under RCW 9.68A.040, it is not a defense that the defendant was involved in activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses. Law enforcement and prosecution agencies shall not employ minors to aid in the investigation of a violation of RCW 9.68A.090 or 9.68A.100. ~~((This chapter does not apply to lawful conduct between spouses.))~~

(2) In a prosecution under RCW 9.68A.050, 9.68A.060, 9.68A.070, or 9.68A.080, it is not a defense that the defendant did not know the age of the child depicted in the visual or printed matter: PROVIDED, That it is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense the defendant was not in possession of any facts on the basis of which he or she should reasonably have known that the person depicted was a minor.

(3) In a prosecution under RCW 9.68A.040, 9.68A.090, 9.68A.101, or 9.68A.102, it is not a defense that the defendant did not know the alleged victim's age: PROVIDED, That it is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense, the defendant made a reasonable bona fide attempt to ascertain the true age of the minor by requiring production of a driver's license, marriage license, birth certificate, or other governmental or educational identification card or paper and did not rely solely on the oral allegations or apparent age of the minor.

(4) In a prosecution under RCW 9.68A.050, 9.68A.060, ~~((or))~~ 9.68A.070, or section 7 of this act, it shall be an affirmative defense that the defendant was a law enforcement officer or a person specifically authorized, in writing, to assist a law enforcement officer and acting at the direction of a law enforcement officer in the process of conducting an official investigation of a sex-related crime against a minor, or that the defendant was providing individual case treatment as a recognized medical facility or as a psychiatrist or psychologist licensed under Title 18 RCW. Nothing in this act is intended to in any way affect or diminish the immunity afforded an electronic communication service provider, remote computing service provider, or domain name registrar acting in the performance of its reporting or preservation responsibilities under 18 U.S.C. Secs. 2258a, 2258b, or 2258c.

(5) In a prosecution under RCW 9.68A.050, 9.68A.060, ~~((or))~~ 9.68A.070, or section 7 of this act, the state is not required to establish the identity of the alleged victim.

(6) In a prosecution under RCW 9.68A.070 or section 7 of this act, it shall be an affirmative defense that:

(a) The defendant was employed at or conducting research in partnership or in cooperation with any institution of higher education as defined in RCW 28B.07.020 or 28B.10.016, and:

(i) He or she was engaged in a research activity;

(ii) The research activity was specifically approved prior to the possession or viewing activity being conducted in writing by a person, or other such entity vested with the authority to grant such approval by the institution of higher learning; and

(iii) Viewing or possessing the visual or printed matter is an essential component of the authorized research; or

(b) The defendant was an employee of the Washington state legislature engaged in research at the request of a member of the legislature and:

(i) The request for research is made prior to the possession or viewing activity being conducted in writing by a member of the legislature;

(ii) The research is directly related to a legislative activity; and

(iii) Viewing or possessing the visual or printed matter is an essential component of the requested research and legislative activity.

(c) Nothing in this section authorizes otherwise unlawful viewing or possession of visual or printed matter depicting a minor engaged in sexually explicit conduct.

Sec. 9. RCW 9.94A.515 and 2008 c 108 s 23 and 2008 c 38 s 1 are each reenacted and amended to read as follows:

TABLE 2

CRIMES INCLUDED WITHIN  
EACH SERIOUSNESS LEVEL

XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055)
	Malicious explosion 1 (RCW 70.74.280(1))
	Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050)
	Trafficking 1 (RCW 9A.40.100(1))
XIII	Malicious explosion 2 (RCW 70.74.280(2))
	Malicious placement of an explosive 1 (RCW 70.74.270(1))
XII	Assault 1 (RCW 9A.36.011)
	Assault of a Child 1 (RCW 9A.36.120)
	Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))
	Rape 1 (RCW 9A.44.040)
	Rape of a Child 1 (RCW 9A.44.073)
	Trafficking 2 (RCW 9A.40.100(2))
XI	Manslaughter 1 (RCW 9A.32.060)
	Rape 2 (RCW 9A.44.050)
	Rape of a Child 2 (RCW 9A.44.076)
X	Child Molestation 1 (RCW 9A.44.083)

	Criminal Mistreatment 1 (RCW 9A.42.020)
	Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
	Kidnapping 1 (RCW 9A.40.020)
	Leading Organized Crime (RCW 9A.82.060(1)(a))
	Malicious explosion 3 (RCW 70.74.280(3))
	Sexually Violent Predator Escape (RCW 9A.76.115)
IX	Abandonment of Dependent Person 1 (RCW 9A.42.060)
	Assault of a Child 2 (RCW 9A.36.130)
	Explosive devices prohibited (RCW 70.74.180)
	Hit and Run--Death (RCW 46.52.020(4)(a))
	Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)
	Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
	Malicious placement of an explosive 2 (RCW 70.74.270(2))
	Robbery 1 (RCW 9A.56.200)
	Sexual Exploitation (RCW 9.68A.040)
	Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
VIII	Arson 1 (RCW 9A.48.020)
	Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)
	Manslaughter 2 (RCW 9A.32.070)
	Promoting Commercial Sexual Abuse of a Minor (RCW 9.68A.101)
	Promoting Prostitution 1 (RCW 9A.88.070)
	Theft of Ammonia (RCW 69.55.010)
	Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
VII	Burglary 1 (RCW 9A.52.020)
	Child Molestation 2 (RCW 9A.44.086)
	Civil Disorder Training (RCW 9A.48.120)
	Dealing in depictions of minor engaged in sexually explicit conduct 1 (RCW 9.68A.050(1))
	Drive-by Shooting (RCW 9A.36.045)
	Homicide by Watercraft, by disregard for the safety of others (RCW

- 79A.60.050)
- Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))
- Introducing Contraband 1 (RCW 9A.76.140)
- Malicious placement of an explosive 3 (RCW 70.74.270(3))
- Negligently Causing Death By Use of a Signal Preemption Device (RCW 46.37.675)
- Sending, bringing into state depictions of minor engaged in sexually explicit conduct 1 (RCW 9.68A.060(1))
- Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1))
- Use of a Machine Gun in Commission of a Felony (RCW 9.41.225)
- Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- VI Bail Jumping with Murder 1 (RCW 9A.76.170(3)(a))
- Bribery (RCW 9A.68.010)
- Incest 1 (RCW 9A.64.020(1))
- Intimidating a Judge (RCW 9A.72.160)
- Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
- Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
- Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 1 (RCW 9.68A.070(1))
- Rape of a Child 3 (RCW 9A.44.079)
- Theft of a Firearm (RCW 9A.56.300)
- Unlawful Storage of Ammonia (RCW 69.55.020)
- V Abandonment of Dependent Person 2 (RCW 9A.42.070)
- Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
- Bail Jumping with class A Felony (RCW 9A.76.170(3)(b))
- Child Molestation 3 (RCW 9A.44.089)
- Criminal Mistreatment 2 (RCW 9A.42.030)
- Custodial Sexual Misconduct 1 (RCW 9A.44.160)
- Dealing in Depictions of Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.050(2))
- Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
- Driving While Under the Influence (RCW 46.61.502(6))
- Extortion 1 (RCW 9A.56.120)
- Extortionate Extension of Credit (RCW 9A.82.020)
- Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
- Incest 2 (RCW 9A.64.020(2))
- Kidnapping 2 (RCW 9A.40.030)
- Perjury 1 (RCW 9A.72.020)
- Persistent prison misbehavior (RCW 9.94.070)
- Physical Control of a Vehicle While Under the Influence (RCW 46.61.504(6))
- Possession of a Stolen Firearm (RCW 9A.56.310)
- Rape 3 (RCW 9A.44.060)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)
- Sending, Bringing into State Depictions of Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.060(2))
- Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
- Sexually Violating Human Remains (RCW 9A.44.105)
- Stalking (RCW 9A.46.110)
- Taking Motor Vehicle Without Permission 1 (RCW 9A.56.070)
- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.021)
- Assault 3 (of a Peace Officer with a Projectile Stun Gun) (RCW 9A.36.031(1)(h))
- Assault by Watercraft (RCW 79A.60.060)
- Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
- Cheating 1 (RCW 9.46.1961)
- Commercial Bribery (RCW 9A.68.060)
- Counterfeiting (RCW 9.16.035(4))
- Endangerment with a Controlled Substance (RCW 9A.42.100)
- Escape 1 (RCW 9A.76.110)
- Hit and Run--Injury (RCW 46.52.020(4)(b))
- Hit and Run with Vessel--Injury Accident (RCW 79A.60.200(3))
- Identity Theft 1 (RCW 9.35.020(2))

- Indecent Exposure to Person Under Age Fourteen (subsequent sex offense) (RCW 9A.88.010)
- Influencing Outcome of Sporting Event (RCW 9A.82.070)
- Malicious Harassment (RCW 9A.36.080)
- Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68.070(2))
- Residential Burglary (RCW 9A.52.025)
- Robbery 2 (RCW 9A.56.210)
- Theft of Livestock 1 (RCW 9A.56.080)
- Threats to Bomb (RCW 9.61.160)
- Trafficking in Stolen Property 1 (RCW 9A.82.050)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(b))
- Unlawful transaction of health coverage as a health care service contractor (RCW 48.44.016(3))
- Unlawful transaction of health coverage as a health maintenance organization (RCW 48.46.033(3))
- Unlawful transaction of insurance business (RCW 48.15.023(3))
- Unlicensed practice as an insurance professional (RCW 48.17.063((~~4~~)) (2))
- Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
- Vehicular Assault, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (RCW 46.61.522)
- Viewing of Depictions of a Minor Engaged in Sexually Explicit Conduct 1 (section 7(1) of this act)
- Willful Failure to Return from Furlough (RCW 72.66.060)
- III Animal Cruelty 1 (Sexual Conduct or Contact) (RCW 16.52.205(3))
- Assault 3 (Except Assault 3 of a Peace Officer With a Projectile Stun Gun) (RCW 9A.36.031 except subsection (1)(h))
- Assault of a Child 3 (RCW 9A.36.140)
- Bail Jumping with class B or C Felony (RCW 9A.76.170(3)(c))
- Burglary 2 (RCW 9A.52.030)
- Commercial Sexual Abuse of a Minor (RCW 9.68A.100)
- Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
- Criminal Gang Intimidation (RCW 9A.46.120)
- Custodial Assault (RCW 9A.36.100)
- Cyberstalking (subsequent conviction or threat of death) (RCW 9.61.260(3))
- Escape 2 (RCW 9A.76.120)
- Extortion 2 (RCW 9A.56.130)
- Harassment (RCW 9A.46.020)
- Intimidating a Public Servant (RCW 9A.76.180)
- Introducing Contraband 2 (RCW 9A.76.150)
- Malicious Injury to Railroad Property (RCW 81.60.070)
- Mortgage Fraud (RCW 19.144.080)
- Negligently Causing Substantial Bodily Harm By Use of a Signal Preemption Device (RCW 46.37.674)
- Organized Retail Theft 1 (RCW 9A.56.350(2))
- Perjury 2 (RCW 9A.72.030)
- Possession of Incendiary Device (RCW 9.40.120)
- Possession of Machine Gun or Short-Barreled Shotgun or Rifle (RCW 9.41.190)
- Promoting Prostitution 2 (RCW 9A.88.080)
- Retail Theft with Extenuating Circumstances 1 (RCW 9A.56.360(2))
- Securities Act violation (RCW 21.20.400)
- Tampering with a Witness (RCW 9A.72.120)
- Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230(2))
- Theft of Livestock 2 (RCW 9A.56.083)
- Theft with the Intent to Resell 1 (RCW 9A.56.340(2))
- Trafficking in Stolen Property 2 (RCW 9A.82.055)
- Unlawful Imprisonment (RCW 9A.40.040)
- Unlawful possession of firearm in the second degree (RCW 9.41.040(2))
- Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)
- Willful Failure to Return from Work Release (RCW 72.65.070)
- II Computer Trespass 1 (RCW 9A.52.110)
- Counterfeiting (RCW 9.16.035(3))
- Escape from Community Custody (RCW 72.09.310)

Failure to Register as a Sex Offender  
(second or subsequent offense)  
(RCW 9A.44.130(11)(a))  
Health Care False Claims (RCW  
48.80.030)  
Identity Theft 2 (RCW 9.35.020(3))  
  
Improperly Obtaining Financial  
Information (RCW 9.35.010)  
Malicious Mischief 1 (RCW  
9A.48.070)  
Organized Retail Theft 2 (RCW  
9A.56.350(3))  
Possession of Stolen Property 1 (RCW  
9A.56.150)  
Possession of a Stolen Vehicle (RCW  
9A.56.068)  
Retail Theft with Extenuating  
Circumstances 2 (RCW  
9A.56.360(3))  
Theft 1 (RCW 9A.56.030)  
  
Theft of a Motor Vehicle (RCW  
9A.56.065)  
Theft of Rental, Leased, or Lease-purchased  
Property (valued at one  
thousand five hundred dollars or  
more) (RCW 9A.56.096(5)(a))  
Theft with the Intent to Resell 2 (RCW  
9A.56.340(3))  
Trafficking in Insurance Claims (RCW  
48.30A.015)  
Unlawful factoring of a credit card or  
payment card transaction (RCW  
9A.56.290(4)(a))  
Unlawful Practice of Law (RCW  
2.48.180)  
Unlicensed Practice of a Profession or  
Business (RCW 18.130.190(7))  
Voyeurism (RCW 9A.44.115)  
  
I Attempting to Elude a Pursuing Police  
Vehicle (RCW 46.61.024)  
False Verification for Welfare (RCW  
74.08.055)  
Forgery (RCW 9A.60.020)  
  
Fraudulent Creation or Revocation of a  
Mental Health Advance Directive  
(RCW 9A.60.060)  
Malicious Mischief 2 (RCW  
9A.48.080)  
Mineral Trespass (RCW 78.44.330)  
  
Possession of Stolen Property 2 (RCW  
9A.56.160)  
Reckless Burning 1 (RCW 9A.48.040)  
  
Taking Motor Vehicle Without  
Permission 2 (RCW 9A.56.075)  
Theft 2 (RCW 9A.56.040)  
  
Theft of Rental, Leased, or Lease-purchased  
Property (valued at two  
hundred fifty dollars or more but  
less than one thousand five

hundred dollars) (RCW  
9A.56.096(5)(b))  
Transaction of insurance business  
beyond the scope of licensure  
(RCW 48.17.063(((4))))  
Unlawful Issuance of Checks or Drafts  
(RCW 9A.56.060)  
Unlawful Possession of Fictitious  
Identification (RCW 9A.56.320)  
Unlawful Possession of Instruments of  
Financial Fraud (RCW 9A.56.320)  
Unlawful Possession of Payment  
Instruments (RCW 9A.56.320)  
Unlawful Possession of a Personal  
Identification Device (RCW  
9A.56.320)  
Unlawful Production of Payment  
Instruments (RCW 9A.56.320)  
Unlawful Trafficking in Food Stamps  
(RCW 9.91.142)  
Unlawful Use of Food Stamps (RCW  
9.91.144)  
Vehicle Prowl 1 (RCW 9A.52.095)

**Sec. 10.** RCW 9.94A.535 and 2008 c 276 s 303 and 2008 c 233 s 9 are each reenacted and amended to read as follows:

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

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

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

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

(1) Mitigating Circumstances - Court to Consider

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

(bb) The current offense involved paying to view, over the internet in violation of section 7 of this act, depictions of a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (g)."

On page 1, line 2 of the title, after "abuse;" strike the remainder of the title and insert "amending RCW 9.68A.001, 9.68A.011, 9.68A.050, 9.68A.060, 9.68A.070, and 9.68A.110; reenacting and amending RCW 9.94A.515 and 9.94A.535; adding new sections to chapter 9.68A RCW; and prescribing penalties."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

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

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House refused to concur in the Senate amendment to ENGROSSED SUBSTITUTE HOUSE BILL NO. 2424 and asked the Senate to recede therefrom.

#### MESSAGE FROM THE SENATE

March 5, 2010

Mr. Speaker:

The Senate has passed SECOND SUBSTITUTE HOUSE BILL NO. 2731 with the following amendment:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** The legislature finds that children who participate in high quality preschool programs have improved educational and life outcomes and are more likely to graduate from high school and pursue higher education, experience successful employment opportunities, and have increased earnings. Therefore, the legislature intends to create an entitlement to a program of early learning to protect the current levels of funding for comprehensive preschool programs for three and four-year old children.

The legislature also finds that the state early childhood education and assistance program was established to help children from low-income families be prepared for kindergarten, and that the program has been a successful model for achieving that goal. Therefore, the legislature intends that implementing a program of early learning shall be accomplished by using the program standards and eligibility criteria in the early childhood education and assistance program.

**NEW SECTION. Sec. 2.** A new section is added to chapter 43.215 RCW to read as follows:

(1) An early learning program is established, beginning September 1, 2011, to provide preschool opportunities for children three and four years of age. The program shall be implemented by using the program standards and eligibility criteria in the early childhood education and assistance program under RCW 43.215.405. Participation in the program is voluntary.

(2)(a) For an initial phase of an early learning program in school years 2011-12 and 2012-13, the number of slots for the early learning program shall not be less than the number of slots for three and four-year old children served in the early childhood education and assistance program during the 2009-2011 biennium.

(b) Funding shall continue to be phased in incrementally each year until full statewide implementation of the early learning program is achieved.

(3) Beginning December 1, 2010, the department shall report annually to the governor and the appropriate committees of the legislature. The first report shall include, but not be limited to:

(a) Recommendations for implementing an early learning program;

(b) A review of relevant early learning programs in Washington and other states; and

(c) Recommendations for renaming the early childhood education and assistance program to reflect the new early learning program.

(4) Beginning December 1, 2012, the department of early learning and the office of financial management shall annually review the caseload forecasts for the early learning program and report to the governor and the appropriate committees of the legislature with recommendations for phasing in additional funding to achieve the goal of full statewide implementation.

**Sec. 3.** RCW 43.215.405 and 2006 c 265 s 210 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 43.215.400 through 43.215.450 and 43.215.900 through 43.215.903.

(1) "Advisory committee" means the advisory committee under RCW 43.215.420.

(2) "Department" means the department of early learning.

(3) "Eligible child" means a child at least three years of age and not eligible for kindergarten whose family income is at or below one hundred ten percent of the federal poverty level, as published annually by the federal department of health and human services, and includes a child whose family is eligible for public assistance, and who is not a participant in a federal or state program providing comprehensive services, and ~~((may include children who are eligible under rules adopted by the department if the number of such children equals not more than ten percent of the total enrollment in the early childhood program))~~ a child with disabilities who qualifies for funds in accordance with part B of the federal individuals with disabilities education act and any other federal or state laws relating to the provision of special education services. Priority for enrollment shall be given to children from families with the lowest income, children in foster care, or to eligible children from families with multiple needs.

(4) "Approved programs" means those state-supported education and special assistance programs which are recognized by the department as meeting the minimum program rules adopted by the department to qualify under RCW 43.215.400 through 43.215.450 and 43.215.900 through 43.215.903 and are designated as eligible for funding by the department under RCW 43.215.430 and 43.215.440.

(5) "Comprehensive" means an assistance program that focuses on the needs of the child and includes education, health, and family support services.

(6) "Family support services" means providing opportunities for parents to:

(a) Actively participate in their child's early childhood program;

(b) Increase their knowledge of child development and parenting skills;

- (c) Further their education and training;
- (d) Increase their ability to use needed services in the community;
- (e) Increase their self-reliance.

**Sec. 4.** RCW 43.215.425 and 1994 c 166 s 6 are each amended to read as follows:

The department shall adopt rules under chapter 34.05 RCW for the administration of the early childhood program. Approved early childhood programs shall conduct needs assessments of their service area, identify any targeted groups of children, to include but not be limited to children of seasonal and migrant farmworkers and native American populations living either on or off reservation, and provide to the department a service delivery plan, to the extent practicable, that addresses these targeted populations.

The department in developing rules for the early childhood program shall consult with the advisory committee, and shall consider such factors as coordination with existing head start and other early childhood programs, the preparation necessary for instructors, qualifications of instructors, adequate space and equipment, ~~((and))~~ special transportation needs, and technical assistance to providers. The rules shall specifically require the early childhood programs to provide for parental involvement in participation with their child's program, in local program policy decisions, in development and revision of service delivery systems, and in parent education and training.

**Sec. 5.** RCW 43.215.020 and 2007 c 394 s 5 are each amended to read as follows:

(1) The department of early learning is created as an executive branch agency. The department is vested with all powers and duties transferred to it under this chapter and such other powers and duties as may be authorized by law.

(2) The primary duties of the department are to implement state early learning policy and to coordinate, consolidate, and integrate child care and early learning programs in order to administer programs and funding as efficiently as possible. The department's duties include, but are not limited to, the following:

(a) To support both public and private sectors toward a comprehensive and collaborative system of early learning that serves parents, children, and providers and to encourage best practices in child care and early learning programs;

(b) To make early learning resources available to parents and caregivers;

(c) To carry out activities, including providing clear and easily accessible information about quality and improving the quality of early learning opportunities for young children, in cooperation with the nongovernmental private-public partnership;

(d) To administer child care and early learning programs;

(e) To standardize internal financial audits, oversight visits, performance benchmarks, and licensing criteria, so that programs can function in an integrated fashion;

(f) To support the implementation of the nongovernmental private- public partnership and cooperate with that partnership in pursuing its goals including providing data and support necessary for the successful work of the partnership;

(g) To work cooperatively and in coordination with the early learning council;

(h) To collaborate with the K-12 school system at the state and local levels to ensure appropriate connections and smooth transitions between early learning, including an early learning program established in section 2 of this act, and K-12 programs; ~~((and))~~

(i) To develop and implement an early learning program established in section 2 of this act; and

(j) Upon the development of an early learning information system, to make available to parents timely inspection and licensing action information through the internet and other means.

(3) The department's programs shall be designed in a way that respects and preserves the ability of parents and legal guardians to

direct the education, development, and upbringing of their children. The department shall include parents and legal guardians in the development of policies and program decisions affecting their children.

**NEW SECTION. Sec. 6.** A new section is added to chapter 28A.320 RCW to read as follows:

For an early learning program established in section 2 of this act, school districts:

(1) Shall work cooperatively with program providers to coordinate the transition from preschool to kindergarten so that children and their families are well-prepared and supported; and

(2) May contract with the department of early learning to deliver services under the program."

On page 1, line 1 of the title, after "for" strike the remainder of the title and insert "children; amending RCW 43.215.405, 43.215.425, and 43.215.020; adding a new section to chapter 43.215 RCW; adding a new section to chapter 28A.320 RCW; and creating a new section."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House refused to concur in the Senate amendment to SECOND SUBSTITUTE HOUSE BILL NO. 2731 and asked the Senate to recede therefrom.

#### MESSAGE FROM THE SENATE

March 5, 2010

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 2596 with the following amendment:

On page 6, after line 2, insert the following:

**NEW SECTION. Sec. 4.** A new section is added to chapter 9A.44 RCW to read as follows:

While Article I, section 22 of the state Constitution and the sixth amendment of the United States Constitution protect the right of a defendant to represent him or herself in a criminal trial, Article I, section 35 of the state Constitution requires that crime victims be accorded due dignity and respect. Conflicts may arise between these constitutional provisions when a pro se defendant questions a victim in court. Procedures may be employed that preserve the pro se defendant's control over his or her own trial and that limit the trauma experienced by the victim. The legislature commends consideration of these competing constitutional provisions to the supreme court of Washington."

Correct the title.

and the same is herewith transmitted.

Brad Hendrickson, Deputy Secretary

#### POINT OF ORDER

Representative Green requested a scope and object ruling on the Senate amendment to Substitute House Bill No. 2596.

#### SPEAKER'S RULING

Mr. Speaker (Representative Moeller presiding): "Substitute House Bill No. 2596, as passed by the House, added child advocacy centers to the list of entities counties must consult when developing protocols for the investigation of child abuse, neglect, fatality and sexual assault. The Senate amendment added a section

relating to pro se defendants questioning victims in court, a subject wholly unrelated to child advocacy centers and protocols for the investigation of child abuse and neglect. The Senate amendment clearly exceeds the scope and object of the bill as passed by the House. The point of order is well taken."

### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House refused to concur in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 2596 and asked the Senate to recede therefrom.

### MESSAGE FROM THE SENATE

March 5, 2010

Mr. Speaker:

The Senate has passed HOUSE BILL NO. 1880 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 29A.40.091 and 2009 c 369 s 39 are each amended to read as follows:

The county auditor shall send each (~~absentee~~) voter a ballot, a security envelope in which to seal the ballot after voting, a larger envelope in which to return the security envelope, and instructions on how to mark the ballot and how to return it to the county auditor. The instructions that accompany (~~an absentee~~) a ballot for a partisan primary must include instructions for voting the applicable ballot style, as provided in chapter 29A.36 RCW. The (~~absentee~~) voter's name and address must be printed on the larger return envelope, which must also contain a declaration by the (~~absentee~~) voter reciting his or her qualifications and stating that he or she has not voted in any other jurisdiction at this election, together with a summary of the penalties for any violation of any of the provisions of this chapter. The declaration must clearly inform the voter that it is illegal to vote if he or she is not a United States citizen; it is illegal to vote if he or she has been convicted of a felony and has not had his or her voting rights restored; and, except as otherwise provided by law, it is illegal to cast a ballot or sign (~~an absentee~~) a return envelope on behalf of another voter. The return envelope must provide space for the voter to indicate the date on which the ballot was voted and for the voter to sign the oath. It must also contain a space so that the voter may include a telephone number. A summary of the applicable penalty provisions of this chapter must be printed on the return envelope immediately adjacent to the space for the voter's signature. The signature of the voter on the return envelope must affirm and attest to the statements regarding the qualifications of that voter and to the validity of the ballot. The return envelope (~~must also have a~~) may provide secrecy (~~flap that the voter may seal that will cover~~) for the voter's signature and optional telephone number. For overseas (~~voters~~) and service voters, the signed declaration on the return envelope constitutes the equivalent of a voter registration for the election or primary for which the ballot has been issued. The voter must be instructed to either return the ballot to the county auditor by whom it was issued or attach sufficient first-class postage, if applicable, and mail the ballot to the appropriate county auditor no later than the day of the election or primary for which the ballot was issued.

If the county auditor chooses to forward (~~absentee~~) ballots, he or she must include with the ballot a clear explanation of the qualifications necessary to vote in that election and must also advise a voter with questions about his or her eligibility to contact the county auditor. This explanation may be provided on the ballot envelope, on an enclosed insert, or printed directly on the ballot itself. If the

information is not included, the envelope must clearly indicate that the ballot is not to be forwarded and that return postage is guaranteed.

**NEW SECTION. Sec. 2.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately."

On page 1, line 1 of the title, after "envelopes;" strike the remainder of the title and insert "amending RCW 29A.40.091; and declaring an emergency."

and the same is herewith transmitted.

Brad Hendrickson, Deputy, Secretary

### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to HOUSE BILL NO. 1880 and advanced the bill, as amended by the Senate, to final passage.

### FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Armstrong and Hunt spoke in favor of the passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of House Bill No. 1880, as amended by the Senate.

### MOTIONS

On motion of Representative Hinkle, Representative Condotta was excused. On motion of Representative Santos, Representative Morris was excused.

### ROLL CALL

The Clerk called the roll on the final passage of House Bill No. 1880, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 94; Nays, 2; Absent, 0; Excused, 2.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Conway, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Fagan, Finn, Flannigan, Goodman, Green, Haigh, Haler, Hasegawa, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Lias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Nealey, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Voting nay: Representatives Ericksen and Herrera.

Excused: Representatives Condotta and Morris.

HOUSE BILL NO. 1880, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

### MESSAGE FROM THE SENATE

March 3, 2010

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 2534 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 9A.44.130 and 2008 c 230 s 1 are each amended to read as follows:

(1)(a) Any adult or juvenile residing whether or not the person has a fixed residence, or who is a student, is employed, or carries on a vocation in this state who has been found to have committed or has been convicted of any sex offense or kidnapping offense, or who has been found not guilty by reason of insanity under chapter 10.77 RCW of committing any sex offense or kidnapping offense, shall register with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation, or as otherwise specified in this section. Where a person required to register under this section is in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility as a result of a sex offense or kidnapping offense, the person shall also register at the time of release from custody with an official designated by the agency that has jurisdiction over the person.

(b) Any adult or juvenile who is required to register under (a) of this subsection:

(i) Who is attending, or planning to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW shall, within ten days of enrolling or prior to arriving at the school to attend classes, whichever is earlier, notify the sheriff for the county of the person's residence of the person's intent to attend the school, and the sheriff shall promptly notify the principal of the school;

(ii) Who is admitted to a public or private institution of higher education shall, within ten days of enrolling or by the first business day after arriving at the institution, whichever is earlier, notify the sheriff for the county of the person's residence of the person's intent to attend the institution;

(iii) Who gains employment at a public or private institution of higher education shall, within ten days of accepting employment or by the first business day after commencing work at the institution, whichever is earlier, notify the sheriff for the county of the person's residence of the person's employment by the institution; or

(iv) Whose enrollment or employment at a public or private institution of higher education is terminated shall, within ten days of such termination, notify the sheriff for the county of the person's residence of the person's termination of enrollment or employment at the institution.

(c) Persons required to register under this section who are enrolled in a public or private institution of higher education on June 11, 1998, or a public or private school regulated under Title 28A RCW or chapter 72.40 RCW on September 1, 2006, must notify the county sheriff immediately.

(d) The sheriff shall notify the school's principal or institution's department of public safety and shall provide that department with the same information provided to a county sheriff under subsection (3) of this section.

(e)(i) A principal receiving notice under this subsection must disclose the information received from the sheriff under (b) of this subsection as follows:

(A) If the student who is required to register as a sex offender is classified as a risk level II or III, the principal shall provide the information received to every teacher of any student required to register under (a) of this subsection and to any other personnel who, in the judgment of the principal, supervises the student or for security purposes should be aware of the student's record;

(B) If the student who is required to register as a sex offender is classified as a risk level I, the principal shall provide the information

received only to personnel who, in the judgment of the principal, for security purposes should be aware of the student's record.

(ii) Any information received by a principal or school personnel under this subsection is confidential and may not be further disseminated except as provided in RCW 28A.225.330, other statutes or case law, and the family and educational and privacy rights act of 1994, 20 U.S.C. Sec. 1232g et seq.

(2) This section may not be construed to confer any powers pursuant to RCW 4.24.550 upon the public safety department of any public or private school or institution of higher education.

(3)(a) The person shall provide the following information when registering: (i) Name; (ii) complete residential address; (iii) date and place of birth; (iv) place of employment; (v) crime for which convicted; (vi) date and place of conviction; (vii) aliases used; (viii) social security number; (ix) photograph; and (x) fingerprints.

(b) Any person who lacks a fixed residence shall provide the following information when registering: (i) Name; (ii) date and place of birth; (iii) place of employment; (iv) crime for which convicted; (v) date and place of conviction; (vi) aliases used; (vii) social security number; (viii) photograph; (ix) fingerprints; and (x) where he or she plans to stay.

(4)(a) Offenders shall register with the county sheriff within the following deadlines. For purposes of this section the term "conviction" refers to adult convictions and juvenile adjudications for sex offenses or kidnapping offenses:

(i) OFFENDERS IN CUSTODY. (A) Sex offenders who committed a sex offense on, before, or after February 28, 1990, and who, on or after July 28, 1991, are in custody, as a result of that offense, of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, and (B) kidnapping offenders who on or after July 27, 1997, are in custody of the state department of corrections, the state department of social and health services, a local division of youth services, or a local jail or juvenile detention facility, must register at the time of release from custody with an official designated by the agency that has jurisdiction over the offender. The agency shall within three days forward the registration information to the county sheriff for the county of the offender's anticipated residence. The offender must also register within twenty- four hours from the time of release with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. The agency that has jurisdiction over the offender shall provide notice to the offender of the duty to register. Failure to register at the time of release and within twenty-four hours of release constitutes a violation of this section and is punishable as provided in subsection ((4+)) (10) of this section.

When the agency with jurisdiction intends to release an offender with a duty to register under this section, and the agency has knowledge that the offender is eligible for developmental disability services from the department of social and health services, the agency shall notify the division of developmental disabilities of the release. Notice shall occur not more than thirty days before the offender is to be released. The agency and the division shall assist the offender in meeting the initial registration requirement under this section. Failure to provide such assistance shall not constitute a defense for any violation of this section.

(ii) OFFENDERS NOT IN CUSTODY BUT UNDER STATE OR LOCAL JURISDICTION. Sex offenders who, on July 28, 1991, are not in custody but are under the jurisdiction of the indeterminate sentence review board or under the department of corrections' active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 28, 1991. Kidnapping offenders who, on July 27, 1997, are not in custody but are under the

jurisdiction of the indeterminate sentence review board or under the department of corrections' active supervision, as defined by the department of corrections, the state department of social and health services, or a local division of youth services, for kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A change in supervision status of a sex offender who was required to register under this subsection (4)(a)(ii) as of July 28, 1991, or a kidnapping offender required to register as of July 27, 1997, shall not relieve the offender of the duty to register or to reregister following a change in residence. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(iii) **OFFENDERS UNDER FEDERAL JURISDICTION.** Sex offenders who, on or after July 23, 1995, and kidnapping offenders who, on or after July 27, 1997, as a result of that offense are in the custody of the United States bureau of prisons or other federal or military correctional agency for sex offenses committed before, on, or after February 28, 1990, or kidnapping offenses committed on, before, or after July 27, 1997, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. Sex offenders who, on July 23, 1995, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for sex offenses committed before, on, or after February 28, 1990, must register within ten days of July 23, 1995. Kidnapping offenders who, on July 27, 1997, are not in custody but are under the jurisdiction of the United States bureau of prisons, United States courts, United States parole commission, or military parole board for kidnapping offenses committed before, on, or after July 27, 1997, must register within ten days of July 27, 1997. A change in supervision status of a sex offender who was required to register under this subsection (4)(a)(iii) as of July 23, 1995, or a kidnapping offender required to register as of July 27, 1997 shall not relieve the offender of the duty to register or to reregister following a change in residence, or if the person is not a resident of Washington, the county of the person's school, or place of employment or vocation. The obligation to register shall only cease pursuant to RCW 9A.44.140.

(iv) **OFFENDERS WHO ARE CONVICTED BUT NOT CONFINED.** Sex offenders who are convicted of a sex offense on or after July 28, 1991, for a sex offense that was committed on or after February 28, 1990, and kidnapping offenders who are convicted on or after July 27, 1997, for a kidnapping offense that was committed on or after July 27, 1997, but who are not sentenced to serve a term of confinement immediately upon sentencing, shall report to the county sheriff to register immediately upon completion of being sentenced.

(v) **OFFENDERS WHO ARE NEW RESIDENTS OR RETURNING WASHINGTON RESIDENTS.** Sex offenders and kidnapping offenders who move to Washington state from another state or a foreign country that are not under the jurisdiction of the state department of corrections, the indeterminate sentence review board, or the state department of social and health services at the time of moving to Washington, must register within three business days of establishing residence or reestablishing residence if the person is a former Washington resident. The duty to register under this subsection applies to sex offenders convicted under the laws of another state or a foreign country, federal or military statutes for offenses committed before, on, or after February 28, 1990, or Washington state for offenses committed before, on, or after February 28, 1990, and to kidnapping offenders convicted under the laws of another state or a foreign country, federal or military statutes, or Washington state for offenses committed before, on, or after July 27, 1997. Sex offenders and kidnapping offenders from other states or a foreign country who, when they move to Washington, are under the jurisdiction of the department of corrections, the indeterminate sentence review board, or the department of social and health services

must register within twenty-four hours of moving to Washington. The agency that has jurisdiction over the offender shall notify the offender of the registration requirements before the offender moves to Washington.

(vi) **OFFENDERS FOUND NOT GUILTY BY REASON OF INSANITY.** Any adult or juvenile who has been found not guilty by reason of insanity under chapter 10.77 RCW of (A) committing a sex offense on, before, or after February 28, 1990, and who, on or after July 23, 1995, is in custody, as a result of that finding, of the state department of social and health services, or (B) committing a kidnapping offense on, before, or after July 27, 1997, and who on or after July 27, 1997, is in custody, as a result of that finding, of the state department of social and health services, must register within twenty-four hours from the time of release with the county sheriff for the county of the person's residence. The state department of social and health services shall provide notice to the adult or juvenile in its custody of the duty to register. Any adult or juvenile who has been found not guilty by reason of insanity of committing a sex offense on, before, or after February 28, 1990, but who was released before July 23, 1995, or any adult or juvenile who has been found not guilty by reason of insanity of committing a kidnapping offense but who was released before July 27, 1997, shall be required to register within twenty-four hours of receiving notice of this registration requirement. The state department of social and health services shall make reasonable attempts within available resources to notify sex offenders who were released before July 23, 1995, and kidnapping offenders who were released before July 27, 1997. Failure to register within twenty-four hours of release, or of receiving notice, constitutes a violation of this section and is punishable as provided in subsection ~~((4))~~ (10) of this section.

(vii) **OFFENDERS WHO LACK A FIXED RESIDENCE.** Any person who lacks a fixed residence and leaves the county in which he or she is registered and enters and remains within a new county for twenty-four hours is required to register with the county sheriff not more than twenty-four hours after entering the county and provide the information required in subsection (3)(b) of this section.

(viii) **OFFENDERS WHO LACK A FIXED RESIDENCE AND WHO ARE UNDER SUPERVISION.** Offenders who lack a fixed residence and who are under the supervision of the department shall register in the county of their supervision.

(ix) **OFFENDERS WHO MOVE TO, WORK, CARRY ON A VOCATION, OR ATTEND SCHOOL IN ANOTHER STATE.** Offenders required to register in Washington, who move to another state, or who work, carry on a vocation, or attend school in another state shall register a new address, fingerprints, and photograph with the new state within ten days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. The person must also send written notice within ten days of moving to the new state or to a foreign country to the county sheriff with whom the person last registered in Washington state. The county sheriff shall promptly forward this information to the Washington state patrol.

(b) Failure to register within the time required under this section constitutes a per se violation of this section and is punishable as provided in subsection ~~((4))~~ (10) of this section. The county sheriff shall not be required to determine whether the person is living within the county.

(c) An arrest on charges of failure to register, service of an information, or a complaint for a violation of this section, or arraignment on charges for a violation of this section, constitutes actual notice of the duty to register. Any person charged with the crime of failure to register under this section who asserts as a defense the lack of notice of the duty to register shall register immediately following actual notice of the duty through arrest, service, or arraignment. Failure to register as required under this subsection (4)(c) constitutes grounds for filing another charge of failing to

register. Registering following arrest, service, or arraignment on charges shall not relieve the offender from criminal liability for failure to register prior to the filing of the original charge.

(d) The deadlines for the duty to register under this section do not relieve any sex offender of the duty to register under this section as it existed prior to July 28, 1991.

(5)(a) If any person required to register pursuant to this section changes his or her residence address within the same county, the person must send signed written notice of the change of address to the county sheriff within seventy-two hours of moving. If any person required to register pursuant to this section moves to a new county, the person must send signed written notice of the change of address at least fourteen days before moving to the county sheriff in the new county of residence and must register with that county sheriff within twenty-four hours of moving. The person must also send signed written notice within ten days of the change of address in the new county to the county sheriff with whom the person last registered. The county sheriff with whom the person last registered shall promptly forward the information concerning the change of address to the county sheriff for the county of the person's new residence. Upon receipt of notice of change of address to a new state, the county sheriff shall promptly forward the information regarding the change of address to the agency designated by the new state as the state's offender registration agency.

(b) It is an affirmative defense to a charge that the person failed to send a notice at least fourteen days in advance of moving as required under (a) of this subsection that the person did not know the location of his or her new residence at least fourteen days before moving. The defendant must establish the defense by a preponderance of the evidence and, to prevail on the defense, must also prove by a preponderance that the defendant sent the required notice within twenty-four hours of determining the new address.

(6)(a) Any person required to register under this section who lacks a fixed residence shall provide signed written notice to the sheriff of the county where he or she last registered within forty-eight hours excluding weekends and holidays after ceasing to have a fixed residence. The notice shall include the information required by subsection (3)(b) of this section, except the photograph and fingerprints. The county sheriff may, for reasonable cause, require the offender to provide a photograph and fingerprints. The sheriff shall forward this information to the sheriff of the county in which the person intends to reside, if the person intends to reside in another county.

(b) A person who lacks a fixed residence must report weekly, in person, to the sheriff of the county where he or she is registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. ~~((The county sheriff's office may require the person to list the locations where the person has stayed during the last seven days.))~~ The person must keep an accurate accounting of where he or she stays during the week and provide it to the county sheriff upon request. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

(c) If any person required to register pursuant to this section does not have a fixed residence, it is an affirmative defense to the charge of failure to register, that he or she provided written notice to the sheriff of the county where he or she last registered within forty-eight hours excluding weekends and holidays after ceasing to have a fixed residence and has subsequently complied with the requirements of subsections (4)(a)(vii) or (viii) and (6) of this section. To prevail, the person must prove the defense by a preponderance of the evidence.

(7) ~~((All offenders who are required to register pursuant to this section who have a fixed residence and who are designated as a risk level II or III must report, in person, every ninety days to the sheriff of the county where he or she is registered. Reporting shall be on a day~~

~~specified by the county sheriff's office, and shall occur during normal business hours. An offender who complies with the ninety day reporting requirement with no violations for a period of at least five years in the community may petition the superior court to be relieved of the duty to report every ninety days. The petition shall be made to the superior court in the county where the offender resides or reports under this section. The prosecuting attorney of the county shall be named and served as respondent in any such petition. The court shall relieve the petitioner of the duty to report if the petitioner shows, by a preponderance of the evidence, that the petitioner has complied with the reporting requirement for a period of at least five years and that the offender has not been convicted of a criminal violation of this section for a period of at least five years, and the court determines that the reporting no longer serves a public safety purpose. Failure to report, as specified, constitutes a violation of this section and is punishable as provided in subsection (11) of this section.~~

~~(8))~~ A sex offender subject to registration requirements under this section who applies to change his or her name under RCW 4.24.130 or any other law shall submit a copy of the application to the county sheriff of the county of the person's residence and to the state patrol not fewer than five days before the entry of an order granting the name change. No sex offender under the requirement to register under this section at the time of application shall be granted an order changing his or her name if the court finds that doing so will interfere with legitimate law enforcement interests, except that no order shall be denied when the name change is requested for religious or legitimate cultural reasons or in recognition of marriage or dissolution of marriage. A sex offender under the requirement to register under this section who receives an order changing his or her name shall submit a copy of the order to the county sheriff of the county of the person's residence and to the state patrol within five days of the entry of the order.

~~((9))~~ (8) The county sheriff shall obtain a photograph of the individual and shall obtain a copy of the individual's fingerprints. A photograph may be taken at any time to update an individual's file.

~~((10))~~ (9) For the purpose of RCW 9A.44.130, 10.01.200, 43.43.540, 70.48.470, and 72.09.330:

(a) "Sex offense" means:

(i) Any offense defined as a sex offense by RCW 9.94A.030;

(ii) Any violation under RCW 9A.44.096 (sexual misconduct with a minor in the second degree);

(iii) Any violation under RCW 9.68A.090 (communication with a minor for immoral purposes);

(iv) Any federal or out-of-state conviction for an offense that under the laws of this state would be classified as a sex offense under this subsection; and

(v) Any gross misdemeanor that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex offense under RCW 9.94A.030 or this subsection.

(b) "Kidnapping offense" means: (i) The crimes of kidnapping in the first degree, kidnapping in the second degree, and unlawful imprisonment, as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent; (ii) any offense that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a kidnapping offense under this subsection ~~((10))~~ (9)(b); and (iii) any federal or out-of-state conviction for an offense that under the laws of this state would be classified as a kidnapping offense under this subsection ~~((10))~~ (9)(b).

(c) "Employed" or "carries on a vocation" means employment that is full-time or part-time for a period of time exceeding fourteen days, or for an aggregate period of time exceeding thirty days during any calendar year. A person is employed or carries on a vocation whether the person's employment is financially compensated, volunteered, or for the purpose of government or educational benefit.

(d) "Student" means a person who is enrolled, on a full-time or part-time basis, in any public or private educational institution. An educational institution includes any secondary school, trade or professional institution, or institution of higher education.

~~((43))~~ (10)(a) A person who knowingly fails to comply with any of the requirements of this section is guilty of a class B felony if the crime for which the individual was convicted was a felony sex offense as defined in subsection ~~((40))~~ (9)(a) of this section or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony sex offense as defined in subsection ~~((40))~~ (9)(a) of this section.

(b) If the crime for which the individual was convicted was other than a felony or a federal or out-of-state conviction for an offense that under the laws of this state would be other than a felony, violation of this section is a gross misdemeanor.

~~((42))~~ (11)(a) A person who knowingly fails to comply with any of the requirements of this section is guilty of a class C felony if the crime for which the individual was convicted was a felony kidnapping offense as defined in subsection ~~((40))~~ (9)(b) of this section or a federal or out-of-state conviction for an offense that under the laws of this state would be a felony kidnapping offense as defined in subsection ~~((40))~~ (9)(b) of this section.

(b) If the crime for which the individual was convicted was other than a felony or a federal or out-of-state conviction for an offense that under the laws of this state would be other than a felony, violation of this section is a gross misdemeanor.

~~((43))~~ (12) Except as may otherwise be provided by law, nothing in this section shall impose any liability upon a peace officer, including a county sheriff, or law enforcement agency, for failing to release information authorized under this section.

**Sec. 2.** RCW 9A.44.135 and 2000 c 91 s 1 are each amended to read as follows:

(1) When an offender registers with the county sheriff pursuant to RCW 9A.44.130, the county sheriff shall notify the police chief or town marshal of the jurisdiction in which the offender has registered to live. If the offender registers to live in an unincorporated area of the county, the sheriff shall make reasonable attempts to verify that the offender is residing at the registered address. If the offender registers to live in an incorporated city or town, the police chief or town marshal shall make reasonable attempts to verify that the offender is residing at the registered address. Reasonable attempts ~~((at verifying an address shall include at a minimum:~~

~~— (a) For offenders who have not been previously designated sexually violent predators under chapter 71.09 RCW or an equivalent procedure in another jurisdiction, each year the chief law enforcement officer of the jurisdiction where the offender is registered to live shall send)) include verifying an offender's address pursuant to the grant program established under section 3 of this act. If the sheriff or police chief or town marshal does not participate in the grant program established under section 3 of this act, reasonable attempts require a yearly mailing by certified mail, with return receipt requested, a nonforwardable verification form to the offender at the offender's last registered address sent by the chief law enforcement officer of the jurisdiction where the offender is registered to live. ~~((b))~~ For offenders who have been previously designated sexually violent predators under chapter 71.09 RCW or the equivalent procedure in another jurisdiction, even if the designation has subsequently been removed, this mailing must be sent every ninety days ~~((the county sheriff shall send by certified mail, with return receipt requested, a nonforwardable verification form to the offender at the offender's last registered address)).~~~~

~~((e))~~ The offender must sign the verification form, state on the form whether he or she still resides at the last registered address, and return the form to the chief law enforcement officer of the jurisdiction where the offender is registered to live within ten days after receipt of the form.

(2) The chief law enforcement officer of the jurisdiction where the offender has registered to live shall make reasonable attempts to locate any sex offender who fails to return the verification form or who cannot be located at the registered address.

If the offender fails to return the verification form or the offender is not at the last registered address, the chief law enforcement officer of the jurisdiction where the offender has registered to live shall promptly forward this information to the county sheriff and to the Washington state patrol for inclusion in the central registry of sex offenders.

(3) When an offender notifies the county sheriff of a change to his or her residence address pursuant to RCW 9A.44.130, and the new address is in a different law enforcement jurisdiction, the county sheriff shall notify the police chief or town marshal of the jurisdiction from which the offender has moved.

(4) County sheriffs and police chiefs or town marshals may enter into agreements for the purposes of delegating the authority and obligation to fulfill the requirements of this section.

NEW SECTION. Sec. 3. A new section is added to chapter 36.28A RCW to read as follows:

(1) When funded, the Washington association of sheriffs and police chiefs shall administer a grant program to local governments for the purpose of verifying the address and residency of sex offenders and kidnapping offenders registered under RCW 9A.44.130 who reside within the county sheriff's jurisdiction. The Washington association of sheriffs and police chiefs shall:

(a) Enter into performance-based agreements with local governments to ensure that registered offender address and residency are verified:

- (i) For level I offenders, every twelve months;
- (ii) For level II offenders, every six months; and
- (iii) For level III offenders, every three months;

(b) Collect performance data from all participating jurisdictions sufficient to evaluate the efficiency and effectiveness of the address and residency verification program; and

(c) Submit a report on the effectiveness of the address and residency verification program to the governor and the appropriate committees of the house of representatives and senate by December 31st each year.

(2) The Washington association of sheriffs and police chiefs may retain up to three percent of the amounts provided pursuant to this section for the cost of administration. Any funds not disbursed for address and residency verification or retained for administration may be allocated to local prosecutors for the prosecution costs associated with failing to register offenders.

(3) For the purposes of this section, unclassified offenders and kidnapping offenders shall be considered at risk level I unless in the opinion of the local jurisdiction a higher classification is in the interest of public safety.

(4) County sheriffs and police chiefs or town marshals may enter into agreements for the purposes of delegating the authority and obligation to fulfill the requirements of this section."

On page 1, line 2 of the title, after "offenders;" strike the remainder of the title and insert "amending RCW 9A.44.130 and 9A.44.135; and adding a new section to chapter 36.28A RCW."

and the same is herewith transmitted.

Thomas Hoeman, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 2534 and advanced the bill, as amended by the Senate, to final passage.

#### FINAL PASSAGE OF HOUSE BILL

**AS SENATE AMENDED**

Representatives Hurst and Pearson spoke in favor of the passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Substitute House Bill No. 2534, as amended by the Senate.

**ROLL CALL**

The Clerk called the roll on the final passage of Substitute House Bill No. 2534, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 96; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Conway, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Fagan, Finn, Flannigan, Goodman, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Lias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Nealey, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representatives Condotta and Morris.

SUBSTITUTE HOUSE BILL NO. 2534, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

**MESSAGE FROM THE SENATE**

March 5, 2010

Mr. Speaker:

The Senate has passed HOUSE BILL NO. 2625 with the following amendment:

Strike everything after the enacting clause and insert the following:

**NEW SECTION. Sec. 1.** The legislature intends by this act to require an individualized determination by a judicial officer of conditions of release for persons in custody for felony. This requirement is consistent with constitutional requirements and court rules regarding the right of a detained person to a prompt determination of probable cause and judicial review of the conditions of release and the requirement that judicial determinations of bail or release be made no later than the preliminary appearance stage.

**NEW SECTION. Sec. 2.** (1) Bail for the release of a person arrested and detained for a felony offense must be determined on an individualized basis by a judicial officer.

(2) This section expires August 1, 2011.

**NEW SECTION. Sec. 3.** It is the intent of the legislature to enact a law for the purpose of reasonably assuring public safety in bail determination hearings and hearings pursuant to the proposed amendment to Article I, section 20 of the state Constitution set forth in House Joint Resolution No. 4220. Other provisions of law address matters relating to assuring the appearance of the defendant at trial and preventing interference with the administration of justice.

**NEW SECTION. Sec. 4.** Upon the appearance before a judicial officer of a person charged with an offense, the judicial officer must issue an order that, pending trial, the person be:

- (1) Released on personal recognizance;
- (2) Released on a condition or combination of conditions ordered under section 5 of this act or other provision of law;
- (3) Temporarily detained as allowed by law; or
- (4) Detained as provided under this act.

**NEW SECTION. Sec. 5.** (1) The judicial officer may at any time amend the order to impose additional or different conditions of release. The conditions imposed under this chapter supplement but do not supplant provisions of law allowing the imposition of conditions to assure the appearance of the defendant at trial or to prevent interference with the administration of justice.

(2) Appropriate conditions of release under this chapter include, but are not limited to, the following:

- (a) The defendant may be placed in the custody of a designated person or organization agreeing to supervise the defendant;
- (b) The defendant may have restrictions placed upon travel, association, or place of abode during the period of release;
- (c) The defendant may be required to comply with a specified curfew;
- (d) The defendant may be required to return to custody during specified hours or to be placed on electronic monitoring, if available. The defendant, if convicted, may not have the period of incarceration reduced by the number of days spent on electronic monitoring;
- (e) The defendant may be prohibited from approaching or communicating in any manner with particular persons or classes of persons;

(f) The defendant may be prohibited from going to certain geographical areas or premises;

(g) The defendant may be prohibited from possessing any dangerous weapons or firearms;

(h) The defendant may be prohibited from possessing or consuming any intoxicating liquors or drugs not prescribed to the defendant. The defendant may be required to submit to testing to determine the defendant's compliance with this condition;

(i) The defendant may be prohibited from operating a motor vehicle that is not equipped with an ignition interlock device;

(j) The defendant may be required to report regularly to and remain under the supervision of an officer of the court or other person or agency; and

(k) The defendant may be prohibited from committing any violations of criminal law.

**NEW SECTION. Sec. 6.** If, after a hearing on offenses prescribed in Article I, section 20 of the state Constitution, the judicial officer finds, by clear and convincing evidence, that a person shows a propensity for violence that creates a substantial likelihood of danger to the community or any persons, and finds that no condition or combination of conditions will reasonably assure the safety of any other person and the community, such judicial officer must order the detention of the person before trial. The detainee is entitled to expedited review of the detention order by the court of appeals under the writ provided in RCW 7.36.160.

**NEW SECTION. Sec. 7.** The judicial officer must, in determining whether there are conditions of release that will reasonably assure the safety of any other person and the community, take into account the available information concerning:

(1) The nature and circumstances of the offense charged, including whether the offense is a crime of violence;

(2) The weight of the evidence against the defendant; and

(3) The history and characteristics of the defendant, including:

(a) The person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or



alcohol abuse, criminal history, and record concerning appearance at court proceedings;

(b) Whether, at the time of the current offense or arrest, the defendant was on community supervision, probation, parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under federal, state, or local law; and

(c) The nature and seriousness of the danger to any person or the community that would be posed by the defendant's release.

**NEW SECTION. Sec. 8.** (1) The judicial officer must hold a hearing in cases involving offenses prescribed in Article 1, section 20, to determine whether any condition or combination of conditions will reasonably assure the safety of any other person and the community upon motion of the attorney for the government.

(2) The hearing must be held immediately upon the defendant's first appearance before the judicial officer unless the defendant, or the attorney for the government, seeks a continuance. Except for good cause, a continuance on motion of such person may not exceed five days (not including any intermediate Saturday, Sunday, or legal holiday), and a continuance on motion of the attorney for the government may not exceed three days (not including any intermediate Saturday, Sunday, or legal holiday). During a continuance, such person must be detained.

(3) At the hearing, such defendant has the right to be represented by counsel, and, if financially unable to obtain representation, to have counsel appointed. The defendant must be afforded an opportunity to testify, to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing. The facts the judicial officer uses to support a finding that no condition or combination of conditions will reasonably assure the safety of any other person and the community must be supported by clear and convincing evidence of a propensity for violence that creates a substantial likelihood of danger to the community or any persons.

(4) The defendant may be detained pending completion of the hearing. The hearing may be reopened, before or after a determination by the judicial officer, at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the safety of any other person and the community.

**NEW SECTION. Sec. 9.** In a release order issued under section 5 of this act the judicial officer must:

(1) Include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the defendant's conduct; and

(2) Advise the defendant of:

(a) The penalties for violating a condition of release, including the penalties for committing an offense while on pretrial release; and

(b) The consequences of violating a condition of release, including the immediate issuance of a warrant for the defendant's arrest.

**NEW SECTION. Sec. 10.** (1) In a detention order issued under section 6 of this act, the judicial officer must:

(a) Include written findings of fact and a written statement of the reasons for the detention;

(b) Direct that the person be committed to the custody of the appropriate correctional authorities for confinement separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal; and

(c) Direct that the person be afforded reasonable opportunity for private consultation with counsel.

(2) The judicial officer may, by subsequent order, permit the temporary release of the person, in the custody of an appropriate law enforcement officer or other appropriate person, to the extent that the

judicial officer determines such release to be necessary for preparation of the person's defense or for another compelling reason.

**NEW SECTION. Sec. 11.** Nothing in this chapter may be construed as modifying or limiting the presumption of innocence.

**NEW SECTION. Sec. 12.** Sections 3 through 11 of this act constitute a new chapter in Title 10 RCW.

**NEW SECTION. Sec. 13.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION. Sec. 14.** Sections 1 and 2 take effect January 1, 2011. Sections 3 through 10 take effect January 1, 2011, only if the proposed amendment to Article I, section 20 of the state Constitution proposed in House Joint Resolution No. 4220 is validly submitted to and is approved and ratified by the voters at the next general election. If the proposed amendment is not approved and ratified, sections 3 through 11 of this act are null and void in their entirety."

On page 1, line 1 of the title, after "offenses;" strike the remainder of the title and insert "adding a new chapter to Title 10 RCW; providing a contingent effective date; and providing an expiration date."

and the same is herewith transmitted.

Brad Hendrickson, Deputy, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to HOUSE BILL NO. 2625 and advanced the joint resolution, as amended by the Senate, to final passage.

#### FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Kelley, Pearson and Hurst spoke in favor of the passage of the joint resolution.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of House Bill No. 2625, as amended by the Senate.

#### ROLL CALL

The Clerk called the roll on the final passage of House Bill No. 2625, as amended by the Senate, and the joint resolution passed the House by the following vote: Yeas, 96; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Conway, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Fagan, Finn, Flannigan, Goodman, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liiias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Nealey, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representatives Condotta and Morris.

HOUSE BILL NO. 2625, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

**MESSAGE FROM THE SENATE**

March 4, 2010

Mr. Speaker:

The Senate has passed ENGROSSED SUBSTITUTE HOUSE JOINT RESOLUTION NO. 4220 with the following amendment:

Beginning on page 1, line 2, strike everything after "ASSEMBLED:" and insert the following:

"THAT, At the next general election to be held in this state the secretary of state shall submit to the qualified voters of the state for their approval and ratification, or rejection, an amendment to Article I, section 20 of the Constitution of the state of Washington to read as follows:

Article I, section 20. All persons charged with crime shall be bailable by sufficient sureties, except for capital offenses when the proof is evident, or the presumption great. Bail may be denied for offenses punishable by the possibility of life in prison upon a showing by clear and convincing evidence of a propensity for violence that creates a substantial likelihood of danger to the community or any persons, subject to such limitations as shall be determined by the legislature.

BE IT FURTHER RESOLVED, That the secretary of state shall cause notice of this constitutional amendment to be published at least four times during the four weeks next preceding the election in every legal newspaper in the state."

and the same is herewith transmitted.

Thomas Hoeman, Secretary

**SENATE AMENDMENT TO HOUSE BILL**

There being no objection, the House concurred in the Senate amendment to ENGROSSED SUBSTITUTE HOUSE JOINT RESOLUTION NO. 4220 and advanced the bill, as amended by the Senate, to final passage.

**FINAL PASSAGE OF HOUSE BILL  
AS SENATE AMENDED**

Representatives Hope, Hurst, Pearson, Dunshee, Klippert and Goodman spoke in favor of the passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Engrossed Substitute House Joint Resolution No. 4220, as amended by the Senate.

**ROLL CALL**

The Clerk called the roll on the final passage of Engrossed Substitute House Joint Resolution No. 4220, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 92; Nays, 4; Absent, 0; Excused, 2.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Conway, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Fagan, Finn, Goodman, Green, Haigh, Haler, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Nealey, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short,

Simpson, Smith, Springer, Sullivan, Takko, Taylor, Van De Wege, Wallace, Walsh, Warnick, White, Wood and Mr. Speaker.

Voting nay: Representatives Flannigan, Hasegawa, Upthegrove and Williams.

Excused: Representatives Condotta and Morris.

ENGROSSED SUBSTITUTE HOUSE JOINT RESOLUTION NO. 4220, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

**MESSAGE FROM THE SENATE**

March 5, 2010

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 2680 with the following amendment:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** The legislature finds that a guardianship is an appropriate permanent plan for a child who has been found to be dependent under chapter 13.34 RCW and who cannot safely be reunified with his or her parents. The legislature is concerned that parents not be pressured by the department into agreeing to the entry of a guardianship when further services would increase the chances that the child could be reunified with his or her parents. The legislature intends to create a separate guardianship chapter to establish permanency for children in foster care through the appointment of a guardian and dismissal of the dependency.

"NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Child" means any individual under the age of eighteen years.

(2) "Dependent child" means a child who has been found by a court to be dependent in a proceeding under chapter 13.34 RCW.

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

(4) "Guardian" means a person who: (a) Has been appointed by the court as the guardian of a child in a legal proceeding under this chapter; and (b) has the legal right to custody of the child pursuant to court order. The term "guardian" does not include a "dependency guardian" appointed pursuant to a proceeding under chapter 13.34 RCW for the purpose of assisting the court in supervising the dependency.

(5) "Relative" means a person related to the child in the following ways: (a) Any blood relative, including those of half-blood, and including first cousins, second cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great; (b) stepfather, stepmother, stepbrother, and stepsister; (c) a person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law; (d) spouses of any persons named in (a), (b), or (c) of this subsection, even after the marriage is terminated; (e) relatives, as named in (a), (b), (c), or (d) of this subsection, of any half sibling of the child; or (f) extended family members, as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent who provides care in the family abode on a twenty-four hour basis to an Indian child as defined in 25 U.S.C. Sec. 1903(4);

(6) "Suitable person" means a nonrelative with whom the child or the child's family has a preexisting relationship; who has completed all required criminal history background checks and otherwise

appears to be suitable and competent to provide care for the child; and with whom the child has been placed pursuant to RCW 13.34.130.

(7) "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.

**NEW SECTION. Sec. 3. GUARDIANSHIP PETITION.** (1)

Any party to a dependency proceeding under chapter 13.34 RCW may request a guardianship be established for a dependent child by filing a petition in juvenile court under this chapter. All parties to the dependency and the proposed guardian must receive adequate notice of all proceedings under this chapter. For purposes of this chapter, a dependent child age twelve years or older is a party to the proceedings. A proposed guardian has the right to intervene in proceedings under this chapter.

(2) To be designated as a proposed guardian in a petition under this chapter, a person must be age twenty-one or over and must meet the minimum requirements to care for children as established by the department under RCW 74.15.030, including but not limited to licensed foster parents, relatives, and suitable persons.

(3) Every petition filed in proceedings under this chapter shall contain: (a) A statement alleging whether the child is or may be an Indian child as defined in 25 U.S.C. Sec. 1903. If the child is an Indian child as defined under the Indian child welfare act, the provisions of that act shall apply; (b) a statement alleging whether the federal servicemembers civil relief act of 2003, 50 U.S.C. Sec. 501 et seq. applies to the proceeding; and (c) a statement alleging whether the Washington service members' civil relief act, chapter 38.42 RCW, applies to the proceeding.

(4) Every order or decree entered in any proceeding under this chapter shall contain: (a) A finding that the Indian child welfare act does or does not apply. Where there is a finding that the Indian child welfare act does apply, the decree or order must also contain a finding that all notice requirements and evidentiary requirements under the Indian child welfare act have been satisfied; (b) a finding that the federal servicemembers civil relief act of 2003 does or does not apply; and (c) a finding that the Washington service members' civil relief act, chapter 38.42 RCW, does or does not apply.

**NEW SECTION. Sec. 4. GUARDIANSHIP HEARING.** (1) At

the hearing on a guardianship petition, all parties have the right to present evidence and cross-examine witnesses. The rules of evidence apply to the conduct of the hearing. The hearing under this section to establish a guardianship or convert an existing dependency guardianship to a guardianship under this section is a stage of the dependency proceedings for purposes of RCW 13.34.090(2).

(2) A guardianship shall be established if:

(a) The court finds by a preponderance of the evidence that it is in the child's best interests to establish a guardianship, rather than to terminate the parent-child relationship and proceed with adoption, or to continue efforts to return custody of the child to the parent; and

(b) All parties agree to entry of the guardianship order and the proposed guardian is qualified, appropriate, and capable of performing the duties of guardian under section 5 of this act; or

(c)(i) The child has been found to be a dependent child under RCW 13.34.030;

(ii) A dispositional order has been entered pursuant to RCW 13.34.130;

(iii) At the time of the hearing on the guardianship petition, the child has or will have been removed from the custody of the parent for at least six consecutive months following a finding of dependency under RCW 13.34.030;

(iv) The services ordered under RCW 13.34.130 and 13.34.136 have been offered or provided and all necessary services, reasonably

available, capable of correcting the parental deficiencies within the foreseeable future have been offered or provided;

(v) There is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future; and

(vi) The proposed guardian has signed a statement acknowledging the guardian's rights and responsibilities toward the child and affirming the guardian's understanding and acceptance that the guardianship is a commitment to provide care for the child until the child reaches age eighteen.

(3) The court may not establish a guardianship for a child who has no legal parent unless the court, in addition to making the required findings set forth in subsection (2) of this section, finds one or more exceptional circumstances exist and the benefits for the child of establishing the guardianship outweigh any potential disadvantage to the child of having no legal parent. Exceptional circumstances may include but are not limited to:

(a) The child has special needs and a suitable guardian is willing to accept custody and able to meet the needs of the child to an extent unlikely to be achieved through adoption; or

(b) The proposed guardian has demonstrated a commitment to provide for the long-term care of the child and: (i) Is a relative of the child; (ii) has been a long-term caregiver for the child and has acted as a parent figure to the child and is viewed by the child as a parent figure; or (iii) the child's family has identified the proposed guardian as the preferred guardian, and, if the child is age twelve years or older, the child also has identified the proposed guardian as the preferred guardian.

(4) Upon the request of a dependency guardian appointed under chapter 13.34 RCW and the department or supervising agency, the court shall convert a dependency guardianship established under chapter 13.34 RCW to a guardianship under this chapter.

**NEW SECTION. Sec. 5. GUARDIANSHIP ORDER.** (1) If the court has made the findings required under section 4 of this act, the court shall issue an order establishing a guardianship for the child. If the guardian has not previously intervened, the guardian shall be made a party to the guardianship proceeding upon entry of the guardianship order. The order shall:

(a) Appoint a person to be the guardian for the child;

(b) Specify the guardian's rights and responsibilities concerning the care, custody, control, and nurturing of the child;

(c) Specify the guardian's authority, if any, to receive, invest, and expend funds, benefits, or property belonging to the child;

(d) Specify an appropriate frequency and type of contact between the parent or parents and the child, if applicable, and between the child and his or her siblings, if applicable; and

(e) Specify the need for and scope of continued oversight by the court, if any.

(2) The guardian shall maintain physical and legal custody of the child and have the following rights and duties under the guardianship:

(a) Duty to protect, nurture, discipline, and educate the child;

(b) Duty to provide food, clothing, shelter, education as required by law, and health care for the child, including but not limited to, medical, dental, mental health, psychological, and psychiatric care and treatment;

(c) Right to consent to health care for the child and sign a release authorizing the sharing of health care information with appropriate authorities, in accordance with state law;

(d) Right to consent to the child's participation in social and school activities; and

(e) Duty to notify the court of a change of address of the guardian and the child. Unless specifically ordered by the court, however, the standards and requirements for relocation in chapter 26.09 RCW do not apply to guardianships established under this chapter.

(3) If the child has independent funds or other valuable property under the control of the guardian, the guardian shall provide an annual written accounting, supported with appropriate documentation, to the

court regarding receipt and expenditure by the guardian of any such funds or benefits. This subsection shall not be construed to require a guardian to account for any routine funds or benefits received from a public social service agency on behalf of the child.

(4) The guardianship shall remain in effect until the child reaches the age of eighteen years or until the court terminates the guardianship, whichever occurs sooner.

(5) Once the dependency has been dismissed pursuant to section 7 of this act, the court shall not order the department or other supervising agency to supervise or provide case management services to the guardian or the child as part of the guardianship order.

(6) The court shall issue a letter of guardianship to the guardian upon the entry of the court order establishing the guardianship under this chapter.

**NEW SECTION. Sec. 6. GUARDIANSHIP MODIFICATION.**

(1) A guardian or a parent of the child may petition the court to modify the visitation provisions of a guardianship order by:

(a) Filing with the court a motion for modification and an affidavit setting forth facts supporting the requested modification; and

(b) Providing notice and a copy of the motion and affidavit to all other parties. The nonmoving parties may file and serve opposing affidavits.

(2) The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested modification should not be granted.

(3) If the court finds that a motion to modify a guardianship order has been brought in bad faith, the court may assess attorney's fees and court costs of the nonmoving party against the moving party.

**NEW SECTION. Sec. 7. GUARDIANSHIP TERMINATION.**

(1) Any party to a guardianship proceeding may request termination of the guardianship by filing a petition and supporting affidavit alleging a substantial change has occurred in the circumstances of the child or the guardian and that the termination is necessary to serve the best interests of the child. The petition and affidavit must be served on the department or supervising agency and all parties to the guardianship.

(2) Except as provided in subsection (3) of this section, the court shall not terminate a guardianship unless it finds, upon the basis of facts that have arisen since the guardianship was established or that were unknown to the court at the time the guardianship was established, that a substantial change has occurred in the circumstances of the child or the guardian and that termination of the guardianship is necessary to serve the best interests of the child. The effect of a guardian's duties while serving in the military potentially impacting guardianship functions shall not, by itself, be a substantial change of circumstances justifying termination of a guardianship.

(3) The court may terminate a guardianship on the agreement of the guardian, the child, if the child is age twelve years or older, and a parent seeking to regain custody of the child if the court finds by a preponderance of the evidence and on the basis of facts that have arisen since the guardianship was established that:

(a) The parent has successfully corrected the parenting deficiencies identified by the court in the dependency action, and the circumstances of the parent have changed to such a degree that returning the child to the custody of the parent no longer creates a risk of harm to the child's health, welfare, and safety;

(b) The child, if age twelve years or older, agrees to termination of the guardianship and the return of custody to the parent; and

(c) Termination of the guardianship and return of custody of the child to the parent is in the child's best interests.

(4) Upon the entry of an order terminating a guardianship, the court shall enter an order:

(a) Granting the child's parent with legal and physical custody of the child;

(b) Granting a substitute guardian with legal and physical custody of the child; or

(c) Directing the child to be temporarily placed in the custody of the department for placement with a relative or other suitable person as defined in RCW 13.34.130(1)(b), if available, or in an appropriate licensed out-of-home placement, and directing that the department file a dependency petition on behalf of the child.

**NEW SECTION. Sec. 8. APPOINTMENT OF GUARDIAN AD LITEM OR ATTORNEY FOR THE CHILD.** In all proceedings to establish, modify, or terminate a guardianship order, the court shall appoint a guardian ad litem or attorney for the child. The court may appoint a guardian ad litem or attorney who represented the child in a prior proceeding under this chapter or under chapter 13.34 RCW, or may appoint an attorney to supersede an existing guardian ad litem.

**NEW SECTION. Sec. 9. GUARDIANSHIP SUBSIDY.** (1) A relative guardian who is a licensed foster parent at the time a guardianship is established under this chapter and who has been the child's foster parent for a minimum of six consecutive months preceding entry of the guardianship order is eligible for a relative guardianship subsidy on behalf of the child. The department may establish rules setting eligibility, application, and program standards consistent with applicable federal guidelines for expenditure of federal funds.

(2) Within amounts appropriated for this specific purpose, a guardian who is a licensed foster parent at the time a guardianship is established under this chapter and who has been the child's foster parent for a minimum of six consecutive months preceding entry of the guardianship order is eligible for a guardianship subsidy on behalf of the child.

**Sec. 10.** RCW 13.34.030 and 2009 c 520 s 21 and 2009 c 397 s 1 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 mental retardation, cerebral palsy, epilepsy, autism, or another

neurological or other condition of an individual found by the secretary to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap 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 (~~(other than a proceeding under this chapter)~~), including a guardian appointed pursuant to chapter 13.-- RCW (the new chapter created in section 17 of this act); and (b) has the legal right to custody of the child pursuant to such appointment. The term "guardian" (~~(shall)~~) 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, general assistance, 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).

(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 ~~((an))~~ licensed by a federally recognized Indian tribe located in this state under RCW 74.15.190 ~~((with whom the department))~~, 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.

**NEW SECTION. Sec. 11.** A new section is added to chapter 13.34 RCW to read as follows:

(1) Notwithstanding the provisions of chapter 13.-- RCW (the new chapter created in section 17 of this act), a dependency guardianship established by court order under this chapter and in force on the effective date of this section shall remain subject to the provisions of this chapter unless: (a) The dependency guardianship is modified or terminated under the provisions of this chapter; or (b) the dependency guardianship is converted by court order to a guardianship pursuant to a petition filed under section 3 of this act.

(2) A dependency guardian or the department or supervising agency may request the juvenile court to convert a dependency guardianship established under this chapter to a guardianship under chapter 13.-- RCW (the new chapter created in section 17 of this act) by filing a petition under section 3 of this act. If both the dependency guardian and the department or supervising agency agree that the dependency guardianship should be converted to a guardianship under this chapter, and if the court finds that such conversion is in the child's best interests, the court shall grant the petition and enter an order of guardianship in accordance with section 5 of this act.

(3) The court shall dismiss the dependency established under this chapter upon the entry of a guardianship order under chapter 13.-- RCW (the new chapter created in section 17 of this act).

**NEW SECTION. Sec. 12.** A new section is added to chapter 74.13 RCW to read as follows:

(1) The department shall adopt rules consistent with federal regulations for the receipt and expenditure of federal funds and implement a subsidy program for eligible relatives appointed by the court as a guardian under section 5 of this act.

(2) For the purpose of licensing a relative seeking to be appointed as a guardian and eligible for a guardianship subsidy under this section, the department shall, on a case-by-case basis, and when determined to be in the best interests of the child:

(a) Waive nonsafety licensing standards; and

(b) Apply the list of disqualifying crimes in the adoption and safe families act, rather than the secretary's list of disqualifying crimes, unless doing so would compromise the child's safety, or would adversely affect the state's ability to continue to obtain federal funding for child welfare related functions.

(3) Relative guardianship subsidy agreements shall be designed to promote long-term permanency for the child, and may include provisions for periodic review of the subsidy amount and the needs of the child.

**Sec. 13.** RCW 13.34.210 and 2009 c 520 s 35 and 2009 c 152 s 2 are each reenacted and amended to read as follows:

If, upon entering an order terminating the parental rights of a parent, there remains no parent having parental rights, the court shall commit the child to the custody of the department or a supervising agency willing to accept custody for the purpose of placing the child for adoption. If an adoptive home has not been identified, the department or supervising agency shall place the child in a licensed foster home, or take other suitable measures for the care and welfare of the child. The custodian shall have authority to consent to the adoption of the child consistent with chapter 26.33 RCW, the marriage of the child, the enlistment of the child in the armed forces of the United States, necessary surgical and other medical treatment for the child, and to consent to such other matters as might normally be required of the parent of the child.

If a child has not been adopted within six months after the date of the order and a guardianship of the child under ~~((RCW 13.34.231))~~ chapter 13.-- RCW (the new chapter created in section 17 of this act) or chapter 11.88 RCW, or a permanent custody order under chapter 26.10 RCW, has not been entered by the court, the court shall review the case every six months until a decree of adoption is entered. The supervising agency shall take reasonable steps to ensure that the child maintains relationships with siblings as provided in RCW 13.34.130(3) and shall report to the court the status and extent of such relationships.

**Sec. 14.** RCW 13.34.232 and 1994 c 288 s 7 are each amended to read as follows:

(1) ~~((If the court has made a finding under RCW 13.34.231, it shall enter))~~ An order establishing a dependency guardianship ~~((for the child. The order))~~ shall:

(a) Appoint a person or agency to serve as dependency guardian for the limited purpose of assisting the court to supervise the dependency;

(b) Specify the dependency guardian's rights and responsibilities concerning the care, custody, and control of the child. A dependency guardian shall not have the authority to consent to the child's adoption;

(c) Specify the dependency guardian's authority, if any, to receive, invest, and expend funds, benefits, or property belonging to the child;

(d) Specify an appropriate frequency of visitation between the parent and the child; and

(e) Specify the need for any continued involvement of the supervising agency and the nature of that involvement, if any.

(2) Unless the court specifies otherwise in the guardianship order, the dependency guardian shall maintain the physical custody of the child and have the following rights and duties:

(a) Protect, discipline, and educate the child;

(b) Provide food, clothing, shelter, education as required by law, and routine health care for the child;

(c) Consent to necessary health and surgical care and sign a release of health care information to appropriate authorities, pursuant to law;

(d) Consent to social and school activities of the child; and

(e) Provide an annual written accounting to the court regarding receipt by the dependency guardian of any funds, benefits, or property belonging to the child and expenditures made therefrom.

(3) As used in this section, the term "health care" includes, but is not limited to, medical, dental, psychological, and psychiatric care and treatment.

(4) The child shall remain dependent for the duration of the guardianship. While the guardianship remains in effect, the dependency guardian shall be a party to any dependency proceedings pertaining to the child.

(5) The guardianship shall remain in effect only until the child is eighteen years of age or until the court terminates the guardianship order, whichever occurs sooner.

**Sec. 15.** RCW 13.34.234 and 2009 c 235 s 6 are each amended to read as follows:

A dependency guardian who is a licensed foster parent at the time the guardianship is established under ~~((RCW 13.34.231 and 13.34.232))~~ this chapter and who has been the child's foster parent for a minimum of six consecutive months preceding entry of the guardianship order ~~((is))~~ may be eligible for a guardianship subsidy on behalf of the child. ~~((The department may establish rules setting eligibility, application, and program standards consistent with applicable federal guidelines.))~~

**NEW SECTION. Sec. 16.** The following acts or parts of acts are each repealed:

(1) RCW 13.34.230 (Guardianship for dependent child--Petition for-- Notice to, intervention by, department or supervising agency) and 2009 c 520 s 37, 1981 c 195 s 1, & 1979 c 155 s 51;

(2) RCW 13.34.231 (Guardianship for dependent child--Hearing-- Rights of parties--Rules of evidence--Guardianship established, when) and 2000 c 122 s 29, 1994 c 288 s 6, & 1981 c 195 s 2;

(3) RCW 13.34.236 (Guardianship for dependent child--Qualifications for dependency guardian--Consideration of preferences of parent) and 1994 c 288 s 10 & 1981 c 195 s 7; and

(4) RCW 13.34.238 (Guardianship for dependent child--Relative guardianship subsidies) and 2009 c 235 s 5.

**NEW SECTION. Sec. 17.** Sections 2 through 9 of this act constitute a new chapter in Title 13 RCW."

On page 1, line 1 of the title, after "program;" strike the remainder of the title and insert "amending RCW 13.34.232 and 13.34.234; reenacting and amending RCW 13.34.030 and 13.34.210; adding a new section to chapter 13.34 RCW; adding a new section to chapter 74.13 RCW; adding a new chapter to Title 13 RCW; creating a new section; and repealing RCW 13.34.230, 13.34.231, 13.34.236, and 13.34.238."

and the same is herewith transmitted.

Thomas Hoeman, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 2680 and advanced the bill, as amended by the Senate, to final passage.

#### FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Roberts and Haler spoke in favor of the passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Substitute House Bill No. 2680, as amended by the Senate.

### ROLL CALL

The Clerk called the roll on the final passage of Substitute House Bill No. 2680, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 96; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Conway, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Fagan, Finn, Flannigan, Goodman, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Nealey, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representatives Condotta and Morris.

SUBSTITUTE HOUSE BILL NO. 2680, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

### MESSAGE FROM THE SENATE

March 4, 2010

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 2717 with the following amendment:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 10.77 RCW to read as follows:

(1) No person committed to the custody of the department for the determination of competency to stand trial under RCW 10.77.060, the restoration of competency for trial under RCW 10.77.084, 10.77.086, or 10.77.088, or following an acquittal by reason of insanity shall be authorized to leave the facility where the person is confined, except in the following circumstances:

(a) In accordance with conditional release or furlough authorized by a court;

(b) For necessary medical or legal proceedings not available in the facility where the person is confined;

(c) For visits to the bedside of a member of the person's immediate family who is seriously ill; or

(d) For attendance at the funeral of a member of the person's immediate family.

(2) Unless ordered otherwise by a court, no leave under subsection (1) of this section shall be authorized unless the person who is the subject of the authorization is escorted by a person approved by the secretary. During the authorized leave, the person approved by the secretary must be in visual or auditory contact at all times with the person on authorized leave.

(3) Prior to the authorization of any leave under subsection (1) of this section, the secretary must give notification to any county or city law enforcement agency having jurisdiction in the location of the leave destination.

**Sec. 2.** RCW 10.77.010 and 2005 c 504 s 106 are each amended to read as follows:

As used in this chapter:

(1) "Admission" means acceptance based on medical necessity, of a person as a patient.

(2) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less-restrictive setting.

(3) "Conditional release" means modification of a court-ordered commitment, which may be revoked upon violation of any of its terms.

(4) A "criminally insane" person means any person who has been acquitted of a crime charged by reason of insanity, and thereupon found to be a substantial danger to other persons or to present a substantial likelihood of committing criminal acts jeopardizing public safety or security unless kept under further control by the court or other persons or institutions.

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

(6) "Designated mental health professional" has the same meaning as provided in RCW 71.05.020.

(7) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter, pending evaluation.

(8) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist or psychologist, or a social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary.

(9) "Developmental disability" means the condition as defined in RCW 71A.10.020(3).

(10) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order.

(11) "Furlough" means an authorized leave of absence for a resident of a state institution operated by the department designated for the custody, care, and treatment of the criminally insane, consistent with an order of conditional release from the court under this chapter, without any requirement that the resident be accompanied by, or be in the custody of, any law enforcement or institutional staff, while on such unescorted leave.

(12) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and in raising their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy. The habilitative process shall be undertaken with recognition of the risk to the public safety presented by the person being assisted as manifested by prior charged criminal conduct.

(13) "History of one or more violent acts" means violent acts committed during: (a) The ten-year period of time prior to the filing of criminal charges; plus (b) the amount of time equal to time spent during the ten-year period in a mental health facility or in confinement as a result of a criminal conviction.

(14) "Immediate family member" means a spouse, child, stepchild, parent, stepparent, grandparent, sibling, or domestic partner.

(15) "Incompetency" means a person lacks the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect.

~~((15))~~ (16) "Indigent" means any person who is financially unable to obtain counsel or other necessary expert or professional services without causing substantial hardship to the person or his or her family.

~~((16))~~ (17) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals

as a team, for an individual with developmental disabilities, which shall state:

(a) The nature of the person's specific problems, prior charged criminal behavior, and habilitation needs;

(b) The conditions and strategies necessary to achieve the purposes of habilitation;

(c) The intermediate and long-range goals of the habilitation program, with a projected timetable for the attainment;

(d) The rationale for using this plan of habilitation to achieve those intermediate and long-range goals;

(e) The staff responsible for carrying out the plan;

(f) Where relevant in light of past criminal behavior and due consideration for public safety, the criteria for proposed movement to less-restrictive settings, criteria for proposed eventual release, and a projected possible date for release; and

(g) The type of residence immediately anticipated for the person and possible future types of residences.

~~((17))~~ (18) "Professional person" means:

(a) A psychiatrist licensed as a physician and surgeon in this state who has, in addition, completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology or the American osteopathic board of neurology and psychiatry;

(b) A psychologist licensed as a psychologist pursuant to chapter 18.83 RCW; or

(c) A social worker with a master's or further advanced degree from an accredited school of social work or a degree deemed equivalent under rules adopted by the secretary.

~~((18))~~ (19) "Registration records" include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify persons who are receiving or who at any time have received services for mental illness.

~~((19))~~ (20) "Release" means legal termination of the court-ordered commitment under the provisions of this chapter.

~~((20))~~ (21) "Secretary" means the secretary of the department of social and health services or his or her designee.

~~((21))~~ (22) "Treatment" means any currently standardized medical or mental health procedure including medication.

~~((22))~~ (23) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staffs, and by treatment facilities. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others.

~~((23))~~ (24) "Violent act" means behavior that: (a)(i) Resulted in; (ii) if completed as intended would have resulted in; or (iii) was threatened to be carried out by a person who had the intent and opportunity to carry out the threat and would have resulted in, homicide, nonfatal injuries, or substantial damage to property; or (b) recklessly creates an immediate risk of serious physical injury to another person. As used in this subsection, "nonfatal injuries" means physical pain or injury, illness, or an impairment of physical condition. "Nonfatal injuries" shall be construed to be consistent with the definition of "bodily injury," as defined in RCW 9A.04.110."

On page 1, line 1 of the title, after "facilities;" strike the remainder of the title and insert "amending RCW 10.77.010; and adding a new section to chapter 10.77 RCW."

and the same is herewith transmitted.

Thomas Hoeman, Secretary

## SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 2717 and advanced the bill, as amended by the Senate, to final passage.

## FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Shea and Orwall spoke in favor of the passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Substitute House Bill No. 2717, as amended by the Senate.

## ROLL CALL

The Clerk called the roll on the final passage of Substitute House Bill No. 2717, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 96; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Conway, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Fagan, Finn, Flannigan, Goodman, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Nealey, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representatives Condotta and Morris.

SUBSTITUTE HOUSE BILL NO. 2717, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

## MESSAGE FROM THE SENATE

March 5, 2010

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 2939 with the following amendment:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 46.52.130 and 2009 c 276 s 1 are each amended to read as follows:

~~((1) A certified abstract of the driving record shall be furnished only to:~~

~~— (a) The individual named in the abstract;~~

~~— (b) An employer or prospective employer or an agent acting on behalf of an employer or prospective employer, or a volunteer organization for which the named individual has submitted an application for a position that could require the transportation of children under eighteen years of age, adults over sixty five years of age, or persons with mental or physical disabilities;~~

~~— (c) An employee or agent of a transit authority checking prospective volunteer vanpool drivers for insurance and risk management needs;~~



~~—(d) The insurance carrier that has insurance in effect covering the employer or a prospective employer;~~

~~—(e) The insurance carrier that has motor vehicle or life insurance in effect covering the named individual;~~

~~—(f) The insurance carrier to which the named individual has applied;~~

~~—(g) An alcohol/drug assessment or treatment agency approved by the department of social and health services, to which the named individual has applied or been assigned for evaluation or treatment;~~

~~—(h) City and county prosecuting attorneys;~~

~~—(i) State colleges, universities, or agencies for employment and risk management purposes; or units of local government authorized to self insure under RCW 48.62.031; or~~

~~—(j) An employer or prospective employer or volunteer organization, or an agent acting on behalf of an employer or prospective employer or volunteer organization, for employment purposes related to driving by an individual as a condition of that individual's employment or otherwise at the direction of the employer or organization.~~

~~—(2) Nothing in this section shall be interpreted to prevent a court from providing a copy of the driver's abstract to the individual named in the abstract, provided that the named individual has a pending case in that court for a suspended license violation or an open infraction or criminal case in that court that has resulted in the suspension of the individual's driver's license. A pending case includes criminal cases that have not reached a disposition by plea, stipulation, trial, or amended charge. An open infraction or criminal case includes cases on probation, payment agreement or subject to, or in collections. Courts may charge a reasonable fee for production and copying of the abstract for the individual.~~

~~—(3) City attorneys and county prosecuting attorneys may provide the driving record to alcohol/drug assessment or treatment agencies approved by the department of social and health services to which the named individual has applied or been assigned for evaluation or treatment.~~

~~—(4)(a) The director, upon proper request, shall furnish a certified abstract covering the period of not more than the last three years to insurance companies.~~

~~—(b) The director may enter into a contractual agreement with an insurance company or its agent for the limited purpose of reviewing the driving records of existing policyholders for changes to the record during specified periods of time. The department shall establish a fee for this service, which must be deposited in the highway safety fund. The fee for this service must be set at a level that will not result in a net revenue loss to the state. Any information provided under this subsection must be treated in the same manner and subject to the same restrictions as certified abstracts.~~

~~—(5) Upon proper request, the director shall furnish a certified abstract covering a period of not more than the last five years to state approved alcohol/drug assessment or treatment agencies, except that the certified abstract shall also include records of alcohol related offenses as defined in RCW 46.01.260(2) covering a period of not more than the last ten years.~~

~~—(6) Upon proper request, a certified abstract of the full driving record maintained by the department shall be furnished to a city or county prosecuting attorney, to the individual named in the abstract, to an employer or prospective employer or an agent acting on behalf of an employer or prospective employer of the named individual, or to a volunteer organization for which the named individual has submitted an application for a position that could require the transportation of children under eighteen years of age, adults over sixty five years of age, or persons with physical or mental disabilities, or to an employee or agent of a transit authority checking prospective volunteer vanpool drivers for insurance and risk management needs.~~

~~—(7) The abstract, whenever possible, shall include:~~

~~—(a) An enumeration of motor vehicle accidents in which the person was driving;~~

~~—(b) The total number of vehicles involved;~~

~~—(c) Whether the vehicles were legally parked or moving;~~

~~—(d) Whether the vehicles were occupied at the time of the accident;~~

~~—(e) Whether the accident resulted in any fatality;~~

~~—(f) Any reported convictions, forfeitures of bail, or findings that an infraction was committed based upon a violation of any motor vehicle law;~~

~~—(g) The status of the person's driving privilege in this state; and~~

~~—(h) Any reports of failure to appear in response to a traffic citation or failure to respond to a notice of infraction served upon the named individual by an arresting officer.~~

~~—(8) Certified abstracts furnished to prosecutors and alcohol/drug assessment or treatment agencies shall also indicate whether a recorded violation is an alcohol-related offense as defined in RCW 46.01.260(2) that was originally charged as one of the alcohol-related offenses designated in RCW 46.01.260(2)(b)(i).~~

~~—(9) The abstract provided to the insurance company shall exclude any information, except that related to the commission of misdemeanors or felonies by the individual, pertaining to law enforcement officers or firefighters as defined in RCW 41.26.030, or any officer of the Washington state patrol, while driving official vehicles in the performance of occupational duty. The abstract provided to the insurance company shall include convictions for RCW 46.61.5249 and 46.61.525 except that the abstract shall report them only as negligent driving without reference to whether they are for first or second degree negligent driving. The abstract provided to the insurance company shall exclude any deferred prosecution under RCW 10.05.060, except that if a person is removed from a deferred prosecution under RCW 10.05.090, the abstract shall show the deferred prosecution as well as the removal.~~

~~—(10) The director shall collect for each abstract the sum of ten dollars, fifty percent of which shall be deposited in the highway safety fund and fifty percent of which must be deposited according to RCW 46.68.038.~~

~~—(11) Any insurance company or its agent receiving the certified abstract shall use it exclusively for its own underwriting purposes and shall not divulge any of the information contained in it to a third party. No policy of insurance may be canceled, nonrenewed, denied, or have the rate increased on the basis of such information unless the policyholder was determined to be at fault. No insurance company or its agent for underwriting purposes relating to the operation of commercial motor vehicles may use any information contained in the abstract relative to any person's operation of motor vehicles while not engaged in such employment, nor may any insurance company or its agent for underwriting purposes relating to the operation of noncommercial motor vehicles use any information contained in the abstract relative to any person's operation of commercial motor vehicles.~~

~~—(12) Any employer or prospective employer or an agent acting on behalf of an employer or prospective employer, or a volunteer organization for which the named individual has submitted an application for a position that could require the transportation of children under eighteen years of age, adults over sixty five years of age, or persons with physical or mental disabilities, receiving the certified abstract shall use it exclusively for his or her own purpose:~~

~~(a) To determine whether the licensee should be permitted to operate a commercial vehicle or school bus, or operate a vehicle for a volunteer organization for purposes of transporting children under eighteen years of age, adults over sixty five years of age, or persons with physical or mental disabilities, upon the public highways of this state; or~~

~~(b) for employment purposes related to driving by an individual as a condition of that individual's employment or otherwise~~

at the direction of the employer or organization, and shall not divulge any information contained in it to a third party.

~~— (13) Any employee or agent of a transit authority receiving a certified abstract for its vanpool program shall use it exclusively for determining whether the volunteer licensee meets those insurance and risk management requirements necessary to drive a vanpool vehicle. The transit authority may not divulge any information contained in the abstract to a third party.~~

~~— (14) Any alcohol/drug assessment or treatment agency approved by the department of social and health services receiving the certified abstract shall use it exclusively for the purpose of assisting its employees in making a determination as to what level of treatment, if any, is appropriate. The agency, or any of its employees, shall not divulge any information contained in the abstract to a third party.~~

~~— (15) Release of a certified abstract of the driving record of an employee, prospective employee, or prospective volunteer requires a statement signed by: (a) The employee, prospective employee, or prospective volunteer that authorizes the release of the record, and (b) the employer or volunteer organization attesting that the information is necessary: (i) To determine whether the licensee should be employed to operate a commercial vehicle or school bus, or operate a vehicle for a volunteer organization for purposes of transporting children under eighteen years of age, adults over sixty five years of age, or persons with physical or mental disabilities, upon the public highways of this state; or (ii) for employment purposes related to driving by an individual as a condition of that individual's employment or otherwise at the direction of the employer or organization. If the employer or prospective employer authorizes an agent to obtain this information on their behalf, this must be noted in the statement. This subsection does not apply to entities identified in subsection (1)(i) of this section.~~

~~— (16) Any negligent violation of this section is a gross misdemeanor.~~

~~— (17) Any intentional violation of this section is a class C felony.) Upon a proper request, the department may furnish an abstract of a person's driving record as permitted under this section.~~

(1) Contents of abstract of driving record. An abstract of a person's driving record, whenever possible, must include:

(a) An enumeration of motor vehicle accidents in which the person was driving, including:

- (i) The total number of vehicles involved;
- (ii) Whether the vehicles were legally parked or moving;
- (iii) Whether the vehicles were occupied at the time of the accident; and
- (iv) Whether the accident resulted in a fatality;

(b) Any reported convictions, forfeitures of bail, or findings that an infraction was committed based upon a violation of any motor vehicle law;

(c) The status of the person's driving privilege in this state; and  
(d) Any reports of failure to appear in response to a traffic citation or failure to respond to a notice of infraction served upon the named individual by an arresting officer.

(2) Release of abstract of driving record. An abstract of a person's driving record may be furnished to the following persons or entities:

(a) Named individuals. (i) An abstract of the full driving record maintained by the department may be furnished to the individual named in the abstract.

(ii) Nothing in this section prevents a court from providing a copy of the driver's abstract to the individual named in the abstract, provided that the named individual has a pending or open infraction or criminal case in that court. A pending case includes criminal cases that have not reached a disposition by plea, stipulation, trial, or amended charge. An open infraction or criminal case includes cases on probation, payment agreement or subject to, or in collections.

Courts may charge a reasonable fee for the production and copying of the abstract for the individual.

(b) Employers or prospective employers. (i) An abstract of the full driving record maintained by the department may be furnished to an employer or prospective employer or an agent acting on behalf of an employer or prospective employer of the named individual for purposes related to driving by the individual as a condition of employment or otherwise at the direction of the employer.

(ii) Release of an abstract of the driving record of an employee or prospective employee requires a statement signed by: (A) The employee or prospective employee that authorizes the release of the record; and (B) the employer attesting that the information is necessary for employment purposes related to driving by the individual as a condition of employment or otherwise at the direction of the employer. If the employer or prospective employer authorizes an agent to obtain this information on their behalf, this must be noted in the statement.

(iii) Upon request of the person named in the abstract provided under this subsection, and upon that same person furnishing copies of court records ruling that the person was not at fault in a motor vehicle accident, the department must indicate on any abstract provided under this subsection that the person was not at fault in the motor vehicle accident.

(c) Volunteer organizations. (i) An abstract of the full driving record maintained by the department may be furnished to a volunteer organization or an agent for a volunteer organization for which the named individual has submitted an application for a position that would require driving by the individual at the direction of the volunteer organization.

(ii) Release of an abstract of the driving record of a prospective volunteer requires a statement signed by: (A) The prospective volunteer that authorizes the release of the record; and (B) the volunteer organization attesting that the information is necessary for purposes related to driving by the individual at the direction of the volunteer organization. If the volunteer organization authorizes an agent to obtain this information on their behalf, this must be noted in the statement.

(d) Transit authorities. An abstract of the full driving record maintained by the department may be furnished to an employee or agent of a transit authority checking prospective volunteer vanpool drivers for insurance and risk management needs.

(e) Insurance carriers. (i) An abstract of the driving record maintained by the department covering the period of not more than the last three years may be furnished to an insurance company or its agent:

(A) That has motor vehicle or life insurance in effect covering the named individual;

(B) To which the named individual has applied; or  
(C) That has insurance in effect covering the employer or a prospective employer of the named individual.

(ii) The abstract provided to the insurance company must:

(A) Not contain any information related to actions committed by law enforcement officers or firefighters, as both terms are defined in RCW 41.26.030, or by Washington state patrol officers, while driving official vehicles in the performance of their occupational duty. This does not apply to any situation where the vehicle was used in the commission of a misdemeanor or felony;

(B) Include convictions under RCW 46.61.5249 and 46.61.525, except that the abstract must report the convictions only as negligent driving without reference to whether they are for first or second degree negligent driving; and

(C) Exclude any deferred prosecution under RCW 10.05.060, except that if a person is removed from a deferred prosecution under RCW 10.05.090, the abstract must show the deferred prosecution as well as the removal.

(iii) Any policy of insurance may not be canceled, nonrenewed, denied, or have the rate increased on the basis of information regarding an accident included in the abstract of a driving record, unless the policyholder was determined to be at fault.

(iv) Any insurance company or its agent, for underwriting purposes relating to the operation of commercial motor vehicles, may not use any information contained in the abstract relative to any person's operation of motor vehicles while not engaged in such employment. Any insurance company or its agent, for underwriting purposes relating to the operation of noncommercial motor vehicles, may not use any information contained in the abstract relative to any person's operation of commercial motor vehicles.

(v) The director may enter into a contractual agreement with an insurance company or its agent for the limited purpose of reviewing the driving records of existing policyholders for changes to the record during specified periods of time. The department shall establish a fee for this service, which must be deposited in the highway safety fund. The fee for this service must be set at a level that will not result in a net revenue loss to the state. Any information provided under this subsection must be treated in the same manner and is subject to the same restrictions as driving record abstracts.

(f) Alcohol/drug assessment or treatment agencies. An abstract of the driving record maintained by the department covering the period of not more than the last five years may be furnished to an alcohol/drug assessment or treatment agency approved by the department of social and health services to which the named individual has applied or been assigned for evaluation or treatment, for purposes of assisting employees in making a determination as to what level of treatment, if any, is appropriate, except that the abstract must:

(i) Also include records of alcohol-related offenses, as defined in RCW 46.01.260(2), covering a period of not more than the last ten years; and

(ii) Indicate whether an alcohol-related offense was originally charged as a violation of either RCW 46.61.502 or 46.61.504.

(g) City attorneys and county prosecuting attorneys. An abstract of the full driving record maintained by the department, including whether a recorded violation is an alcohol-related offense, as defined in RCW 46.01.260(2), that was originally charged as a violation of either RCW 46.61.502 or 46.61.504, may be furnished to city attorneys or county prosecuting attorneys. City attorneys and county prosecuting attorneys may provide the driving record to alcohol/drug assessment or treatment agencies approved by the department of social and health services to which the named individual has applied or been assigned for evaluation or treatment.

(h) State colleges, universities, or agencies, or units of local government. An abstract of the full driving record maintained by the department may be furnished to (i) state colleges, universities, or agencies for employment and risk management purposes or (ii) units of local government authorized to self-insure under RCW 48.62.031 for employment and risk management purposes.

(i) Superintendent of public instruction. An abstract of the full driving record maintained by the department may be furnished to the superintendent of public instruction for review of public school bus driver records. The superintendent or superintendent's designee may discuss information on the driving record with an authorized representative of the employing school district for employment and risk management purposes.

(3) Release to third parties prohibited. Any person or entity receiving an abstract of a person's driving record under subsection (2)(b) through (i) of this section shall use the abstract exclusively for his, her, or its own purposes or as otherwise expressly permitted under this section, and shall not divulge any information contained in the abstract to a third party.

(4) Fee. The director shall collect a ten-dollar fee for each abstract of a person's driving record furnished by the department.

Fifty percent of the fee must be deposited in the highway safety fund, and fifty percent of the fee must be deposited according to RCW 46.68.038.

(5) Violation. (a) Any negligent violation of this section is a gross misdemeanor.

(b) Any intentional violation of this section is a class C felony.

NEW SECTION. Sec. 2. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2010, in the omnibus transportation appropriations act, this act is null and void.

NEW SECTION. Sec. 3. This act takes effect October 31, 2010."

On page 1, line 2 of the title, after "accident," strike the remainder of the title and insert "amending RCW 46.52.130; creating a new section; prescribing penalties; and providing an effective date."

and the same is herewith transmitted.

Thomas Hoeman, Secretary

### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 2939 and advanced the bill, as amended by the Senate, to final passage.

### FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Dammeier and Liias spoke in favor of the passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Substitute House Bill No. 2939, as amended by the Senate.

### ROLL CALL

The Clerk called the roll on the final passage of Substitute House Bill No. 2939, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 96; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Conway, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Erickson, Fagan, Finn, Flannigan, Goodman, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Nealey, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representatives Condotta and Morris.

SUBSTITUTE HOUSE BILL NO. 2939, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

### MESSAGE FROM THE SENATE

March 8, 2010

Mr. Speaker:

The Senate concurred in the House amendments to the following bills and passed the bills as amended by the House:

SUBSTITUTE SENATE BILL 5295  
 ENGROSSED SUBSTITUTE SENATE BILL 5529  
 ENGROSSED SUBSTITUTE SENATE BILL 5704  
 SUBSTITUTE SENATE BILL 6207  
 SUBSTITUTE SENATE BILL 6214  
 SUBSTITUTE SENATE BILL 6373  
 SUBSTITUTE SENATE BILL 6459  
 SUBSTITUTE SENATE BILL 6557

and the same are herewith transmitted.

Thomas Hoemann, Secretary

#### MESSAGE FROM THE SENATE

March 5, 2010

Mr. Speaker:

The Senate has passed SECOND SUBSTITUTE HOUSE BILL NO. 1761 with the following amendment:

On page 2, line 25, after "purposes", strike all material through "well" on line 27

Re-number the sections consecutively and correct any internal references accordingly.

and the same is herewith transmitted.

Thomas Hoeman, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SECOND SUBSTITUTE HOUSE BILL NO. 1761 and advanced the bill, as amended by the Senate, to final passage.

#### FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Hunt, Kristiansen and Hasegawa spoke in favor of the passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Second Substitute House Bill No. 1761, as amended by the Senate.

#### ROLL CALL

The Clerk called the roll on the final passage of Second Substitute House Bill No. 1761, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Conway, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Fagan, Finn, Flannigan, Goodman, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Lias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nealey, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Condotta.

SECOND SUBSTITUTE HOUSE BILL NO. 1761, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

#### MESSAGE FROM THE SENATE

March 5, 2010

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 2179 with the following amendment:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 35.21 RCW to read as follows:

In addition to any other power and authority conferred to a city that is located in a county having a population of more than one million five hundred thousand, a city legislative authority may provide or contract for supplemental transportation improvements to meet mobility needs within the city's boundaries. For purposes of this section, a "supplemental transportation improvement" or "supplemental improvement" means any project, work, or undertaking to provide or contract for public transportation service in addition to any existing or planned public transportation service provided by public transportation agencies and systems serving the city. The supplemental authority provided to the city legislative authority under this section is subject to the following requirements:

(1) Prior to taking any action to provide or contract for supplemental transportation improvements permitted under this section, the legislative authority of the city shall conduct a public hearing at the time and place specified in a notice published at least once, not less than ten days before the hearing, in a newspaper of general circulation within the proposed district. The notice must specify the supplemental facilities or services to be provided or contracted for by the city, and must include estimated capital, operating, and maintenance costs. The legislative authority of the city shall hear objections from any person affected by the proposed supplemental improvements.

(2) Following the hearing held pursuant to subsection (1) of this section, if the city legislative authority finds that the proposed supplemental transportation improvements are in the public interest, the legislative authority shall adopt an ordinance providing for the supplemental improvements and provide or contract for the supplemental improvements.

(3) For purposes of providing or contracting for the proposed supplemental transportation improvements, the legislative authority of the city may contract with private providers and nonprofit organizations, and may form public-private partnerships. Such contracts and partnerships must require that public transportation services be coordinated with other public transportation agencies and systems serving the area and border jurisdictions.

(4) The legislative authorities of cities that are participating jurisdictions in a transportation benefit district, as provided under chapter 36.73 RCW, may petition the transportation benefit district for partial or full funding of supplemental transportation improvements as prescribed under section 3 of this act.

(5) Supplemental transportation improvements must be consistent with the city's comprehensive plan under chapter 36.70A RCW.

**Sec. 2.** RCW 36.73.015 and 2006 c 311 s 24 are each amended to read as follows:

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

(1) "District" means a transportation benefit district created under this chapter.

(2) "City" means a city or town.

(3) "Transportation improvement" means a project contained in the transportation plan of the state or a regional transportation planning organization. A project may include investment in new or existing highways of statewide significance, principal arterials of regional significance, high capacity transportation, public transportation, and other transportation projects and programs of regional or statewide significance including transportation demand management. Projects may also include the operation, preservation, and maintenance of these facilities or programs.

(4) "Supplemental transportation improvement" or "supplemental improvement" means any project, work, or undertaking to provide public transportation service, in addition to a district's existing or planned voter-approved transportation improvements, proposed by a participating city member of the district under section 3 of this act.

**NEW SECTION. Sec. 3.** A new section is added to chapter 36.73 RCW to read as follows:

(1) In districts comprised of more than one member city, the legislative authorities of any member city that is located in a county having a population of more than one million five hundred thousand may petition the district to provide supplemental transportation improvements.

(2) Upon receipt of a petition as provided in subsection (1) of this section for supplemental transportation improvements that are to be fully funded by the petitioner city, including ongoing operating and maintenance costs, the district must:

(a) Conduct a public hearing, and provide notice and opportunity for public comment consistent with the requirements of RCW 36.73.050(1); and

(b) Following the hearing, if a majority of the district's governing board determines that the proposed supplemental transportation improvements are in the public interest, the district shall adopt an ordinance providing for the incorporation of the supplemental improvements into any existing services. The supplemental transportation improvements must be in addition to existing services provided by the district. The district shall enter into agreements with the petitioner city or identified service providers to coordinate existing services with the supplemental improvements.

(3) Upon receipt of a petition as provided in subsection (1) of this section for supplemental transportation improvements proposed to be partially or fully funded by the district, the district must:

(a) Conduct a public hearing, and provide notice and opportunity for public comment consistent with the requirements of RCW 36.73.050(1); and

(b) Following the hearing, submit a proposition to the voters at the next special or general election for approval by a majority of the voters in the district. The proposition must specify the supplemental transportation improvements to be provided and must estimate the capital, maintenance, and operating costs to be funded by the district.

(4) If a proposition to incorporate supplemental transportation improvements is approved by the voters as provided under subsection (3) of this section, the district shall adopt an ordinance providing for the incorporation of the supplemental improvements into any existing services provided by the district. The supplemental improvements must be in addition to existing services. The district shall enter into agreements with the petitioner city or identified service providers to coordinate existing services with the supplemental improvements.

(5) A supplemental transportation improvement must be consistent with the petitioner city's comprehensive plan under chapter 36.70A RCW.

(6) Unless otherwise agreed to by the petitioner city or by a majority of the district's governing board, upon adoption of an ordinance under subsection (2) or (4) of this section, the district shall maintain its existing public transportation service levels in locations where supplemental transportation improvements are provided.

**NEW SECTION. Sec. 4.** A new section is added to chapter 35.58 RCW to read as follows:

If the legislative authority of a city provides or contracts for supplemental transportation improvements, as described in section 1 of this act or under chapter 36.73 RCW, a metropolitan municipal corporation serving the city or border jurisdictions shall coordinate its services with the supplemental transportation improvements to maximize efficiencies in public transportation services within and across service boundaries.

**NEW SECTION. Sec. 5.** A new section is added to chapter 36.57A RCW to read as follows:

If the legislative authority of a city provides or contracts for supplemental transportation improvements, as described in section 1 of this act or under chapter 36.73 RCW, a public transportation benefit area serving the city or border jurisdictions shall coordinate its services with the supplemental transportation improvements to maximize efficiencies in public transportation services within and across service boundaries.

**NEW SECTION. Sec. 6.** A new section is added to chapter 81.112 RCW to read as follows:

If the legislative authority of a city provides or contracts for supplemental transportation improvements, as described in section 1 of this act or under chapter 36.73 RCW, a regional transit authority serving the city or border jurisdictions shall coordinate its services with the supplemental transportation improvements to maximize efficiencies in public transportation services within and across service boundaries.

**Sec. 7.** RCW 35.58.260 and 1965 c 7 s 35.58.260 are each amended to read as follows:

If a metropolitan municipal corporation shall be authorized to perform the metropolitan transportation function, it shall, upon the effective date of the assumption of such power, have and exercise all rights with respect to the construction, acquisition, maintenance, operation, extension, alteration, repair, control and management of passenger transportation which any component city shall have been previously empowered to exercise and, except as provided in sections 1 and 3 of this act, such powers shall not thereafter be exercised by such component cities without the consent of the metropolitan municipal corporation: **PROVIDED**, That any city owning and operating a public transportation system on such effective date may continue to operate such system within such city until such system shall have been acquired by the metropolitan municipal corporation and a metropolitan municipal corporation may not acquire such system without the consent of the city council of such city.

**Sec. 8.** RCW 35.58.272 and 1975 1st ex.s. c 270 s 1 are each amended to read as follows:

"Municipality" as used in RCW 35.58.272 through 35.58.279, as now or hereafter amended, and in RCW 36.57.080, 36.57.100, 36.57.110, 35.58.2721, 35.58.2794, and chapter 36.57A RCW, means any metropolitan municipal corporation which shall have been authorized to perform the function of metropolitan public transportation; any county performing the public transportation function as authorized by RCW 36.57.100 and 36.57.110 or which has established a county transportation authority pursuant to chapter 36.57 RCW; any public transportation benefit area established pursuant to chapter 36.57A RCW; and any city, which is not located within the boundaries of a metropolitan municipal corporation unless provided otherwise in sections 1 and 3 of this act, county transportation authority, or public transportation benefit area, and which owns, operates or contracts for the services of a publicly owned or operated system of transportation: **PROVIDED**, That the term "municipality" shall mean in respect to any county performing the public transportation function pursuant to RCW 36.57.100 and 36.57.110 only that portion of the unincorporated area lying wholly within such unincorporated transportation benefit area.

"Motor vehicle" as used in RCW 35.58.272 through 35.58.279, as now or hereafter amended, shall have the same meaning as in RCW 82.44.010.

"County auditor" shall mean the county auditor of any county or any person designated to perform the duties of a county auditor pursuant to RCW 82.44.140.

"Person" shall mean any individual, corporation, firm, association or other form of business association."

On page 1, line 2 of the title, after "improvements;" strike the remainder of the title and insert "amending RCW 36.73.015, 35.58.260, and 35.58.272; adding a new section to chapter 35.21 RCW; adding a new section to chapter 36.73 RCW; adding a new section to chapter 35.58 RCW; adding a new section to chapter 36.57A RCW; and adding a new section to chapter 81.112 RCW."

and the same is herewith transmitted.

Thomas Hoeman, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 2179 and advanced the bill, as amended by the Senate, to final passage.

#### FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representative Eddy spoke in favor of the passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Substitute House Bill No. 2179, as amended by the Senate.

#### ROLL CALL

The Clerk called the roll on the final passage of Substitute House Bill No. 2179, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Conway, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Fagan, Finn, Flannigan, Goodman, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Lias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nealey, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Condotta.

SUBSTITUTE HOUSE BILL NO. 2179, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

#### MESSAGE FROM THE SENATE

February 27, 2010

Mr. Speaker:

The Senate has passed HOUSE BILL NO. 2681 with the following amendment:

0)

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 3.34.140 and 1984 c 258 s 20 are each amended to read as follows:

Any district judge may hold a session in any district in the state, at the request of the judge or majority of judges in the district if the visiting judge determines that the state of business in his or her district allows the judge to be absent. The county legislative authority in which the district court is located shall first approve the temporary absence and the judge pro tempore shall not be required to serve during the judge's absence. A visiting judge shall be entitled to reimbursement for subsistence, lodging, and travel expenses in accordance with the rates applicable to state officers under RCW 43.03.050 and 43.03.060 as now or hereafter amended while so acting, to be paid by the visited district. These expenses shall not be paid to the visiting judge unless the legislative authority of the county in which the visited district is located has approved the payment before the visit. In addition a visiting part-time district court judge, when not serving in a judicial capacity in his or her district, shall be entitled to compensation for judicial services so long as the legislative authority of the county in which the visited district is located has approved the payment before the visit."

On page 1, line 2 of the title, after "services;" strike the remainder of the title and insert "and amending RCW 3.34.140."

and the same is herewith transmitted.

Thomas Hoeman, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to HOUSE BILL NO. 2681 and advanced the bill, as amended by the Senate, to final passage.

#### FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Goodman and Rodne spoke in favor of the passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of House Bill No. 2681, as amended by the Senate.

#### ROLL CALL

The Clerk called the roll on the final passage of House Bill No. 2681, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Conway, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Fagan, Finn, Flannigan, Goodman, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Lias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nealey, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Condotta.

HOUSE BILL NO. 2681, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

**MESSAGE FROM THE SENATE**

March 5, 2010

Mr. Speaker:

The Senate has passed SECOND SUBSTITUTE HOUSE BILL NO. 2867 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 43.215.005 and 2007 c 415 s 1 are each amended to read as follows:

(1) The legislature recognizes that:

(a) Parents are their children's first and most important teachers and decision makers;

(b) Research across disciplines now demonstrates that what happens in the earliest years makes a critical difference in children's readiness to succeed in school and life;

(c) Washington's competitiveness in the global economy requires a world-class education system that starts early and supports life-long learning;

(d) Washington state currently makes substantial investments in voluntary child care and early learning services and supports, but because services are fragmented across multiple state agencies, and early learning providers lack the supports and incentives needed to improve the quality of services they provide, many parents have difficulty accessing high quality early learning services;

(e) A more cohesive and integrated voluntary early learning system would result in greater efficiencies for the state, increased partnership between the state and the private sector, improved access to high quality early learning services, and better employment and early learning outcomes for families and all children.

(2) The legislature finds that:

(a) The early years of a child's life are critical to the child's healthy brain development and that the quality of caregiving during the early years can significantly impact the child's intellectual, social, and emotional development;

(b) A successful outcome for every child obtaining a K-12 education depends on children being prepared from birth for academic and social success in school. For children at risk of school failure, the achievement gap often emerges as early as eighteen months of age;

(c) There currently is a shortage of high quality services and supports for children ages birth to three and their parents and caregivers; and

(d) Increasing the availability of high quality services for children ages birth to three and their parents and caregivers will result in improved school and life outcomes.

(3) Therefore, the legislature intends to establish a robust birth-to-three continuum of services for parents and caregivers of young children in order to provide education and support regarding the importance of early childhood development.

~~((3))~~ (4) The purpose of this chapter is:

(a) To establish the department of early learning;

(b) To coordinate and consolidate state activities relating to child care and early learning programs;

(c) To safeguard and promote the health, safety, and well-being of children receiving child care and early learning assistance, which is paramount over the right of any person to provide care;

(d) To provide tools to promote the hiring of suitable providers of child care by:

(i) Providing parents with access to information regarding child care providers;

(ii) Providing parents with child care licensing action histories regarding child care providers; and

(iii) Requiring background checks of applicants for employment in any child care facility licensed or regulated under current law;

(e) To promote linkages and alignment between early learning programs and elementary schools and support the transition of children and families from prekindergarten environments to kindergarten;

(f) To promote the development of a sufficient number and variety of adequate child care and early learning facilities, both public and private; and

(g) To license agencies and to assure the users of such agencies, their parents, the community at large and the agencies themselves that adequate minimum standards are maintained by all child care and early learning facilities.

~~((4))~~ (5) This chapter does not expand the state's authority to license or regulate activities or programs beyond those licensed or regulated under existing law.

**Sec. 2.** RCW 43.215.020 and 2007 c 394 s 5 are each amended to read as follows:

(1) The department of early learning is created as an executive branch agency. The department is vested with all powers and duties transferred to it under this chapter and such other powers and duties as may be authorized by law.

(2) The primary duties of the department are to implement state early learning policy and to coordinate, consolidate, and integrate child care and early learning programs in order to administer programs and funding as efficiently as possible. The department's duties include, but are not limited to, the following:

(a) To support both public and private sectors toward a comprehensive and collaborative system of early learning that serves parents, children, and providers and to encourage best practices in child care and early learning programs;

(b) To make early learning resources available to parents and caregivers;

(c) To carry out activities, including providing clear and easily accessible information about quality and improving the quality of early learning opportunities for young children, in cooperation with the nongovernmental private-public partnership;

(d) To administer child care and early learning programs;

(e) To standardize internal financial audits, oversight visits, performance benchmarks, and licensing criteria, so that programs can function in an integrated fashion;

(f) To support the implementation of the nongovernmental private-public partnership and cooperate with that partnership in pursuing its goals including providing data and support necessary for the successful work of the partnership;

(g) To work cooperatively and in coordination with the early learning council;

(h) To collaborate with the K-12 school system at the state and local levels to ensure appropriate connections and smooth transitions between early learning and K-12 programs; ~~(and)~~

(i) To develop a comprehensive birth-to-three plan to provide education and support through a continuum of options including, but not limited to, services such as: Home visiting; quality incentives for infant and toddler child care subsidies; quality improvements for family home and center-based child care programs serving infants and toddlers; professional development; early literacy programs; and informal supports for family, friend, and neighbor caregivers;

(j) Upon the development of an early learning information system, to make available to parents timely inspection and licensing action information through the internet and other means.

(3) The department's programs shall be designed in a way that respects and preserves the ability of parents and legal guardians to direct the education, development, and upbringing of their children, and that recognizes and honors cultural and linguistic diversity. The

department shall include parents and legal guardians in the development of policies and program decisions affecting their children.

**NEW SECTION. Sec. 3.** The department of early learning, in collaboration with the early learning nongovernmental private-public partnership and the early learning advisory council, shall develop a birth-to-three plan, including recommended appropriation levels, and report to the appropriate committees of the legislature and the governor by December 1, 2010. The plan and recommendations required under this section shall be developed within existing resources."

On page 1, line 1 of the title, after "learning;" strike the remainder of the title and insert "amending RCW 43.215.005 and 43.215.020; and creating a new section."

and the same is herewith transmitted.

Thomas Hoeman, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SECOND SUBSTITUTE HOUSE BILL NO. 2867 and advanced the bill, as amended by the Senate, to final passage.

#### FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Kagi and Haler spoke in favor of the passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Second Substitute House Bill No. 2867, as amended by the Senate.

#### ROLL CALL

The Clerk called the roll on the final passage of Second Substitute House Bill No. 2867, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 73; Nays, 24; Absent, 0; Excused, 1.

Voting yea: Representatives Anderson, Appleton, Armstrong, Blake, Carlyle, Chase, Clibborn, Cody, Conway, Dammeier, Darneille, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Finn, Flannigan, Goodman, Green, Haigh, Haler, Hasegawa, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Lias, Linville, Maxwell, McCoy, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pedersen, Pettigrew, Priest, Probst, Quall, Roberts, Rodne, Rolfes, Santos, Seaquist, Sells, Simpson, Smith, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Walsh, White, Williams, Wood and Mr. Speaker.

Voting nay: Representatives Alexander, Angel, Bailey, Campbell, Chandler, Crouse, DeBolt, Ericksen, Fagan, Herrera, Hinkle, Klippert, Kretz, Kristiansen, McCune, Nealey, Pearson, Roach, Ross, Schmick, Shea, Short, Taylor and Warnick.

Excused: Representative Condotta.

SECOND SUBSTITUTE HOUSE BILL NO. 2867, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

#### MESSAGE FROM THE SENATE

March 5, 2010

Mr. Speaker:

The Senate has passed ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2961 with the following amendment:

On page 6, line 6, after "hours" insert "in accordance with any rules adopted pursuant to section 3 of this act"

On page 7, line 15, after "officers" insert "in accordance with rules adopted by the board of pharmacy regarding the privacy of the purchaser of products covered by this act and law enforcement access to the records submitted to the tracking system as provided in this section consistent with the federal combat meth act"

On page 7, line 26, after "section." insert "The board of pharmacy shall adopt rules regarding the privacy of the purchaser of products covered by this act, and any public or law enforcement access to the records submitted to the tracking system as provided in subsection (2) (c) of this section consistent with the federal combat meth act."

and the same is herewith transmitted.

Brad Hendrickson, Deputy, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2961 and advanced the bill, as amended by the Senate, to final passage.

#### FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Campbell and Morrell spoke in favor of the passage of the bill.

Representative Schmick spoke against the passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Engrossed Second Substitute House Bill No. 2961, as amended by the Senate.

#### ROLL CALL

The Clerk called the roll on the final passage of Engrossed Second Substitute House Bill No. 2961, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 84; Nays, 13; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Chase, Clibborn, Cody, Conway, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Finn, Flannigan, Goodman, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Lias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Seaquist, Sells, Simpson, Smith, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Voting nay: Representatives Carlyle, Chandler, Crouse, Fagan, Kretz, Kristiansen, Nealey, Parker, Pearson, Schmick, Shea, Short and Taylor.

Excused: Representative Condotta.

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2961, as amended by the Senate, having received the necessary constitutional majority, was declared passed.



## MESSAGE FROM THE SENATE

March 5, 2010

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 3016 with the following amendment:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 26.09.170 and 2008 c 6 s 1017 are each amended to read as follows:

(1) Except as otherwise provided in ~~((subsection (7) of))~~ RCW 26.09.070(7), the provisions of any decree respecting maintenance or support may be modified: (a) Only as to installments accruing subsequent to the petition for modification or motion for adjustment except motions to compel court-ordered adjustments, which shall be effective as of the first date specified in the decree for implementing the adjustment; and, (b) except as otherwise provided in ~~((subsections (5), (6), (9), and (10) of))~~ this section, only upon a showing of a substantial change of circumstances. The provisions as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(2) Unless otherwise agreed in writing or expressly provided in the decree the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance or registration of a new domestic partnership of the party receiving maintenance.

(3) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child or by the death of the parent obligated to support the child.

(4) Unless expressly provided by an order of the superior court or a court of comparable jurisdiction, provisions for the support ~~((provisions of the order))~~ of a child are terminated upon the marriage or registration of a domestic partnership to each other of parties to a paternity order, or upon the remarriage or registration of a domestic partnership to each other of parties to a decree of dissolution. The remaining provisions of the order, including provisions establishing paternity, remain in effect.

(5)(a) A party to an order of child support may petition for a modification based upon a showing of substantially changed circumstances at any time.

(b) An obligor's voluntary unemployment or voluntary underemployment, by itself, is not a substantial change of circumstances.

(6) An order of child support may be modified one year or more after it has been entered without a showing ((a substantial change)) of substantially changed circumstances:

(a) If the order in practice works a severe economic hardship on either party or the child;

(b) If a party requests an adjustment in an order for child support which was based on guidelines which determined the amount of support according to the child's age, and the child is no longer in the age category on which the current support amount was based;

(c) If a child is still in high school, upon a finding that there is a need to extend support beyond the eighteenth birthday to complete high school; or

(d) To add an automatic adjustment of support provision consistent with RCW 26.09.100.

~~((6) An order or decree entered prior to June 7, 1984, may be modified without showing a substantial change of circumstances if the requested modification is to:~~

~~(a) Require health insurance coverage for a child named therein;~~

~~or~~

~~(b) Modify an existing order for health insurance coverage.~~

~~(7) An obligor's voluntary unemployment or voluntary underemployment, by itself, is not a substantial change of circumstances.))~~

(7)(a) If twenty-four months have passed from the date of the entry of the order or the last adjustment or modification, whichever is later, the order may be adjusted without a showing of substantially changed circumstances based upon:

(i) Changes in the income of the parents; or

(ii) Changes in the economic table or standards in chapter 26.19 RCW.

(b) Either party may initiate the adjustment by filing a motion and child support worksheets.

(c) If the court adjusts or modifies a child support obligation pursuant to this subsection by more than thirty percent and the change would cause significant hardship, the court may implement the change in two equal increments, one at the time of the entry of the order and the second six months from the entry of the order. Twenty-four months must pass following the second change before a motion for another adjustment under this subsection may be filed.

(8)(a) The department of social and health services may file an action to modify or adjust an order of child support if public assistance money is being paid to or for the benefit of the child and the child support order is at least twenty-five percent ((or more)) above or below the appropriate child support amount set forth in the standard calculation as defined in RCW 26.19.011 and reasons for the deviation are not set forth in the findings of fact or order. ((The determination of twenty five percent or more shall be based on the current income of the parties and the department shall not be required to show a substantial change of circumstances if the reasons for the deviations were not set forth in the findings of fact or order.

~~(9)(a) All child support decrees may be adjusted once every twenty four months based upon changes in the income of the parents without a showing of substantially changed circumstances. Either party may initiate the adjustment by filing a motion and child support worksheets.~~

~~(b) A party may petition for modification in cases of substantially changed circumstances under subsection (1) of this section at any time. However, if relief is granted under subsection (1) of this section, twenty four months must pass before a motion for an adjustment under (a) of this subsection may be filed.~~

~~(c) If, pursuant to (a) of this subsection or subsection (10) of this section, the court adjusts or modifies a child support obligation by more than thirty percent and the change would cause significant hardship, the court may implement the change in two equal increments, one at the time of the entry of the order and the second six months from the entry of the order. Twenty four months must pass following the second change before a motion for an adjustment under (a) of this subsection may be filed.~~

~~(d) A parent who is receiving transfer payments who receives a wage or salary increase may not bring a modification action pursuant to subsection (1) of this section alleging that increase constitutes a substantial change of circumstances.~~

~~(e) The department of social and health services may file an action at any time to modify an order of child support in cases of substantially changed circumstances if public assistance money is being paid to or for the benefit of the child. The determination of the existence of substantially changed circumstances by the department that lead to the filing of an action to modify the order of child support is not binding upon the court.~~

~~(10) An order of child support may be adjusted twenty four months from the date of the entry of the decree or the last adjustment or modification, whichever is later, based upon changes in the economic table or standards in chapter 26.19 RCW.))~~

(b) The department of social and health services may file an action to modify or adjust an order of child support in a nonassistance case if:

(i) The child support order is at least twenty-five percent above or below the appropriate child support amount set forth in the standard calculation as defined in RCW 26.19.011;

(ii) The department has determined the case meets the department's review criteria; and

(iii) A party to the order or another state or jurisdiction has requested a review.

(c) The determination of twenty-five percent or more shall be based on the current income of the parties and the department shall not be required to show a substantial change of circumstances if the reasons for the deviations were not set forth in the findings of fact or order.

(9) The department of social and health services may file an action to modify or adjust an order of child support under subsections (5) through (7) of this section if:

(a) Public assistance money is being paid to or for the benefit of the child;

(b) A party to the order in a nonassistance case has requested a review; or

(c) Another state or jurisdiction has requested a modification of the order.

(10) If testimony other than affidavit is required in any proceeding under this section, a court of this state shall permit a party or witness to be deposed or to testify under penalty of perjury by telephone, audiovisual means, or other electronic means, unless good cause is shown.

**Sec. 2.** RCW 26.09.175 and 2002 c 199 s 2 are each amended to read as follows:

(1) A proceeding for the modification of an order of child support shall commence with the filing of a petition and worksheets. The petition shall be in the form prescribed by the administrator for the courts. There shall be a fee of twenty dollars for the filing of a petition for modification of dissolution.

(2)(a) The petitioner shall serve upon the other party the summons, a copy of the petition, and the worksheets in the form prescribed by the administrator for the courts. If the modification proceeding is the first action filed in this state, service shall be made by personal service. If the decree to be modified was entered in this state, service shall be by personal service or by any form of mail requiring a return receipt. Proof of service shall be filed with the court.

(b) If the support obligation has been assigned to the state pursuant to RCW 74.20.330 or the state has a subrogated interest under RCW 74.20A.030, the summons, petition, and worksheets shall also be served on the attorney general; except that notice shall be given to the office of the prosecuting attorney for the county in which the action is filed in lieu of the office of the attorney general in those counties and in the types of cases as designated by the office of the attorney general by letter sent to the presiding superior court judge of that county. ((Proof of service shall be filed with the court.))

(3) ((The)) As provided for under RCW 26.09.170, the department of social and health services may file an action to modify or adjust an order of child support if:

(a) Public assistance money is being paid to or for the benefit of the child;

(b) A party to the order in a nonassistance case has requested a review; or

(c) Another state or jurisdiction has requested a modification of the order.

(4) A responding party's answer and worksheets shall be served and the answer filed within twenty days after service of the petition or sixty days if served out of state. ((The)) A responding party's failure to file an answer within the time required shall result in entry of a default judgment for the petitioner.

(((4))) (5) At any time after responsive pleadings are filed, ((either)) any party may schedule the matter for hearing.

(((5))) (6) Unless ((both)) all parties stipulate to arbitration or the presiding judge authorizes oral testimony pursuant to subsection (((6))) (7) of this section, a petition for modification of an order of child support shall be heard by the court on affidavits, the petition, answer, and worksheets only.

(((6))) (7) A party seeking authority to present oral testimony on the petition to modify a support order shall file an appropriate motion not later than ten days after the time of notice of hearing. Affidavits and exhibits setting forth the reasons oral testimony is necessary to a just adjudication of the issues shall accompany the petition. The affidavits and exhibits must demonstrate the extraordinary features of the case. Factors which may be considered include, but are not limited to: (a) Substantial questions of credibility on a major issue; (b) insufficient or inconsistent discovery materials not correctable by further discovery; or (c) particularly complex circumstances requiring expert testimony.

(8) If testimony other than affidavit is required in any proceeding under this section, a court of this state shall permit a party or witness to be deposed or to testify under penalty of perjury by telephone, audiovisual means, or other electronic means, unless good cause is shown.

**Sec. 3.** RCW 26.09.100 and 2008 c 6 s 1013 are each amended to read as follows:

(1) In a proceeding for dissolution of marriage or domestic partnership, legal separation, declaration of invalidity, maintenance, or child support, after considering all relevant factors but without regard to misconduct, the court shall order either or both parents owing a duty of support to any child of the marriage or the domestic partnership dependent upon either or both spouses or domestic partners to pay an amount determined under chapter 26.19 RCW.

(2) The court may require automatic periodic adjustments or modifications of child support. That portion of any decree that requires periodic adjustments or modifications of child support shall use the provisions in chapter 26.19 RCW as the basis for the adjustment or modification. Provisions in the decree for periodic adjustment or modification shall not conflict with RCW 26.09.170 except that the decree may require periodic adjustments or modifications of support more frequently than the time periods established pursuant to RCW 26.09.170.

(3) Upon motion of a party and without a substantial change of circumstances, the court shall modify the decree to comply with subsection (2) of this section as to installments accruing subsequent to entry of the court's order on the motion for modification.

(4) The adjustment or modification provision may be modified by the court due to economic hardship consistent with the provisions of RCW 26.09.170(((5))) (6)(a)."

On page 1, line 3 of the title, after "requirements;" strike the remainder of the title and insert "and amending RCW 26.09.170, 26.09.175, and 26.09.100."

and the same is herewith transmitted.

Brad Hendrickson, Deputy, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 3016 and advanced the bill, as amended by the Senate, to final passage.

#### FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Pedersen and Rodne spoke in favor of the passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Substitute House Bill No. 3016, as amended by the Senate.

### ROLL CALL

The Clerk called the roll on the final passage of Substitute House Bill No. 3016, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Conway, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Fagan, Finn, Flannigan, Goodman, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nealey, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Condotta.

SUBSTITUTE HOUSE BILL NO. 3016, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

### MESSAGE FROM THE SENATE

March 5, 2010

Mr. Speaker:

The Senate has passed ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 3026 with the following amendment:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** The legislature finds that in 1975 legislation was adopted, codified as chapter 28A.640 RCW, recognizing the deleterious effect of discrimination on the basis of sex, specifically prohibiting such discrimination in Washington public schools, and requiring the office of the superintendent of public instruction to monitor and enforce compliance. The legislature further finds that, while numerous state and federal laws prohibit discrimination on other bases in addition to sex, the common school provisions in Title 28A RCW do not include specific acknowledgment of the right to be free from discrimination because of race, creed, color, national origin, honorably discharged veteran or military status, sexual orientation, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability, nor do any common school provisions specifically direct the office of the superintendent of public instruction to monitor and enforce compliance with these laws. The legislature finds that one of the recommendations made to the legislature by the achievement gap oversight and accountability committee created in chapter 468, Laws of 2009, was that the office of the superintendent of public instruction should be specifically authorized to take affirmative steps to ensure that school districts comply with all civil rights laws, similar to what has already been authorized in chapter 28A.640 RCW with respect to discrimination on the basis of sex.

**NEW SECTION. Sec. 2.** Discrimination in Washington public schools on the basis of race, creed, religion, color, national origin,

honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability is prohibited. The definitions given these terms in chapter 49.60 RCW apply throughout this chapter unless the context clearly requires otherwise.

**NEW SECTION. Sec. 3.** The superintendent of public instruction shall develop rules and guidelines to eliminate discrimination prohibited in section 2 of this act as it applies to public school employment, counseling and guidance services to students, recreational and athletic activities for students, access to course offerings, and in textbooks and instructional materials used by students.

**NEW SECTION. Sec. 4.** The office of the superintendent of public instruction shall monitor local school districts' compliance with this chapter, and shall establish a compliance timetable, rules, and guidelines for enforcement of this chapter.

**NEW SECTION. Sec. 5.** Any person aggrieved by a violation of this chapter, or aggrieved by the violation of any rule or guideline adopted under this chapter, has a right of action in superior court for civil damages and such equitable relief as the court determines.

**NEW SECTION. Sec. 6.** The superintendent of public instruction has the power to enforce and obtain compliance with the provisions of this chapter and the rules and guidelines adopted under this chapter, by appropriate order made pursuant to chapter 34.05 RCW. The order may include, but is not limited to, termination of all or part of state apportionment or categorical moneys to the offending school district, termination of specified programs in which violations may be flagrant within the offending school district, institution of corrective action, and the placement of the offending school district on probation with appropriate sanctions until compliance is achieved.

**NEW SECTION. Sec. 7.** This chapter is supplementary to, and does not supersede, existing law and procedures and future amendments to those laws and procedures relating to unlawful discrimination.

**NEW SECTION. Sec. 8.** Sections 1 through 7 of this act constitute a new chapter in Title 28A RCW.

**NEW SECTION. Sec. 9.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2010, in the omnibus appropriations act, this act is null and void."

On page 1, line 2 of the title, after "laws;" strike the remainder of the title and insert "adding a new chapter to Title 28A RCW; and creating a new section."

and the same is herewith transmitted.

Thomas Hoeman, Secretary

### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 3026 and advanced the bill, as amended by the Senate, to final passage.

### FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Santos and Priest spoke in favor of the passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Engrossed Second Substitute House Bill No. 3026, as amended by the Senate.

### ROLL CALL

The Clerk called the roll on the final passage of Engrossed Second Substitute House Bill No. 3026, as amended by the Senate, and the bill passed the House by the following vote: Yeas, 62; Nays, 35; Absent, 0; Excused, 1.

Voting yea: Representatives Appleton, Blake, Carlyle, Chase, Clibborn, Cody, Conway, Darneille, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Finn, Flannigan, Goodman, Green, Haigh, Hasegawa, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Kagi, Kelley, Kenney, Kessler, Kirby, Litas, Linville, Maxwell, McCoy, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Ormsby, Orwall, Pedersen, Pettigrew, Priest, Probst, Quall, Rolfes, Santos, Sequist, Sells, Simpson, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, White, Williams, Wood and Mr. Speaker.

Voting nay: Representatives Alexander, Anderson, Angel, Armstrong, Bailey, Campbell, Chandler, Crouse, Dammeier, DeBolt, Ericksen, Fagan, Haler, Herrera, Hinkle, Johnson, Klippert, Kretz, Kristiansen, McCune, Nealey, Orcutt, Parker, Pearson, Roach, Roberts, Rodne, Ross, Schmick, Shea, Short, Smith, Taylor, Walsh and Warnick.

Excused: Representative Condotta.

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 3026, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

#### MESSAGE FROM THE SENATE

March 5, 2010

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 3105 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 43.41.130 and 2009 c 519 s 6 are each amended to read as follows:

(1) The director of financial management, after consultation with other interested or affected state agencies, shall establish overall policies governing the acquisition, operation, management, maintenance, repair, and disposal of ~~(,)~~ all ~~((passenger))~~ motor vehicles owned or operated by any state agency. ~~((Such))~~ These policies shall include but not be limited to a definition of what constitutes authorized use of a state owned or controlled passenger motor vehicle and other motor vehicles on official state business. The definition shall include, but not be limited to, the use of state-owned motor vehicles for commuter ride sharing so long as the entire capital depreciation and operational expense of the commuter ride-sharing arrangement is paid by the commuters. Any use other than such defined use shall be considered as personal use.

(2)(a) By June 15, 2010, the director of the department of general administration, in consultation with the office and other interested or affected state agencies, shall develop strategies to ~~((reduce))~~ assist state agencies in reducing fuel consumption and emissions from all classes of vehicles.

(b) In an effort to achieve lower overall emissions for all classes of vehicles, state agencies should, when financially comparable over the vehicle's useful life, consider purchasing or converting to ultra- low carbon fuel vehicles.

~~(3) State agencies shall ((use these strategies to:))~~  
~~((4))~~ phase in fuel economy standards for motor pools and leased petroleum-based fuel vehicles to achieve an average fuel economy standard of thirty-six miles per gallon for passenger vehicle fleets by 2015~~(;)~~

~~((2) Achieve an average fuel economy of forty miles per gallon for light duty passenger vehicles purchased after June 15, 2010; and~~

~~((3) Achieve an average fuel economy standard of twenty seven miles per gallon for light duty vans and sport utility vehicles purchased after June 15, 2010)) .~~

(4) After June 15, 2010, state agencies shall:

(a) When purchasing new petroleum-based fuel vehicles for vehicle fleets: (i) Achieve an average fuel economy of forty miles per gallon for light duty passenger vehicles; and (ii) achieve an average fuel economy of twenty-seven miles per gallon for light duty vans and sports utility vehicles; or

(b) Purchase ultra-low carbon fuel vehicles.

(5) State agencies must report annually on the progress made to achieve the goals under subsections ~~((1-4))~~ (3) and (4) of this section beginning October 31, 2011.

(6) The department of general administration, in consultation with the office and other affected or interested agencies, shall develop a separate fleet fuel economy standard for all other classes of petroleum-based fuel vehicles and report the progress made toward meeting the fuel consumption and emissions goals established by this section to the governor and the relevant legislative committees by December 1, 2012.

~~((For the purposes of this section, light duty vehicles refers to cars, sport utility vehicles, and passenger vans.))~~

(7) The following vehicles are excluded from the ~~((agency fleet))~~ average fuel economy ~~((calculation))~~ goals established in subsections (3) and (4) of this section: Emergency response vehicles, passenger vans with a gross vehicle weight of eight thousand five hundred pounds or greater, vehicles that are purchased for off-pavement use, ultra-low carbon fuel vehicles, and vehicles that are driven less than two thousand miles per year.

(8) Average fuel economy calculations used under this section for petroleum-based fuel vehicles must be based upon the current United States environmental protection agency composite city and highway mile per gallon rating.

(9) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Petroleum-based fuel vehicle" means a vehicle that uses, as a fuel source, more than ten percent gasoline or diesel fuel.

(b) "Ultra-low carbon fuel vehicle" means a vehicle that uses, as a fuel source, at least ninety percent natural gas, hydrogen, biomethane, or electricity."

On page 1, line 3 of the title, after "fleets;" strike the remainder of the title and insert "and amending RCW 43.41.130."

and the same is herewith transmitted.

Thomas Hoeman, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 3105 and advanced the bill, as amended by the Senate, to final passage.

#### FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Rolfes and Short spoke in favor of the passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Substitute House Bill No. 3105, as amended by the Senate.

#### ROLL CALL

The Clerk called the roll on the final passage of Substitute House Bill No. 3105, as amended by the Senate, and the bill

passed the House by the following vote: Yeas, 97; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Carlyle, Chandler, Chase, Clibborn, Cody, Conway, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Driscoll, Dunshee, Eddy, Ericks, Ericksen, Fagan, Finn, Flannigan, Goodman, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Lias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Morris, Nealey, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Simpson, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representative Condotta.

SUBSTITUTE HOUSE BILL NO. 3105, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

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

## SECOND READING

**ENGROSSED SUBSTITUTE SENATE BILL NO. 6381, by Senators Haugen and Marr**

**Making 2009-11 supplemental transportation appropriations.**

The bill was read the second time.

Representative Clibborn moved the adoption of amendment (1527).

*Formatting changed to accommodate amendment.*

Strike everything after the enacting clause and insert the following:

**"2009-11 FISCAL BIENNIUM  
ECONOMIC STIMULUS FUNDING**

**Sec. 1.** 2009 c 8 s 2 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION--AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009.**

Motor Vehicle Account--Federal Appropriation ..... \$341,400,000

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

(1) The entire appropriation in this section is (~~provided solely~~) for the projects and amounts listed in ARRA Washington State Project LEAP document 2009, as developed on February 24, 2009. Funds under this section may be reallocated among projects shown in the document to the extent that the department finds it necessary for the purposes of facilitating completion of the projects with the highest priority or to maintain maximum federal funds eligibility.

(2) To achieve the legislative objectives provided in section 1(2) of this act with respect to highway projects, it is the intent of the legislature that the appropriation in this section be used for: Transportation 2003 account (nickel account) projects and transportation partnership account (TPA) projects that would have otherwise been delayed due to decreased revenues, so as to advance project completion dates similar to those envisioned in the enacted 2008 legislative list of projects; projects that preserve or rehabilitate Washington state highways and roads; and projects that modify roadway alignments and conditions to create safer roads for the traveling public.

(3)(a) The department of transportation shall obligate at least fifty percent of the funds no later than one hundred twenty days after surface transportation program funds under the American Recovery and Reinvestment Act of 2009 have been apportioned to the states;

(b) The department shall obligate all funds no later than one year after surface transportation program funds under the American Recovery and Reinvestment Act of 2009 have been apportioned to the states;

(c) The department shall place the first priority for allocating funds on those projects listed as "First Tier" projects on ARRA Washington State Project LEAP document 2009, as developed on February 24, 2009. The department shall place the second priority on projects listed as "Second Tier" projects on the document; and

(d) Within each tier of projects on ARRA Washington State Project LEAP document 2009, as developed on February 24, 2009, the department shall place the highest priority for allocating funds on the transportation 2003 account (nickel account) projects and transportation partnership account (TPA) projects listed to advance their completion. The department shall prioritize funding for other projects within the tier according to how soon the contract for the project could be awarded.

(4) By June 30, 2009, the department of transportation shall report to the legislative standing committees on transportation and the office of financial management on the status of federal stimulus funds including, but not limited to, identifying the projects shown in ARRA Washington State Project LEAP document 2009, as developed on February 24, 2009, for which federal stimulus funding has already been obligated, the amount of federal recovery funds estimated to be obligated to the projects, and the completion status of each project. Subsequent status reports are due to the legislative standing committees on transportation and the office of financial management on August 31, 2009, and December 1, 2009.

**GENERAL GOVERNMENT AGENCIES--OPERATING**

**Sec. 101.** 2009 c 470 s 101 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF ARCHAEOLOGY AND HISTORIC PRESERVATION**

Motor Vehicle Account--State Appropriation ..... ~~(\$422,000)~~  
..... \$413,000

The appropriation in this section is subject to the following conditions and limitations: The entire appropriation is provided solely for staffing costs to be dedicated to state transportation activities. Staff hired to support transportation activities must have practical experience with complex construction projects.

**Sec. 102.** 2009 c 470 s 102 (uncodified) is amended to read as follows:

**FOR THE UTILITIES AND TRANSPORTATION COMMISSION**

Grade Crossing Protective Account--State  
Appropriation ..... ~~(\$705,000)~~  
..... \$702,000

**Sec. 103.** 2009 c 470 s 103 (uncodified) is amended to read as follows:

**FOR THE OFFICE OF FINANCIAL MANAGEMENT**

Motor Vehicle Account--State Appropriation ..... ~~(\$3,389,000)~~  
..... \$3,526,000

Puget Sound Ferry Operations Account--State  
Appropriation ..... ~~(\$100,000)~~  
..... \$98,000

TOTAL APPROPRIATION ..... ~~(\$3,489,000)~~  
..... \$3,624,000

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

(1) \$1,699,000 of the motor vehicle account--state appropriation is provided solely for the office of regulatory assistance integrated permitting project.

(2) \$1,004,000 of the motor vehicle account--state appropriation is provided solely for the continued maintenance and support of the transportation executive information system. Of the amount provided in this subsection, \$502,000 is for two existing FTEs at the department of transportation to maintain and support the system.

(3) \$150,000 of the motor vehicle account--state appropriation is provided solely for the office of financial management to contract with the Washington state association of counties for a pilot program to develop and implement a streamlined process for programmatic hydraulic project approvals for multiple, recurring local transportation and public works projects. The pilot program must include the following: (a) Describing, defining, and documenting classes of local transportation and public works projects appropriate for programmatic hydraulic project approvals permits; (b) developing technical permitting requirements and conditions; (c) administratively adopting and implementing programmatic hydraulic project approvals statewide; and (d) piloting, reviewing, updating, and training throughout all Washington counties. For the purpose of this subsection, the contract with the Washington state association of counties is deemed a revenue generation and auditing activity as that term is construed in section 602(2), chapter 3, Laws of 2010.

**Sec. 104.** 2009 c 470 s 104 (uncodified) is amended to read as follows:

**FOR THE MARINE EMPLOYEES COMMISSION**

Puget Sound Ferry Operations Account--State

Appropriation ..... ((\$446,000))  
 ..... \$440,000

**Sec. 105.** 2009 c 470 s 105 (uncodified) is amended to read as follows:

**FOR THE STATE PARKS AND RECREATION COMMISSION**

Motor Vehicle Account--State Appropriation ..... ((\$986,000))  
 ..... \$985,000

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

**Sec. 106.** 2009 c 470 s 106 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF AGRICULTURE**

Motor Vehicle Account--State Appropriation ..... ((\$1,507,000))  
 ..... \$1,493,000

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

(1) \$351,000 of the motor vehicle account--state appropriation is provided solely for costs associated with the motor fuel quality program.

(2) \$1,004,000 of the motor vehicle account--state appropriation is provided solely to test the quality of biofuel. The department must test fuel quality at the biofuel manufacturer, distributor, and retailer.

**Sec. 107.** 2009 c 470 s 107 (uncodified) is amended to read as follows:

**FOR THE LEGISLATIVE EVALUATION AND ACCOUNTABILITY PROGRAM COMMITTEE**

Motor Vehicle Account--State Appropriation ..... ((\$502,000))  
 ..... \$491,000

**Sec. 108.** 2009 c 470 s 108 (uncodified) is amended to read as follows:

**FOR THE JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE**

Multimodal Transportation Account--State Appropriation ..... \$50,000

(1) As part of its 2009-11 fiscal biennium work plan, the joint legislative audit and review committee shall audit the capital cost accounting practices of the Washington state ferries. The audit must review the following and provide a report on its findings and any related recommendations to the legislature by January 2011:

(a) Costs assigned to capital accounts to determine whether they are capital costs that meet the statutory requirements for preservation and improvement activities and whether they are within the scope of legislative appropriations;

(b) Implementation of the life-cycle cost model required under RCW 47.60.345 to determine if it was developed as required and is maintained and updated when asset inspections are made; and

(c) Washington state ferries' implementation of the cost allocation methodology evaluated under section 205, chapter 518, Laws of 2007, assessing whether actual costs are allocated consistently with the methodology, whether there are sufficient internal controls to ensure proper allocation, and the adequacy of staff training.

(2) The joint legislative audit and review committee shall use existing staff and resources to conduct a review of scoping and cost estimates for transportation highway improvement and preservation projects funded in whole, or in part, by transportation partnership account--state and transportation 2003 account (nickel account)--state funds, excluding mega-projects. The review will examine whether the scoping and cost estimates guidelines used by the department of transportation are consistent with general construction industry practices and other appropriate standards. The review will include an analysis of a sample of scope and cost estimates for future projects. A report on the committee's findings and recommendations must be submitted to the house of representatives and senate transportation committees by December 2009.

(3) As part of its 2009-11 fiscal biennium work plan, the joint legislative audit and review committee shall conduct an analysis of the cost of credit card payment options at the department of transportation. For programs where a credit card payment option is offered, the review must include:

(a) An analysis of the direct and indirect cost per transaction to process customer payments using credit cards;

(b) An analysis of the direct and indirect cost per transaction for other methods of processing customer payments;

(c) An analysis of the historical and projected total aggregate costs for processing all forms of customer payments;

(d) Identification of whether there are customer service, administrative, and revenue collection benefits resulting from credit card usage; and

(e) A review of the use of credit card payment options in other state agencies and in similar transportation programs at other states.

The committee shall provide a report on its findings and any related recommendations to the legislature by January 2010.

(4)(a) As part of its 2009-11 fiscal biennium work plan, the entire appropriation in this section is for the joint legislative audit and review committee to conduct an analysis of the storm water permit requirements issued by the department of ecology in February 2009 to determine the costs and benefits of alternative options for the department of transportation to meet the requirements. However, if the

committee does not include the analysis as part of its 2009-11 fiscal biennium work plan by April 15, 2010, the amount provided in this section lapses. The analysis must include, at a minimum, an analysis of the following:

- (i) The department of transportation performing the functions of the permit in house;
  - (ii) The functions of the permit being consolidated within the department of ecology or otherwise centralizing efforts for all state agencies; and
  - (iii) The use of an external firm or organization to meet the requirements.
- (b) The entire appropriation is for a consultant contract to assist the committee with its analysis. For the purpose of this subsection, the consultant contract is deemed an auditing activity as that term is construed in section 602(2), chapter 3, Laws of 2010.
- (c) The committee shall provide a report to the legislature by December 2010.

**TRANSPORTATION AGENCIES--OPERATING**

**Sec. 201.** 2009 c 470 s 201 (uncodified) is amended to read as follows:

**FOR THE WASHINGTON TRAFFIC SAFETY COMMISSION**

Highway Safety Account--State Appropriation.....	(( <del>\$2,542,000</del> ))
.....	<u>\$2,532,000</u>
Highway Safety Account--Federal Appropriation.....	(( <del>\$16,540,000</del> ))
.....	<u>\$34,630,000</u>
School Zone Safety Account--State Appropriation.....	\$3,340,000
Highway Safety Account--Local Appropriation .....	\$50,000
TOTAL APPROPRIATION.....	(( <del>\$22,472,000</del> ))
.....	<u>\$40,552,000</u>

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

(1) ((~~\$2,670,000~~)) \$2,826,000 of the highway safety account--federal appropriation is provided solely for a target zero trooper pilot program, which the commission shall develop and implement in collaboration with the Washington state patrol. The pilot program must demonstrate the effectiveness of intense, high visibility, driving under the influence enforcement in Washington. The commission shall apply to the national highway traffic safety administration for federal highway safety grants to cover the cost of the pilot program. If the pilot program is approved for funding by the national highway traffic safety administration, and sufficient federal grants are received, the commission shall provide grants to the Washington state patrol for the purchase of twenty-one fully equipped patrol vehicles in fiscal year 2010, and up to twenty-four months of salaries and benefits for eighteen troopers and three sergeants beginning in fiscal year ((~~2011~~)) 2010. The legislature anticipates that an additional ((~~\$1,830,000~~)) \$1,673,900 will be appropriated from the highway safety account--federal in the 2011-13 fiscal biennium to conclude this pilot program.

(2) The commission may oversee pilot projects implementing the use of automated traffic safety cameras to detect speed violations within cities west of the Cascade mountains that have a population over two hundred thousand. For the purposes of pilot projects in this subsection, no more than one automated traffic safety camera may be used to detect speed violations within any one jurisdiction.

(a) The commission shall comply with RCW 46.63.170 in administering the projects.

(b) In order to ensure adequate time in the 2009-11 fiscal biennium to evaluate the effectiveness of the pilot projects, any projects authorized by the commission must be authorized by December 31, 2009.

(c) By January 1, 2011, the commission shall provide a report to the legislature regarding the use, public acceptance, outcomes, and other relevant issues regarding automated traffic safety cameras demonstrated by the projects.

(3) \$18,000,000 of the highway safety account--federal appropriation is for federal funds that may be received during the 2009-11 fiscal biennium. Upon receipt of the funds, the commission shall provide a report on the use of the funds to the transportation committees of the legislature and the office of financial management.

**Sec. 202.** 2009 c 470 s 202 (uncodified) is amended to read as follows:

**FOR THE COUNTY ROAD ADMINISTRATION BOARD**

Rural Arterial Trust Account--State Appropriation.....	(( <del>\$920,000</del> ))
.....	<u>\$896,000</u>
Motor Vehicle Account--State Appropriation .....	(( <del>\$2,129,000</del> ))
.....	<u>\$2,084,000</u>
County Arterial Preservation Account--State	
Appropriation.....	(( <del>\$1,423,000</del> ))
.....	<u>\$1,396,000</u>
TOTAL APPROPRIATION.....	(( <del>\$4,472,000</del> ))
.....	<u>\$4,376,000</u>

**Sec. 203.** 2009 c 470 s 203 (uncodified) is amended to read as follows:

**FOR THE TRANSPORTATION IMPROVEMENT BOARD**

Urban Arterial Trust Account--State Appropriation.....	(( <del>\$1,824,000</del> ))
.....	<u>\$1,793,000</u>
Transportation Improvement Account--State	
Appropriation.....	(( <del>\$1,827,000</del> ))
.....	<u>\$1,796,000</u>
TOTAL APPROPRIATION.....	(( <del>\$3,651,000</del> ))
.....	<u>\$3,589,000</u>

**Sec. 204.** 2009 c 470 s 204 (uncodified) is amended to read as follows:

**FOR THE JOINT TRANSPORTATION COMMITTEE**

Motor Vehicle Account--State Appropriation .....	(( <del>\$1,901,000</del> ))
.....	<u>\$2,163,000</u>



Multimodal Transportation Account--State Appropriation .....	\$400,000
.....	TOTAL APPROPRIATION
.....	\$2,563,000

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

(1) \$236,000 of the motor vehicle account--state appropriation is a reappropriation from the 2007-09 fiscal biennium for a comprehensive analysis of mid-term and long-term transportation funding mechanisms and methods. Elements of the study will include existing data and trends, policy objectives, performance and evaluation criteria, incremental transition strategies, and possibly, scaled testing. Baseline data and methods assessment must be concluded by December 31, 2009. Performance criteria must be developed by June 30, 2010, and recommended planning level alternative funding strategies must be completed by December 31, 2010.

(2) \$200,000 of the motor vehicle account--state appropriation is for the joint transportation committee to convene an independent expert review panel to review the assumptions for toll operations costs used by the department to model financial plans for tolled facilities. The joint transportation committee shall work with staff from the senate and the house of representatives transportation committees to identify the scope of the review and to assure that the work performed meets the needs of the house of representatives and the senate. The joint transportation committee shall provide a report to the house of representatives and senate transportation committees by September 1, 2009.

(3) \$300,000 of the motor vehicle account--state appropriation is for an independent analysis of methodologies to value the reversible lanes on Interstate 90 to be used for high capacity transit pursuant to sound transit proposition 1 approved by voters in November 2008. The independent analysis shall be conducted by sound transit and the department of transportation, using consultant resources deemed appropriate by the secretary of the department, the chief executive officer of sound transit, and the cochairs of the joint transportation committee. It shall be conducted in consultation with the federal transit and federal highway administrations and account for applicable federal laws, regulations, and practices. It shall also account for the 1976 Interstate 90 memorandum of agreement and subsequent 2004 amendment and the 1978 federal secretary of transportation's environmental decision on Interstate 90. The department and sound transit must provide periodic reports to the joint transportation committee, the sound transit board of directors, and the governor, and report final recommendations by November 1, 2009.

(4) The joint transportation committee shall perform a review of the fuel tax refunds for nonhighway or off-road use of gasoline and diesel fuels as listed in RCW 46.09.170, 46.10.150, and 79A.25.070. The review must: Provide an overview of the off-road programs; analyze historical funding and expenditures from the respective treasury accounts; outline and provide process documentation on how the funds are distributed to the treasury accounts; and document future identified off-road, snowmobile, and marine funding needs. A report on the joint transportation committee review must be presented to the house of representatives and senate transportation committees by December 31, 2010.

(5)(a) \$350,000 of the multimodal transportation account--state appropriation is for the joint transportation committee to conduct a study to establish a statewide blueprint for public transportation that will serve to guide state investments in public transportation. At a minimum, the study should include an assessment of unmet operating and capital needs of public transportation agencies, the state role in funding those unmet needs, and the priorities for state investments. The report should include efficiency and accountability measures that inform future state investment in public transportation to maximize mobility, social, economic, and environmental benefits provided to the state.

(b) The statewide blueprint for public transportation should serve to guide state investments to support public transportation and address unmet needs to improve service, access to public transportation, and connectivity between public transportation providers across jurisdictional boundaries. The blueprint must be consistent with the state's transportation system policy goals provided in RCW 47.04.280 and the statewide transportation plan provided in RCW 47.01.071(4).

(c) To provide input to the study, the joint transportation committee shall convene a public transit advisory panel. The cochairs of the committee shall appoint and convene the advisory panel to be comprised of members as provided in this subsection:

- (i) One member from each of the two largest caucuses of the senate;
- (ii) One member from each of the two largest caucuses of the house of representatives;
- (iii) One representative of the department of transportation's public transportation division;
- (iv) Two representatives of users of public transportation systems, one of which must represent persons with special needs;
- (v) Three representatives from transit agencies from a list recommended by the Washington state transit association;
- (vi) Two representatives from regional transportation planning organizations, one representing eastern Washington and one representing western Washington;
- (vii) Three representatives of employers at or owners of major work sites in Washington;
- (viii) The chief executive officer, or the chief executive officer's designee, of a regional transit authority;
- (ix) Two representatives of organizations that address primarily environmental issues;
- (x) One member of a collective bargaining organization that primarily represents the interests of transit agency employees; and
- (xi) Other individuals deemed appropriate.

Nonlegislative members of the advisory panel must seek reimbursement for travel and other membership expenses through their respective agencies or organizations. The committee may make exceptions and approve certain expenses for good cause on a case-by-case basis.

(d) The joint transportation committee shall submit a report on the study to the standing transportation committees of the legislature by December 15, 2010.

(6) The joint transportation committee shall work with the department of licensing, the office of the code reviser, staff to the legislative transportation committees, and other stakeholders to evaluate the implementation of Senate Bill No. 6379. At a minimum, the evaluation must identify the unintended impacts of Senate Bill No. 6379 on policy and revenue collection, if any. The joint transportation committee shall issue its evaluation, including corrective draft legislation if needed, by December 1, 2010.

(7) \$125,000 of the motor vehicle account--state appropriation is for the joint transportation committee to evaluate the preparation of state-level transportation plans. The evaluation must include a review of federal planning requirements, the Washington transportation plan and statewide modal plan requirements, and transportation plan requirements for regional and local entities. The evaluation must make recommendations concerning the appropriate responsibilities for preparation of plans, methods to develop plans more efficiently, and the utility of the state-level planning documents. The committee shall issue a report of its evaluation, including draft legislation if required, to the house of representatives and senate transportation committees by December 15, 2010.

(8)(a) \$200,000 of the motor vehicle account--state appropriation is for the joint transportation committee to evaluate funding assistance and services provided by the county road administration board, transportation improvement board, freight mobility strategic investment board, and

the department of transportation's highway and local programs division. In 2010, the governor recommended consolidating small transportation agencies as part of an overall effort to streamline state government, provide economies of scale, and improve customer service. The evaluation may include recommendations on consolidating the agencies within the department of transportation, within another existing agency, or within a newly created agency. The study may also make recommendations on restructuring grant programs to generate efficiencies or other more efficient ways to distribute associated revenues.

(b) The joint transportation committee shall form a policy work group to oversee the evaluation. The work group must consist of legislators appointed by the joint transportation committee and a member of the governor's staff appointed by the governor.

(c) Any evaluation recommendations must be accompanied by a detailed implementation plan. The plan must include details on the recommended governance structure, accounts and program structure, and transition process and associated costs. The plan must include a proposed organization chart and proposed legislation to enact the recommended changes. A preliminary evaluation must be made to the joint transportation committee by November 15, 2010, and a final evaluation is due on December 15, 2010.

(9) The joint transportation committee shall conduct the following studies by December 15, 2010:

(a) A comparison of medical, time-loss, vocational and disability benefits available to injured workers, and costs payable by the state of Washington and employees, under the federal Jones act and Washington's industrial insurance act. The report must include information regarding the experience of the Alaska marine highway system; and

(b) A comparison of the processing time of grievances and hearings at the personnel relations employment commission and the marine employee commission. The review must also investigate whether the necessary expertise exists at the personnel relations employment commission to administer the grievances and hearings currently administered by the marine employee commission.

(10)(a) \$50,000 of the multimodal transportation account--state appropriation is for the joint transportation committee to conduct an analysis of the storm water permit requirements issued by the department of ecology in February 2009 to determine the costs and benefits of alternative options for the department of transportation to meet the requirements. However, if the committee does not include the analysis as part of its 2009-11 fiscal biennium work plan by April 15, 2010, the amount provided in this subsection lapses. The analysis must include, at a minimum, an analysis of the following:

(i) The department of transportation performing the functions of the permit in house;

(ii) The functions of the permit being consolidated within the department of ecology or otherwise centralizing efforts for all state agencies; and

(iii) The use of an external firm or organization to meet the requirements.

(b) The committee shall provide a report to the legislature by December 2010.

**Sec. 205.** 2009 c 470 s 205 (uncodified) is amended to read as follows:

**FOR THE TRANSPORTATION COMMISSION**

Motor Vehicle Account--State Appropriation .....	(( <del>\$2,237,000</del> ))
.....	\$2,328,000
Multimodal Transportation Account--State Appropriation .....	\$112,000
TOTAL APPROPRIATION.....	(( <del>\$2,349,000</del> ))
.....	\$2,440,000

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

(1) Pursuant to RCW 43.135.055, during the 2009-11 fiscal biennium, the transportation commission shall periodically review and, if necessary, modify the schedule of fares for the Washington state ferry system. The transportation commission may increase ferry fares, except no fare schedule modifications may be made prior to September 1, 2009. For purposes of this subsection, "modify" includes increases or decreases to the schedule. ~~((The commission may only approve ferry fare rate changes that have the same proportionate change for passengers as for vehicles.))~~

(2) Pursuant to RCW 43.135.055, during the 2009-11 fiscal biennium, the transportation commission shall periodically review and, if necessary, modify a schedule of toll charges applicable to the state route number 167 high occupancy toll lane pilot project, as required under RCW 47.56.403. For purposes of this subsection, "modify" includes increases or decreases to the schedule.

(3) Pursuant to RCW 43.135.055, during the 2009-11 fiscal biennium, the transportation commission shall periodically review and, if necessary, modify the schedule of toll charges applicable to the Tacoma Narrows bridge, taking into consideration the recommendations of the citizen advisory committee created under RCW 47.46.091. For purposes of this subsection, "modify" includes increases or decreases to the schedule.

(4) The commission may name state ferry vessels consistent with its authority to name state transportation facilities under RCW 47.01.420. When naming or renaming state ferry vessels, the commission shall investigate selling the naming rights and shall make recommendations to the legislature regarding this option.

(5) \$350,000 of the motor vehicle account--state appropriation is provided solely for consultant support services to assist the commission in updating the statewide transportation plan. The updated plan must be submitted to the legislature by December 1, 2010.

(6) If the commission considers implementing a ferry fuel surcharge, it must first submit an analysis and business plan to the office of financial management and either the joint transportation committee or the transportation committees of the legislature. The commission may impose a ferry fuel surcharge effective July 1, 2011. When implementing a ferry fuel surcharge, the commission must regard ferry fuel surcharges as fare policy changes and thus, ferry fuel surcharges should be included in all public procedures and processes currently used for fare pricing per RCW 47.60.290.

(7) The commission shall work with the department of transportation's economic partnerships (Program K) in conducting a best practices review of nontoll, public-private partnerships. The purpose of this review is to identify the policies and procedures that would be appropriate for application in Washington state. The commission must report its findings and recommendations, including draft legislation if warranted, to the house of representatives and senate transportation committees by January 2011.

(8) As part of its development of the statewide transportation plan, the commission shall review prioritized projects, including preservation and maintenance projects, from regional transportation and metropolitan planning organizations to identify statewide transportation needs. The review should include a brief description and status of each project along with the funding required and associated timeline from start to

completion. The commission shall submit the review, along with recommendations, to the house of representatives and senate transportation committees by January 2011.

**Sec. 206.** 2009 c 470 s 206 (uncodified) is amended to read as follows:

**FOR THE FREIGHT MOBILITY STRATEGIC INVESTMENT BOARD**

Motor Vehicle Account--State Appropriation ..... ((\$695,000))  
 ..... \$688,000

The appropriation in this section is subject to the following conditions and limitations: The freight mobility strategic investment board shall, on a quarterly basis, provide status reports to the office of financial management and the transportation committees of the legislature on the delivery of projects funded by this act.

**Sec. 207.** 2009 c 470 s 207 (uncodified) is amended to read as follows:

**FOR THE WASHINGTON STATE PATROL--FIELD OPERATIONS BUREAU**

State Patrol Highway Account--State  
 Appropriation ..... ((\$228,024,000))  
 ..... \$227,958,000

State Patrol Highway Account--Federal  
 Appropriation ..... (\$10,602,000)  
 ..... \$10,903,000

State Patrol Highway Account--Private/Local  
 Appropriation ..... ((\$859,000))  
 ..... \$867,000

**TOTAL APPROPRIATION** ..... ((\$239,485,000))  
 ..... \$239,728,000

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

(1) Washington state patrol officers engaged in off-duty uniformed employment providing traffic control services to the department of transportation or other state agencies may use state patrol vehicles for the purpose of that employment, subject to guidelines adopted by the chief of the Washington state patrol. The Washington state patrol shall be reimbursed for the use of the vehicle at the prevailing state employee rate for mileage and hours of usage, subject to guidelines developed by the chief of the Washington state patrol, and Cessna pilots funded from the state patrol highway account who are certified to fly the King Airs may pilot those aircraft for general fund purposes with the general fund reimbursing the state patrol highway account an hourly rate to cover the costs incurred during the flights since the aviation section will no longer be part of the Washington state patrol cost allocation system as of July 1, 2009.

(2) The patrol shall not account for or record locally provided DUI cost reimbursement payments as expenditure credits to the state patrol highway account. The patrol shall report the amount of expected locally provided DUI cost reimbursements to the office of financial management and transportation committees of the legislature by September 30th of each year.

(3) During the 2009-11 fiscal biennium, the Washington state patrol shall continue to perform traffic accident investigations on Thurston county roads, and shall work with the county to transition the traffic accident investigations on Thurston county roads to the county by July 1, 2011.

(4) Within existing resources, the Washington state patrol shall make every reasonable effort to increase the enrollment in each academy class that commences during the 2009-11 fiscal biennium to fifty-five cadets.

(5) The Washington state patrol shall collaborate with the Washington traffic safety commission to develop and implement the target zero trooper pilot program referenced in section 201 of this act.

~~(6) (The Washington state patrol shall discuss the implementation of the pilot program described under section 218(2) of this act with any union representing the affected employees.~~

~~(7) The Washington state patrol shall assign necessary personnel and equipment to implement and operate the pilot program described under section 218(2) of this act using the portion of the automated traffic safety camera fines deposited into the state patrol highway account, but not to exceed \$370,000. If the fines deposited into the state patrol highway account from automated traffic safety camera infractions do not reach \$370,000, the department of transportation shall remit funds necessary to the Washington state patrol to ensure the completion of the pilot program.) \$370,000 of the state patrol highway account--state appropriation is provided solely for costs associated with the pilot program described under section 218(2) of this act. The Washington state patrol may incur costs related only to the assignment of cadets and necessary computer equipment and to the reimbursement of the Washington state department of transportation for contract costs. The appropriation in this subsection must be funded from the portion of the automated traffic safety camera fines deposited into the state patrol highway account; however, if the fines deposited into the state patrol highway account from automated traffic safety camera infractions do not reach three hundred seventy thousand dollars, the department of transportation shall remit funds necessary to the Washington state patrol to ensure the completion of the pilot program. The Washington state patrol may not incur overtime as a result of this pilot program. The Washington state patrol shall not assign troopers to operate or deploy the pilot program equipment used in the roadway construction zones.~~

~~(7) If, as a result of lower than average rate of attrition among troopers, the Washington state patrol postpones the year 2011 training for trooper cadets beyond June 30, 2011, funding provided in section 207, chapter 470, Laws of 2009 for the class must be used to fund the salaries and benefits associated with the existing commissioned Washington state patrol troopers that are funded within the field operations bureau.~~

~~(8) \$2,832,000 of the state patrol highway account--state appropriation is provided solely for the aerial traffic enforcement program. The Washington state patrol shall evaluate the costs associated with aerial traffic highway enforcement to determine if the costs are accurately apportioned between the state patrol highway account and the general fund. It is the intent of the legislature that the state patrol highway account incurs costs that result only from highway enforcement activities and that the general fund incurs costs associated with the King Airs. The Washington state patrol shall report the results of the evaluation to the legislature by June 30, 2010.~~

~~(9) For the remainder of the 2009-11 fiscal biennium, the Washington state patrol shall continue to work with Island county on traffic accident investigations.~~

~~(10) \$3,601,000 of the state patrol highway account--state appropriation is provided solely for the costs associated with a basic trooper class.~~

**Sec. 208.** 2009 c 470 s 208 (uncodified) is amended to read as follows:

**FOR THE WASHINGTON STATE PATROL--INVESTIGATIVE SERVICES BUREAU**

State Patrol Highway Account--State Appropriation .....	(\$1,557,000))
.....	<u>\$1,648,000</u>

**Sec. 209.** 2009 c 470 s 209 (uncodified) is amended to read as follows:

**FOR THE WASHINGTON STATE PATROL--TECHNICAL SERVICES BUREAU**

State Patrol Highway Account--State Appropriation .....	(\$105,680,000))
.....	<u>\$108,560,000</u>
State Patrol Highway Account--Private/Local Appropriation .....	(\$2,008,000))
.....	<u>\$2,510,000</u>
TOTAL APPROPRIATION .....	(\$107,688,000))
.....	<u>\$111,070,000</u>

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

(1) The Washington state patrol shall work with the risk management division in the office of financial management in compiling the Washington state patrol's data for establishing the agency's risk management insurance premiums to the tort claims account. The office of financial management and the Washington state patrol shall submit a report to the legislative transportation committees by December 31st of each year on the number of claims, estimated claims to be paid, method of calculation, and the adjustment in the premium.

(2) (~~(\$8,673,000)~~) \$10,425,000 of the total appropriation is provided solely for automobile fuel in the 2009-11 fiscal biennium.

(3) \$7,421,000 of the total appropriation is provided solely for the purchase of pursuit vehicles.

(4) (~~(\$6,328,000)~~) \$6,611,000 of the total appropriation is provided solely for vehicle repair and maintenance costs of vehicles used for highway purposes.

(5) (~~(\$384,000)~~) \$1,724,000 of the total appropriation is provided solely for the purchase of mission vehicles used for highway purposes in the commercial vehicle and traffic investigation sections of the Washington state patrol.

(6) The Washington state patrol may submit information technology-related requests for funding only if the patrol has coordinated with the department of information services as required under section 601 of this act.

(7) \$345,000 of the state patrol highway account--state appropriation is provided solely for the implementation of Engrossed Substitute House Bill No. 1445 (domestic partners/Washington state patrol retirement system). If Engrossed Substitute House Bill No. 1445 is not enacted by June 30, 2009, the amount provided in this subsection shall lapse.

**Sec. 210.** 2009 c 470 s 210 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF LICENSING**

Marine Fuel Tax Refund Account--State Appropriation .....	\$32,000
Motorcycle Safety Education Account--State Appropriation .....	(\$4,373,000))
.....	<u>\$4,356,000</u>
Wildlife Account--State Appropriation .....	(\$837,000))
.....	<u>\$821,000</u>
Highway Safety Account--State Appropriation .....	(\$145,085,000))
.....	<u>\$143,660,000</u>
Highway Safety Account--Federal Appropriation .....	(\$8,900))
.....	<u>\$944,000</u>
Motor Vehicle Account--State Appropriation .....	(\$78,805,000))
.....	<u>\$77,898,000</u>
Motor Vehicle Account--Private/Local Appropriation .....	\$1,372,000
Motor Vehicle Account--Federal Appropriation .....	\$242,000
Department of Licensing Services Account--State Appropriation .....	(\$3,867,000))
.....	<u>\$4,705,000</u>
Washington State Patrol Highway Account--State Appropriation .....	(\$738,000))
.....	<u>\$737,000</u>
Ignition Interlock Device Revolving Account--State Appropriation .....	(\$2,490,000))
.....	<u>\$1,315,000</u>
TOTAL APPROPRIATION .....	(\$237,849,000))
.....	<u>\$236,082,000</u>

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

(1)(a) By November 1, 2009, the department of licensing, working with the department of revenue, shall analyze and plan for the transfer by July 1, 2010, of the administration of fuel taxes imposed under chapters 82.36, 82.38, 82.41, and 82.42 RCW and other provisions of law from the department of licensing to the department of revenue. By November 1, 2009, the departments shall report findings and recommendations to the governor and the transportation and fiscal committees of the legislature.

(b) The analysis and planning directed under this subsection must include, but is not limited to, the following:

(i) Outreach to and solicitation of comment from parties affected by the fuel taxes, including taxpayers, industry associations, state and federal agencies, and Indian tribes, and from the transportation and fiscal committees of the legislature; and

(ii) Identification and analysis of relevant factors including, but not limited to:

(A) Taxpayer reporting and payment processes;

(B) The international fuel tax agreement;

- (C) Proportional registration under the provisions of the international registration plan and chapter 46.87 RCW;
- (D) Computer systems;
- (E) Best management practices and efficiencies;
- (F) Costs; and
- (G) Personnel matters(;

~~—(iii) Development of recommended actions to accomplish the transfer; and~~

~~—(iv) An implementation plan and schedule.~~

~~—(e) The report must include draft legislation, which transfers administration of fuel taxes as described under (a) of this subsection to the department of revenue on July 1, 2010, and amends existing law as needed)).~~

(2) \$55,845,000 of the highway safety account--state appropriation is provided solely for the driver examining program. In order to reduce costs and make the most efficient use of existing resources, the department may consolidate licensing service offices by closing the vehicle services counter at the highways licensing building in Olympia and up to twenty-five licensing service offices.

(a) When closing offices, the department may redistribute staff from consolidated offices to neighboring offices and local community supercenters.

(b) In order to mitigate the effects of office consolidations on customers, the department shall, within existing resources, provide the following enhanced services:

(i) Extended daily and weekend hours in regional supercenter offices;

(ii) Staffed greeter stations to improve office work flow; and

(iii) Self-service stations for online transaction access, including vehicle renewal transactions.

(c) In areas that are not consolidated, the department will work to reduce costs by identifying opportunities to share facilities with subagent offices and state, county, or local government offices and by analyzing hours and days of operation to meet demand.

(d) The department shall work with vehicle licensing subagents regarding potential placement of self-service driver licensing kiosks in communities that will be affected by licensing services offices closures. The department may place kiosks in those subagent offices where both parties agree, and may pay the subagents the fair market value for any space used for kiosks.

(e) The department shall report to the joint transportation committee by November 30, 2009, on the department's consolidation implementation to date and its plan for continued implementation.

(3) \$11,688,000 of the highway safety account--state appropriation is provided solely for costs associated with: Issuing enhanced drivers' licenses and identicards at the enhanced licensing services offices; extended hours at those licensing services offices; cross-border tourism education; and other education campaigns. This is the maximum amount the department may expend for this purpose.

(4) ~~(\$2,490,000)~~ \$1,315,000 of the ignition interlock device revolving account--state appropriation is provided solely for the department to assist indigent persons with the costs of installing, removing, and leasing the device, and applicable licensing pursuant to RCW 46.68.340.

(5) By December 31, 2009, the department shall report to the office of financial management and the transportation committees of the legislature a cost-benefit analysis of leasing versus purchasing field office equipment.

(6) By December 31, 2009, the department shall submit to the office of financial management and the transportation committees of the legislature draft legislation that rewrites RCW 46.52.130 (driving record abstracts) in plain language.

(7) The department may seek federal funds to implement a driver's license and identicard biometric matching system pilot program to verify the identity of applicants for, and holders of, drivers' licenses and identicards. If funds are received, the department shall report any benefits or problems identified during the course of the pilot program to the transportation committees of the legislature upon the completion of the program.

(8) The department may submit information technology-related requests for funding only if the department has coordinated with the department of information services as required under section 601 of this act.

(9) Consistent with the authority delegated to the director of licensing under RCW 46.01.100, the department may adopt a new organizational structure that includes the following programs: (a) Driver and vehicle services, which must encompass services relating to driver licensing customers, vehicle industry and fuel tax licensees, and vehicle and vessel licensing and registration; and (b) driver policy and programs, which must encompass policy development for all driver-related programs, including driver examining, driver records, commercial driver's license testing and auditing, driver training schools, motorcycle safety, technical services, hearings, driver special investigations, drivers' data management, central issuance contract management, and state and federal initiatives.

(10) The legislature finds that measuring the performance of the department requires the measurement of quality, timeliness, and unit cost of services delivered to customers. Consequently:

(a) The department shall develop a set of metrics that measure that performance and report to the transportation committees of the house of representatives and the senate and to the office of financial management on the development of these measurements along with recommendations to the 2010 legislature on which measurements must become a part of the next omnibus transportation appropriations act;

(b) The department shall study the process in place at the licensing services office and present to the 2010 legislature recommendations for process changes to improve efficiencies for both the department and the customer; and

(c) The department shall, on a quarterly basis, report to the transportation committees of the legislature the following monthly data by licensing service office locations: (i) Lease costs; (ii) salary and benefit costs; (iii) other costs; (iv) actual FTEs; (v) number of transactions completed, by type of transaction; and (vi) office hours.

(11) \$25,000 of the motor vehicle account--state appropriation is provided solely for the department to provide to at least five hundred limousine chauffeurs an overview of the laws and rules governing limousine carriers.

(12) \$938,000 of the highway safety account--federal appropriation is for federal funds that may be received during the 2009-11 fiscal biennium. Upon receipt of the funds, the department shall provide a report on the use of the funds to the transportation committees of the legislature and the office of financial management.

(13) \$869,000 of the department of licensing services account--state appropriation is provided solely for purchasing equipment for the field licensing service offices and subagent offices.

Sec. 211. 2009 c 470 s 211 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION--TOLL OPERATIONS AND MAINTENANCE--PROGRAM B**

High Occupancy Toll Lanes Operations Account--State

Appropriation .....	(\$2,867,000)
.....	\$2,852,000
Motor Vehicle Account--State Appropriation .....	(\$585,000)
.....	\$575,000
Tacoma Narrows Toll Bridge Account--State	
Appropriation .....	(\$27,358,000)
.....	\$26,543,000
State Route Number 520 Corridor Account--State	
Appropriation .....	(\$58,088,000)
.....	\$28,000,000
<u>State Route Number 520 Civil Penalties</u>	
Account--State Appropriation .....	\$2,130,000
TOTAL APPROPRIATION .....	(\$88,898,000)
.....	\$60,100,000

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

(1) The department shall make detailed quarterly expenditure reports available to the transportation commission and to the public on the department's web site using current department resources. The reports must include a summary of revenue generated by tolls on the Tacoma Narrows bridge and an itemized depiction of the use of that revenue.

(2) The department shall work with the office of financial management to review insurance coverage, deductibles, and limitations on tolled facilities to assure that the assets are well protected at a reasonable cost. Results from this review must be used to negotiate any future new or extended insurance agreements.

(3) ~~(\$58,088,000)~~ \$28,000,000 of the state route number 520 corridor account--state appropriation is provided solely for the costs directly related to tolling the state route number 520 floating bridge. Of this amount, ~~(\$175,000 is for the immediate costs necessary to pursue a request for proposal to implement variable, open road tolling on the state route number 520 floating bridge. The request for proposal must include tolling infrastructure and signage, customer service centers, collection and billing procedures, and, to the extent practicable, the maintenance and dispensing of transponders by the vendor. The remaining \$57,913,000)~~ \$8,000,000 must be retained in unallotted status, and may only be released by the office of financial management after consultation with the joint transportation committee ~~((following the committee's examination of toll operations costs referenced in section 204(2) of this act. The amount provided in this subsection is contingent on the enactment of (a) Engrossed Substitute House Bill No. 2211 and (b) either Engrossed Substitute House Bill No. 2326 or other legislation authorizing bonds for the state route number 520 corridor projects. If the conditions of this subsection are not satisfied, the amount provided in this subsection shall lapse)).~~

(4) The department shall consider transitioning to all electronic tolling on the Tacoma Narrows bridge toll facility and discontinuing a cash toll option.

(5) \$2,130,000 of the state route number 520 civil penalties account--state appropriation and \$140,000 of the Tacoma Narrows toll bridge account--state appropriation are provided solely for expenditures related to the toll adjudication process. The amount provided in this subsection is contingent on the enactment by June 30, 2010, of either Engrossed Substitute Senate Bill No. 6499 or Substitute House Bill No. 2897; however, if the enacted bill does not specify the department as the toll penalty adjudicating agency, the amounts provided in this subsection lapse.

(6) The department shall review, and revise where appropriate, current signage and ingress/egress locations on the state route number 167 high occupancy toll lanes pilot project. The department shall continue to work with the Washington state patrol on educating the public on the rules of the road related to crossing a double white line. The department shall continue to monitor the performance of the high occupancy toll lanes to ensure that driving conditions for high occupancy vehicles that share these lanes are not significantly changed.

Sec. 212. 2009 c 470 s 212 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION--INFORMATION TECHNOLOGY--PROGRAM C**

Transportation Partnership Account--State	
Appropriation .....	\$2,675,000
Motor Vehicle Account--State Appropriation .....	(\$67,811,000)
.....	\$68,650,000
Motor Vehicle Account--Federal Appropriation .....	\$240,000
Multimodal Transportation Account--State	
Appropriation .....	\$363,000
Transportation 2003 Account (Nickel Account)--State	
Appropriation .....	\$2,676,000
TOTAL APPROPRIATION .....	(\$73,765,000)
.....	\$74,604,000

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

(1) The department shall consult with the office of financial management and the department of information services to: (a) Ensure that the department's current and future system development is consistent with the overall direction of other key state systems; and (b) when possible, use or develop common statewide information systems to encourage coordination and integration of information used by the department and other state agencies and to avoid duplication.

(2) \$1,216,000 of the transportation partnership account--state appropriation and \$1,216,000 of the transportation 2003 account (nickel account)--state appropriation are provided solely for the department to develop a project management and reporting system which is a collection of integrated tools for capital construction project managers to use to perform all the necessary tasks associated with project management. The department shall integrate commercial off-the-shelf software with existing department systems and enhanced approaches to data management to provide web-based access for multi-level reporting and improved business work flows and reporting. On a quarterly basis, the department shall report to the office of financial management and the transportation committees of the legislature on the status of the development and integration

of the system. At a minimum, the reports shall indicate the status of the work as it compares to the work plan, any discrepancies, and proposed adjustments necessary to bring the project back on schedule or budget if necessary.

(3) The department may submit information technology-related requests for funding only if the department has coordinated with the department of information services as required under section 601 of this act.

(4) \$573,000 of the motor vehicle account--state appropriation is provided solely for the department to maintain the investment in the electronic fare system at Washington's ferry terminals. Investment in the electronic fare system must include the following: Replacement of critical hardware components that are at risk of failure; implementation of software to allow ORCA cards to be used for vehicles; repair of the turnstiles to ensure that the turnstiles properly record ORCA credit and debit card charges; and dedication of a communication line for transmission of ORCA data to the clearinghouse.

Sec. 213. 2009 c 470 s 213 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION--FACILITY MAINTENANCE, OPERATIONS AND CONSTRUCTION--PROGRAM D--OPERATING**

Motor Vehicle Account--State Appropriation ..... ((~~\$25,501,000~~))  
..... \$25,292,000

Sec. 214. 2009 c 470 s 214 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION--AVIATION--PROGRAM F**

Aeronautics Account--State Appropriation ..... ((~~\$6,009,000~~))  
..... \$5,960,000  
Aeronautics Account--Federal Appropriation ..... \$2,150,000  
TOTAL APPROPRIATION ..... ((~~\$8,159,000~~))  
..... \$8,110,000

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

(1) \$50,000 of the aeronautics account--state appropriation is a reappropriation provided solely to pay any outstanding obligations of the aviation planning council, which expires July 1, 2009.

(2) \$150,000 of the aeronautics account--state appropriation is a reappropriation provided solely to complete runway preservation projects.

(3) Within the amounts provided in this section, the department shall develop guidelines setting forth consultation procedures and a process to assist counties and cities to identify land uses that may be incompatible with airports and aircraft operations, and to encourage and facilitate the adoption and implementation of comprehensive plan policies and development regulations consistent with RCW 36.70.547 and 36.70A.510.

Sec. 215. 2009 c 470 s 215 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION--PROGRAM DELIVERY MANAGEMENT AND SUPPORT--PROGRAM H**

Motor Vehicle Account--State Appropriation ..... ((~~\$48,032,000~~))  
..... \$49,331,000  
Motor Vehicle Account--Federal Appropriation ..... \$500,000  
Multimodal Transportation Account--State  
Appropriation ..... \$250,000  
~~(Water Pollution Account--State Appropriation ..... \$2,000,000)~~  
TOTAL APPROPRIATION ..... ((~~\$50,782,000~~))  
..... \$50,081,000

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

(1) The department shall develop a plan for all current and future surplus property parcels based on the recommendations from the surplus property legislative work group that were presented to the senate transportation committee on February 26, 2009. The plan must include, at a minimum, strategies for maximizing the number of parcels sold, a schedule that optimizes proceeds, a recommended cash discount, a plan to report to the joint transportation committee, a recommendation for regional incentives, and a recommendation for equivalent value exchanges. This plan must accompany the department's 2010 supplemental budget request. By December 1, 2010, the department shall report to the legislative transportation committees on the individuals and entities eligible to receive surplus property provided in RCW 47.12.063 to determine the frequency with which the department transfers property to those individuals and entities and the implications to the department. It is the intent of the legislature that the list of individuals and entities eligible to receive surplus property be periodically evaluated to determine whether the list is appropriate and provides utility to the department.

~~((3))~~ (2) The legislature recognizes that the Dryden pit site (WSDOT Inventory Control (IC) No. 2-04-00103) is unused state-owned real property under the jurisdiction of the department of transportation, and that the public would benefit significantly from the complete enjoyment of the natural scenic beauty and recreational opportunities available at the site. Therefore, pursuant to RCW 47.12.080, the legislature declares that transferring the property to the department of fish and wildlife for recreational use and fish and wildlife restoration efforts is consistent with the public interest in order to preserve the area for the use of the public and the betterment of the natural environment. The department of transportation shall, (as soon as is practicable,) work with the department of fish and wildlife, and shall transfer and convey the Dryden pit site to the department of fish and wildlife as is for (adequate consideration in the amount of no less than \$600,000) an adjusted fair market value reflecting site conditions, the proceeds of which must be deposited in the motor vehicle fund. (By July 1, 2009) The department of transportation is not responsible for any costs associated with the cleanup or transfer of this property. By July 1, 2010, and annually thereafter until the entire Dryden pit property has been transferred, the department shall submit a status report regarding the transaction to the chairs of the legislative transportation committees.

~~((5))~~ (3) \$3,175,000 of the motor vehicle account--state appropriation is provided solely for the department's compliance with its national pollution discharge elimination system permit. The department's work may include the completion of system development, reporting, and planning to meet deadlines in the current biennium. The appropriation provided in this subsection is contingent on either the joint legislative audit and review committee or the joint transportation committee including the analysis identified in sections 108(4) and 204 of this act in its respective 2009-11 fiscal biennium work plan by April 15, 2010.

~~((6))~~ (4) The department shall provide updated information on six project milestones for all active projects, funded in part or in whole with 2005 transportation partnership account funds or 2003 nickel account funds, on a quarterly basis in the transportation executive information

system (TEIS). The department shall also provide updated information on six project milestones for projects, funded with preexisting funds and that are agreed to by the legislature, office of financial management, and the department, on a quarterly basis in TEIS.

(5) It is the intent of the legislature that the real estate services division of the department will recover the cost of its efforts from future sale proceeds. By January 31, 2011, the department must report to the office of financial management and the legislative transportation committees on the status of surplus property. The report must include: (a) The department's plan for continued disposal of surplus property; (b) a detail of changes from the previous report; and (c) a current list of surplus property by region that includes the acquisition date and price of the property, the status of the surplus property, and estimated value of the property. Except as provided otherwise in this subsection, by June 30, 2010, the department must finalize all pending equal value exchange activity for the construction or improvement of facilities, after which time the department may not pursue any other equal value exchanges for the construction or improvement of facilities. However, the northwest region may pursue an equal value exchange to replace the Mount Baker headquarters office. The exchange may include an exchange for the old Puget Sound energy site, the old Arco site, or any combination of the two.

**Sec. 216.** 2009 c 470 s 216 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION--ECONOMIC PARTNERSHIPS--PROGRAM K**

Motor Vehicle Account--State Appropriation .....	(( <del>\$615,000</del> ))
.....	\$673,000
Multimodal Transportation Account--State Appropriation .....	\$200,000
TOTAL APPROPRIATION .....	(( <del>\$815,000</del> ))
.....	\$873,000

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

(1) \$200,000 of the multimodal transportation account--state appropriation is provided solely for the department to develop and implement public private partnerships at high priority terminals as identified in the January 12, 2009, final report on joint development opportunities at Washington state ferries terminals. The department shall first consider a mutually beneficial agreement at the Edmonds terminal.

(2) \$50,000 of the motor vehicle account--state appropriation is provided solely for the department to investigate the potential to generate revenue from web site sponsorships and similar ventures and, if feasible, pursue partnership opportunities.

(3) \$75,000 of the motor vehicle account--state appropriation is provided solely for the implementation of a pilot project allowing advertisements and sponsorships on select web pages. The pilot project must be organized under the partnership model described in the department's web site monetizing feasibility study, which was prepared under subsection (2) of this section. Once operational, the pilot project must operate for at least twelve consecutive months. After twelve months of continuous operation, the department shall provide a report with recommendations on whether to continue project operations to the office of financial management and the chairs of the transportation committees. The department may end the pilot project after less than twelve consecutive months of operation if insufficient bids or proposals are received from potential sponsors or advertisers. For the purpose of this subsection, if a consultant contract is warranted, the consultant contract is deemed a revenue generation activity as that term is construed in section 602(2), chapter 3, Laws of 2010.

**Sec. 217.** 2009 c 470 s 217 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION--HIGHWAY MAINTENANCE--PROGRAM M**

Motor Vehicle Account--State Appropriation .....	(( <del>\$347,637,000</del> ))
.....	\$347,645,000
Motor Vehicle Account--Federal Appropriation .....	(( <del>\$2,000,000</del> ))
.....	\$7,000,000
Motor Vehicle Account--Private/Local Appropriation.....	\$5,797,000
<del>(Water Pollution Account--State Appropriation.....</del>	<del>\$12,500,000</del> )
TOTAL APPROPRIATION .....	(( <del>\$367,934,000</del> ))
.....	\$360,442,000

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

(1) If portions of the appropriations in this section are required to fund maintenance work resulting from major disasters not covered by federal emergency funds such as fire, flooding, snow, and major slides, supplemental appropriations must be requested to restore state funding for ongoing maintenance activities.

(2) The department shall request an unanticipated receipt for any federal moneys received for emergency snow and ice removal and shall place an equal amount of the motor vehicle account--state into unallotted status. This exchange shall not affect the amount of funding available for snow and ice removal.

(3) The department shall request an unanticipated receipt for any private or local funds received for reimbursements of third party damages that are in excess of the motor vehicle account--private/local appropriation.

(4) ~~((~~\$2,000,000~~))~~ \$7,000,000 of the motor vehicle account--federal appropriation is for unanticipated federal funds that may be received during the 2009-11 fiscal biennium. Upon receipt of the funds, the department shall provide a report on the use of the funds to the transportation committees of the legislature and the office of financial management.

(5) The department may incur costs related to the maintenance of the decorative lights on the Tacoma Narrows bridge only if:

(a) The nonprofit corporation, narrows bridge lights organization, maintains an account balance sufficient to reimburse the department for all costs; and

(b) The department is reimbursed from the narrows bridge lights organization within three months from the date any maintenance work is performed. If the narrows bridge lights organization is unable to reimburse the department for any future costs incurred, the lights must be removed at the expense of the narrows bridge lights organization subject to the terms of the contract.

(6) The department may work with the department of corrections to utilize corrections crews for the purposes of litter pickup on state highways.

(7) \$650,000 of the motor vehicle account--state appropriation is provided solely for increased asphalt costs. ~~((If Senate Bill No. 5976 is not enacted by June 30, 2009, the amount provided in this subsection shall lapse.))~~

(8) \$16,800,000 of the motor vehicle account--state appropriation is provided solely for the high priority maintenance backlog. Addressing the maintenance backlog must result in increased levels of service.



~~((40))~~ (9) \$750,000 of the motor vehicle account--state appropriation is provided solely for the department's compliance with its national pollution discharge elimination system permit.

(10) \$317,000 of the motor vehicle account--state appropriation is provided solely for maintaining a new active traffic management system on Interstate 5, Interstate 90, and SR 520. The department shall track the costs associated with these systems on a corridor basis and report to the legislative transportation committees on the cost and benefits of the system.

(11) \$286,000 of the motor vehicle account--state appropriation is provided solely for storm water assessment fees charged by local governments.

**Sec. 218.** 2009 c 470 s 218 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION--TRAFFIC OPERATIONS--PROGRAM Q--OPERATING**

Motor Vehicle Account--State Appropriation .....	(( <del>\$51,526,000</del> ))
.....	<u>\$51,128,000</u>
Motor Vehicle Account--Federal Appropriation .....	\$2,050,000
Motor Vehicle Account--Private/Local Appropriation.....	\$127,000
TOTAL APPROPRIATION.....	(( <del>\$53,703,000</del> ))
.....	<u>\$53,305,000</u>

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

(1) \$2,400,000 of the motor vehicle account--state appropriation is provided solely for low-cost enhancements. The department shall give priority to low-cost enhancement projects that improve safety or provide congestion relief. The department shall prioritize low-cost enhancement projects on a statewide rather than regional basis. By September 1st of each even-numbered year, the department shall provide a report to the legislature listing all low-cost enhancement projects prioritized on a statewide rather than regional basis completed in the prior year.

(2) The department, in consultation with the Washington state patrol, may continue a pilot program for the patrol to issue infractions based on information from automated traffic safety cameras in roadway construction zones on state highways. For the purpose of this pilot program, during the 2009-11 fiscal biennium, a roadway construction zone includes areas where public employees or private contractors are not present but where a driving condition exists that would make it unsafe to drive at higher speeds, such as, when the department is redirecting or realigning lanes on any public roadway pursuant to ongoing construction. The department shall use the following guidelines to administer the program:

(a) Automated traffic safety cameras may only take pictures of the vehicle and vehicle license plate and only while an infraction is occurring. The picture must not reveal the face of the driver or of passengers in the vehicle;

(b) The department shall plainly mark the locations where the automated traffic safety cameras are used by placing signs on locations that clearly indicate to a driver that he or she is entering a roadway construction zone where traffic laws are enforced by an automated traffic safety camera;

(c) Notices of infractions must be mailed to the registered owner of a vehicle within fourteen days of the infraction occurring;

(d) The owner of the vehicle is not responsible for the violation if the owner of the vehicle, within fourteen days of receiving notification of the violation, mails to the patrol, a declaration under penalty of perjury, stating that the vehicle involved was, at the time, stolen or in the care, custody, or control of some person other than the registered owner, or any other extenuating circumstances;

(e) For purposes of the 2009-11 fiscal biennium pilot program, infractions detected through the use of automated traffic safety cameras are not part of the registered owner's driving record under RCW 46.52.101 and 46.52.120. Additionally, infractions generated by the use of automated traffic safety cameras must be processed in the same manner as parking infractions for the purposes of RCW 3.50.100, 35.20.220, 46.16.216, and 46.20.270(3). However, the amount of the fine issued under this subsection (2) for an infraction generated through the use of an automated traffic safety camera is one hundred thirty-seven dollars. The court shall remit thirty-two dollars of the fine to the state treasurer for deposit into the state patrol highway account; and

(f) If a notice of infraction is sent to the registered owner and the registered owner is a rental car business, the infraction must be dismissed against the business if it mails to the patrol, within fourteen days of receiving the notice, a declaration under penalty of perjury of the name and known mailing address of the individual driving or renting the vehicle when the infraction occurred. If the business is unable to determine who was driving or renting the vehicle at the time the infraction occurred, the business must sign a declaration under penalty of perjury to this effect. The declaration must be mailed to the patrol within fourteen days of receiving the notice of traffic infraction. Timely mailing of this declaration to the issuing agency relieves a rental car business of any liability under this section for the notice of infraction. A declaration form suitable for this purpose must be included with each automated traffic infraction notice issued, along with instructions for its completion and use.

(3) The department shall implement a pilot project to evaluate the benefits of using electronic traffic flagging devices. Electronic traffic flagging devices must be tested by the department at multiple sites and reviewed for efficiency and safety. The department shall report to the transportation committees of the legislature on the best use and practices involving electronic traffic flagging devices, including recommendations for future use, by June 30, 2010.

(4) \$173,000 of the motor vehicle account--state appropriation is provided solely for the department to continue a pilot tow truck incentive program and to expand the program to other areas of the state. The department may provide incentive payments to towing companies that meet clearance goals on accidents that involve heavy trucks. The department shall report to the office of financial management and the transportation committees of the legislature on the effectiveness of the clearance goals and submit recommendations to improve the pilot program with the department's 2010 supplemental omnibus transportation appropriations act submittal. The tow truck incentive program may continue to provide incentives for quick clearance of traffic incidents involving large vehicles. The department shall make recommendations as part of its biennial budget proposal for expanding the use of the incentive program.

(5) \$92,000 of the motor vehicle account--state appropriation is provided solely for operating a new active traffic management system on Interstate 5, Interstate 90, and SR 520. The department shall track the costs associated with these systems on a corridor basis and report to the legislative transportation committees on the cost and benefits of the system.

(6) To the extent practicable, the department shall synchronize traffic lights on state route number 161 in the vicinity of Puyallup.

(7) During the 2009-11 biennium, the department shall implement a pilot program that expands private transportation providers' access to high occupancy vehicle lanes. Under the pilot program, when the department reserves a portion of a highway based on the number of passengers in a vehicle, the following vehicles must be authorized to use the reserved portion of the highway if the vehicle has the capacity to carry eight or more passengers, regardless of the number of passengers in the vehicle: (a) Auto transportation company vehicles regulated under chapter 81.68

RCW; (b) passenger charter carrier vehicles regulated under chapter 81.70 RCW, except marked or unmarked stretch limousines and stretch sport utility vehicles as defined under department rules; (c) private nonprofit transportation provider vehicles regulated under chapter 81.66 RCW; and (d) private employer transportation service vehicles. For purposes of this subsection, "private employer transportation service" means regularly scheduled, fixed-route transportation service that is offered by an employer for the benefit of its employees. By June 30, 2011, the department shall report to the transportation committees of the legislature on whether private transportation provider use of high occupancy vehicle lanes under the pilot program reduces the speeds of high occupancy vehicle lanes.

**Sec. 219.** 2009 c 470 s 219 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION--TRANSPORTATION MANAGEMENT AND SUPPORT--PROGRAM S**

Motor Vehicle Account--State Appropriation .....	(\$29,153,000))
.....	\$28,468,000
Motor Vehicle Account--Federal Appropriation .....	\$30,000
Multimodal Transportation Account--State	
Appropriation .....	(\$973,000))
.....	\$971,000
State Route Number 520 Corridor Account--State	
Appropriation .....	\$264,000
TOTAL APPROPRIATION .....	(\$30,420,000))
.....	\$29,733,000

The appropriations in this section are subject to the following conditions and limitations: \$264,000 of the state route number 520 corridor account--state appropriation is provided solely for the costs directly related to tolling the state route number 520 floating bridge. This amount must be retained in unallotted status, and may only be released by the office of financial management after consultation with the joint transportation committee (~~following the committee's examination of toll operations costs referenced in section 204(2) of this act. The amount provided in this section is contingent on the enactment of (1) Engrossed Substitute House Bill No. 2211 and (2) either Engrossed Substitute House Bill No. 2326 or other legislation authorizing bonds for the state route number 520 corridor projects. If the conditions of this section are not satisfied, the amount provided in this section shall lapse~~).

**Sec. 220.** 2009 c 470 s 220 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION--TRANSPORTATION PLANNING, DATA, AND RESEARCH--PROGRAM T**

Motor Vehicle Account--State Appropriation .....	(\$24,724,000))
.....	\$25,955,000
Motor Vehicle Account--Federal Appropriation .....	(\$19,116,000))
.....	\$22,002,000
Multimodal Transportation Account--State	
Appropriation .....	(\$696,000))
.....	\$1,090,000
Multimodal Transportation Account--Federal	
Appropriation .....	(\$2,809,000))
.....	\$3,287,000
Multimodal Transportation Account--Private/Local	
Appropriation .....	(\$100,000))
.....	\$99,000
TOTAL APPROPRIATION .....	(\$47,445,000))
.....	\$52,433,000

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

(1) \$150,000 of the motor vehicle account--federal appropriation is provided solely for the costs to develop an electronic map-based computer application that will enable law enforcement officers and others to more easily locate collisions and other incidents in the field.

(2) \$400,000 of the (~~motor vehicle account~~) multimodal transportation account--state appropriation is provided solely for a diesel multiple unit feasibility and initial planning study. The study must evaluate potential service on the Stampede Pass line from Maple Valley to Auburn via Covington. The study must evaluate the potential demand for service, the business model and capital needs for launching and running the line, and the need for improvements in switching, signaling, and tracking. The study must also consider the interconnectivity benefits of, and potential for, future Amtrak Cascades stops in south King county and north Pierce county. As part of its consideration, the department shall conduct a thorough market analysis of the potential for adding or changing stops on the Amtrak Cascades route. The department shall amend the scope, schedule, and budget of the current study process to accommodate the market analysis. A report on the study must be submitted to the legislature by (~~June~~) September 30, 2010.

(3) (~~\$243,000~~) \$365,000 of the motor vehicle account--state appropriation and \$81,000 of the motor vehicle account--federal appropriation are provided solely for the development of a freight database to help guide freight investment decisions and track project effectiveness. The database must be based on truck movement tracked through geographic information system technology. For the remainder of the biennium, the department may expand data collection to any highways that have high truck volumes. TransNow shall contribute additional federal funds that are not appropriated in this act. The department shall work with the freight mobility strategic investment board to implement this database.

(4) \$2,000,000 of the motor vehicle account--state appropriation is provided solely for scoping unfunded state highway projects to ensure that a well-vetted project list is available for future program funding discussions.

(a) It is the intent of the legislature that the funding provided in this subsection support the development of transportation solutions that benefit all state residents, including addressing the impacts of traffic diversion from tolled facilities. It is further the intent of the legislature that the buying power of future revenue packages is maximized.

(b) Scoping work must be consistent with achieving transportation system policy goals as stated in RCW 47.04.280.

(c) The department shall provide cost-effective design solutions that achieve the desired functional outcomes. This may be achieved by providing one or more design alternatives for legislative consideration, based on a reasonable range of assumptions about traffic volume and speeds.

(d) Prior to the commencement of the 2011 legislative session, the department shall provide a report to the legislative transportation committees and the office of financial management that includes estimated costs and construction time frames.

(5) \$150,000 of the motor vehicle account--state appropriation is provided solely for a corridor study of state route number 516 from the eastern border of Maple Valley to state route number 167 to determine whether improvements are needed and the costs of any needed improvements.

(6) \$500,000 of the multimodal transportation account--federal appropriation is provided solely for continued support of the International Mobility and Trade Corridor project and for the department to work with the Whatcom council of governments to examine potential improvements to international border freight and passenger rail movement and the use of diesel multiple units.

(7) \$80,000 of the motor vehicle account--state appropriation is provided solely to continue existing work regarding feasibility of a new interchange between Rochester and Harrison Avenue on Interstate 5.

**Sec. 221.** 2009 c 470 s 222 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION--PUBLIC TRANSPORTATION--PROGRAM V**

Regional Mobility Grant Program Account--State

Appropriation .....((~~\$54,677,000~~))  
 ..... \$65,274,000

Multimodal Transportation Account--State

Appropriation .....((~~\$65,795,000~~))  
 ..... \$65,667,000

Multimodal Transportation Account--Federal

Appropriation .....((~~\$2,582,000~~))  
 ..... \$2,573,000

Multimodal Transportation Account--Private/Local

Appropriation .....((~~\$1,027,000~~))  
 ..... \$1,025,000

TOTAL APPROPRIATION .....((~~\$124,081,000~~))  
 ..... \$134,539,000

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

(1) \$25,000,000 of the multimodal transportation account--state appropriation is provided solely for a grant program for special needs transportation provided by transit agencies and nonprofit providers of transportation.

(a) \$5,500,000 of the amount provided in this subsection is provided solely for grants to nonprofit providers of special needs transportation. Grants for nonprofit providers shall be based on need, including the availability of other providers of service in the area, efforts to coordinate trips among providers and riders, and the cost effectiveness of trips provided.

(b) \$19,500,000 of the amount provided in this subsection is provided solely for grants to transit agencies to transport persons with special transportation needs. To receive a grant, the transit agency must have a maintenance of effort for special needs transportation that is no less than the previous year's maintenance of effort for special needs transportation. Grants for transit agencies shall be prorated based on the amount expended for demand response service and route deviated service in calendar year 2007 as reported in the "Summary of Public Transportation - 2007" published by the department of transportation. No transit agency may receive more than thirty percent of these distributions.

(2) Funds are provided for the rural mobility grant program as follows:

(a) \$8,500,000 of the multimodal transportation account--state appropriation is provided solely for grants for those transit systems serving small cities and rural areas as identified in the "Summary of Public Transportation - 2007" published by the department of transportation. Noncompetitive grants must be distributed to the transit systems serving small cities and rural areas in a manner similar to past disparity equalization programs.

(b) \$8,500,000 of the multimodal transportation account--state appropriation is provided solely to providers of rural mobility service in areas not served or underserved by transit agencies through a competitive grant process.

(3) \$7,000,000 of the multimodal transportation account--state appropriation is provided solely for a vanpool grant program for: (a) Public transit agencies to add vanpools or replace vans; and (b) incentives for employers to increase employee vanpool use. The grant program for public transit agencies will cover capital costs only; operating costs for public transit agencies are not eligible for funding under this grant program. Additional employees may not be hired from the funds provided in this section for the vanpool grant program, and supplanting of transit funds currently funding vanpools is not allowed. The department shall encourage grant applicants and recipients to leverage funds other than state funds. At least \$1,600,000 of this amount must be used for vanpool grants in congested corridors.

(4) \$400,000 of the multimodal transportation account--state appropriation is provided solely for a grant for a flexible carpooling pilot project program to be administered and monitored by the department. Funds are appropriated for one time only. The pilot project program must: Test and implement at least one flexible carpooling system in a high-volume commuter area that enables carpooling without prearrangement; utilize technologies that, among other things, allow for transfer of ride credits between participants; and be a membership system that involves prescreening to ensure safety of the participants. The program must include a pilot project that targets commuter traffic on the state route number 520 bridge. The department shall submit to the legislature by December 2010 a report on the program results and any recommendations for additional flexible carpooling programs.

(5) \$3,318,000 of the multimodal transportation account--state appropriation and \$21,248,000 of the regional mobility grant program account--state appropriation are reappropriated and provided solely for the regional mobility grant projects identified on the LEAP Transportation Document 2007-B, as developed April 20, 2007, or the LEAP Transportation Document 2006-D, as developed March 8, 2006. The department shall continue to review all projects receiving grant awards under this program at least semiannually to determine whether the projects are making satisfactory progress. The department shall promptly close out grants when projects have been completed, and any remaining funds available to the office of transit mobility must be used only to fund projects on the LEAP Transportation Document 2006-D, as developed March

8, 2006; the LEAP Transportation Document 2007-B, as developed April 20, 2007; or the LEAP Transportation Document 2009-B, as developed April 24, 2009. It is the intent of the legislature to appropriate funds through the regional mobility grant program only for projects that will be completed on schedule. However, the Chuckanut park and ride project (101100G) is recognized as a crucial investment in the transportation system. For this reason, the department shall not close out the grant for the Chuckanut park and ride project until Skagit transit has exhausted all other pending opportunities for federal and local funds. If additional funds cannot be secured, the department shall consider this project a priority in the 2011-13 grant process. The department shall make every effort to advance the Chuckanut park and ride project within existing resources.

(6) \$33,429,000 of the regional mobility grant program account--state appropriation is provided solely for the regional mobility grant projects identified in LEAP Transportation Document 2009-B, as developed April 24, 2009. The department shall review all projects receiving grant awards under this program at least semiannually to determine whether the projects are making satisfactory progress. Any project that has been awarded funds, but does not report activity on the project within one year of the grant award, must be reviewed by the department to determine whether the grant should be terminated. The department shall promptly close out grants when projects have been completed, and any remaining funds available to the office of transit mobility must be used only to fund projects identified in LEAP Transportation Document 2009-B, as developed April 24, 2009. The department shall provide annual status reports on December 15, 2009, and December 15, 2010, to the office of financial management and the transportation committees of the legislature regarding the projects receiving the grants. It is the intent of the legislature to appropriate funds through the regional mobility grant program only for projects that will be completed on schedule.

(7) \$10,596,768 of the regional mobility grant program account--state appropriation must be obligated no later than December 31, 2010, and is provided solely for the following recommended contingency regional mobility grant projects identified in the 2009-11 omnibus transportation appropriations act, LEAP Transportation Document 2009-B, as developed April 24, 2009, as follows:

(a) \$4,000,000 is provided solely for the Rainier/Jackson transit priority corridor improvements;

(b) \$2,100,000 is provided solely for the state route number 522 west city limits to Northeast 180th stage 2A (91st Ave NE to west of 96th Ave NE) project; and

(c) \$4,496,768 is provided solely for the sound transit express bus expansion - Snohomish to King county project.

(8) \$300,000 of the multimodal transportation account--state appropriation is provided solely for a transportation demand management program, developed by the Whatcom council of governments, to further reduce drive-alone trips and maximize the use of sustainable transportation choices. The community-based program must focus on all trips, not only commute trips, by providing education, assistance, and incentives to four target audiences: (a) Large work sites; (b) employees of businesses in downtown areas; (c) school children; and (d) residents of Bellingham.

~~((8))~~ (9) \$130,000 of the multimodal transportation account--state appropriation is provided solely to the department to distribute to support Engrossed Substitute House Bill No. 2072 (special needs transportation).

(a) \$80,000 of the amount provided in this subsection is provided solely for implementation of the work group related to federal requirements in section 1, chapter . . . (Engrossed Substitute House Bill No. 2072), Laws of 2009.

(b) \$50,000 of the amount provided in this subsection is provided solely to support the pilot project to be developed or implemented by the local coordinating coalition comprised of a single county, described in sections 9, 10, and 11, chapter . . . (Engrossed Substitute House Bill No. 2072), Laws of 2009. The department shall assist the local coordinating coalition to seek funding sufficient to fully fund the pilot project from a variety of sources including, but not limited to, the regional transit authority serving the county, the regional transportation planning organization serving the county, and other appropriate state and federal agencies and grants. Development or implementation of the pilot project is contingent on securing funding sufficient to fully fund the pilot project.

(c) If Engrossed Substitute House Bill No. 2072 is not enacted by June 30, 2009, the amount provided in this subsection ~~((8))~~ (9) lapses. If Engrossed Substitute House Bill No. 2072 is enacted by June 30, 2009, but a commitment from other sources to fully fund the pilot project described in (b) of this subsection has not been obtained by September 30, 2009, the amount provided in (b) of this subsection lapses.

~~((9))~~ (10) Funds provided for the commute trip reduction program may also be used for the growth and transportation efficiency center program.

~~((40))~~ (11) An affected urban growth area that has not previously implemented a commute trip reduction program is exempt from the requirements in RCW 70.94.527 if a solution to address the state highway deficiency that exceeds the person hours of delay threshold has been funded and is in progress during the 2009-11 fiscal biennium.

~~((11))~~ (12) \$2,309,000 of the multimodal transportation account--state appropriation is provided solely for the tri-county connection service for Island, Skagit, and Whatcom transit agencies.

(13) During the 2009-11 biennium, the department shall implement a pilot project that expands opportunities for private transportation providers' use of high occupancy vehicle lanes, transit-only lanes, and certain park and ride facilities. The pilot project must establish that to receive grant funding from a program administered by the public transportation office of the department during the 2009-11 biennium, the local jurisdiction in which the applicant is located must be able to show that it has in place an application process for the reasonable use by private transportation providers of high occupancy vehicle lanes, transit-only lanes, and certain park and ride facilities that are regulated by the local jurisdiction. If a private transportation provider clearly demonstrates that the local jurisdiction failed to consider an application in good faith, the department may not award the jurisdiction any grant funding. Reasonable use exists if the private transportation provider has applied for the use of: (a) High occupancy vehicle or transit-only lanes, and such use will not interfere with the safety of public transportation operations and not reduce the speed of the lanes more than five percent during peak hours; and (b) a park and ride lot (i) during peak hours at a lot that is below ninety percent capacity during peak hours or (ii) during off-peak hours only. A transit agency may require that a private transportation provider enter into an agreement for use of the park and ride lot, and may include provisions to recover actual costs for the use of the lot and its related facilities. For purposes of this subsection: A "private transportation provider" means an auto transportation company regulated under chapter 81.68 RCW; a passenger charter carrier regulated under chapter 81.70 RCW; a private nonprofit transportation provider regulated under chapter 81.66 RCW; or a private employer transportation service provider; and "private employer transportation service" means regularly scheduled, fixed-route transportation service that is offered by an employer for the benefit of its employees.

Sec. 222. 2009 c 470 s 223 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION--MARINE--PROGRAM X**

Puget Sound Ferry Operations Account--State

Appropriation.....((\$400,592,000))

..... \$425,922,000

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

(1) (~~(\$53,110,560)~~) \$78,754,952 of the Puget Sound ferry operations account--state appropriation is provided solely for auto ferry vessel operating fuel in the 2009-11 fiscal biennium. This appropriation is contingent upon the enactment of sections 716 and 701 of this act. All fuel purchased by the Washington state ferries at Harbor Island truck terminal for the operation of the Washington state ferries diesel powered vessels must be a minimum of five percent biodiesel blend so long as the per gallon price of diesel containing a five percent biodiesel blend level does not exceed the per gallon price of diesel by more than five percent.

(2) To protect the waters of Puget Sound, the department shall investigate nontoxic alternatives to fuel additives and other commercial products that are used to operate, maintain, and preserve vessels.

(3) If, after the department's review of fares and pricing policies, the department proposes a fuel surcharge, the department must evaluate other cost savings and fuel price stabilization strategies that would be implemented before the imposition of a fuel surcharge. The department shall report to the legislature and transportation commission on its progress of implementing new fuel forecasting and budgeting practices, price hedging contracts for fuel purchases, and fuel conservation strategies by November 30, 2010.

(4) The department shall strive to significantly reduce the number of injuries suffered by Washington state ferries employees. By December 15, 2009, the department shall submit to the office of financial management and the transportation committees of the legislature its implementation plan to reduce such injuries.

(5) The department shall continue to provide service to Sidney, British Columbia. The department may place a Sidney terminal departure surcharge on fares for out of state residents riding the Washington state ferry route that runs between Anacortes, Washington and Sidney, British Columbia, if the cost for landing/license fee, taxes, and additional amounts charged for docking are in excess of \$280,000 CDN. The surcharge must be limited to recovering amounts above \$280,000 CDN.

(6) The department shall analyze operational solutions to enhance service on the Bremerton to Seattle ferry run. The Washington state ferries shall report its analysis to the transportation committees of the legislature by December 1, 2009.

(7) The office of financial management budget instructions require agencies to recast enacted budgets into activities. The Washington state ferries shall include a greater level of detail in its 2011-13 omnibus transportation appropriations act request, as determined jointly by the office of financial management, the Washington state ferries, and the legislative transportation committees.

(8) (~~(\$3,000,000)~~) \$4,794,000 of the Puget Sound ferry operations account--state appropriation is provided solely for commercial insurance for ferry assets. The office of financial management, after consultation with the transportation committees of the legislature, must present a business plan for the Washington state ferry system's insurance coverage to the 2010 legislature. The business plan must include a cost-benefit analysis of Washington state ferries' current commercial insurance purchased for ferry assets and a review of self-insurance for noncatastrophic events.

(9) \$1,100,000 of the Puget Sound ferry operations account--state appropriation is provided solely for a marketing program. The department shall present a marketing program proposal to the transportation committees of the legislature during the 2010 legislative session before implementing this program. Of this amount, \$10,000 is for the city of Port Townsend and \$10,000 is for the town of Coupeville for mitigation expenses related to only one vessel operating on the Port Townsend/Keystone ferry route. The moneys provided to the city of Port Townsend and town of Coupeville are not contingent upon the required marketing proposal.

(10) \$350,000 of the Puget Sound ferry operations account--state appropriation is provided solely for two extra trips per day during the summer of 2009 season, beyond the current schedule, on the Port Townsend/Keystone route.

(11) When purchasing uniforms that are required by collective bargaining agreements, the department shall contract with the lowest cost provider.

(12) The legislature finds that measuring the performance of Washington state ferries requires the measurement of quality, timeliness, and unit cost of services delivered to customers. Consequently, the department must develop a set of metrics that measure that performance and report to the transportation committees of the legislature and to the office of financial management on the development of these measurements along with recommendations to the 2010 legislature on which measurements must become a part of the next omnibus transportation appropriations act.

(13) As a priority task, the department is directed to propose a comprehensive incident and accident investigation policy and appropriate procedures, and to provide the proposal to the legislature by November 1, 2009, using existing resources and staff expertise. In addition to consulting with ferry system unions and the United States coast guard, the Washington state ferries is encouraged to solicit independent outside expertise on incident and accident investigation best practices as they may be found in other organizations with a similar concern for marine safety. It is the intent of the legislature to enact the policies into law and to publish that law and procedures as a manual for Washington state ferries' accident/incident investigations. Until that time, the Washington state ferry system must exercise particular diligence to assure that any incident or accident investigations are conducted within the spirit of the guidelines of this act. The proposed policy must contain, at a minimum:

(a) The definition of an incident and an accident and the type of investigation that is required by both types of events;

(b) The process for appointing an investigating officer or officers and a description of the authorities and responsibilities of the investigating officer or officers. The investigating officer or officers must:

(i) Have the appropriate training and experience as determined by the policy;

(ii) Not have been involved in the incident or accident so as to avoid any conflict of interest;

(iii) Have full access to all persons, records, and relevant organizations that may have information about or may have contributed to, directly or indirectly, the incident or accident under investigation, in compliance with any affected employee's or employees' respective collective bargaining agreement and state laws and rules regarding public disclosure under chapter 42.56 RCW;

(iv) Be provided with, if requested by the investigating officer or officers, appropriate outside technical expertise; and

(v) Be provided with staff and legal support by the Washington state ferries as may be appropriate to the type of investigation;

(c) The process of working with the affected employee or employees in accordance with the employee's or employees' respective collective bargaining agreement and the appropriate union officials, within protocols afforded to all public employees;

(d) The process by which the United States coast guard is kept informed of, interacts with, and reviews the investigation;

(e) The process for review, approval, and implementation of any approved recommendations within the department; and

(f) The process for keeping the public informed of the investigation and its outcomes, in compliance with any affected employee's or employees' respective collective bargaining agreement and state laws and rules regarding public disclosure under chapter 42.56 RCW.

(14) \$7,300,000 of the Puget Sound ferry operations account--state appropriation is provided solely for the purposes of travel time associated with Washington state ferries employees. However, if Engrossed Substitute House Bill No. 3209 (managing costs of ferry system) is enacted by June 30, 2010, containing an appropriation for purposes of travel time associated with Washington state ferries employees, the amount provided in this subsection lapses.

(15) \$50,000 of the Puget Sound ferry operations account--state appropriation is provided solely to implement a mechanism to report on-time performance statistics.

(a) The department shall conduct a study to identify process changes that would improve on-time performance on a route-by-route basis. The study must include looking into the slowing down of vessels for fuel economy purposes and touch-and-go sailings on peak runs. The department shall report its findings to the transportation committees of the senate and house of representatives by December 1, 2010.

(b) The department shall, by November 1, 2010, report to the transportation committees of the legislature statistics regarding its on-time arrival and departure status on a route-by-route and month-by-month basis, as well as an annual route-by-route and systemwide basis, weighted by the number of customers on each sailing and distinguishing peak period on-time performance. The statistics must include reasons for any delays over ten minutes from the scheduled time. The statistics must be prominently displayed on the Washington state ferries' web site. Each Washington state ferries vessel and terminal must prominently display the statistics as they relate to their specific route.

(16) The department shall investigate outsourcing the call center functions planned for the ferry reservation system and report its findings to the transportation committees of the senate and house of representatives by December 15, 2010.

(17) By July 1, 2010, the department shall provide to the governor and the transportation committees of the senate and house of representatives a listing of all benefits that Washington state ferries union employees receive that other state employees do not traditionally receive. The listing must include any costs associated with these benefits.

**Sec. 223.** 2009 c 470 s 224 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION--RAIL--PROGRAM Y--OPERATING**

Multimodal Transportation Account--State

Appropriation ..... ((\$34,933,000))  
 ..... \$37,371,000

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

(1) (~~(\$29,091,000)~~) \$31,591,000 of the multimodal transportation account--state appropriation is provided solely for the Amtrak service contract and Talgo maintenance contract associated with providing and maintaining the state-supported passenger rail service. Upon completion of the rail platform project in the city of Stanwood, the department shall provide daily Amtrak Cascades service to the city.

(2) Amtrak Cascade runs may not be eliminated.

(3) The department shall begin planning for a third roundtrip Cascades train between Seattle and Vancouver, B.C. by 2010.

**Sec. 224.** 2009 c 470 s 225 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION--LOCAL PROGRAMS--PROGRAM Z--OPERATING**

Motor Vehicle Account--State Appropriation ..... ((\$8,739,000))  
 ..... \$8,621,000  
 Motor Vehicle Account--Federal Appropriation ..... ((\$2,567,000))  
 ..... \$2,545,000  
 TOTAL APPROPRIATION ..... ((\$11,306,000))  
 ..... \$11,166,000

**TRANSPORTATION AGENCIES--CAPITAL**

**Sec. 301.** 2009 c 470 s 302 (uncodified) is amended to read as follows:

**FOR THE COUNTY ROAD ADMINISTRATION BOARD**

Rural Arterial Trust Account--State Appropriation ..... ((\$51,000,000))  
 ..... \$73,000,000  
 Motor Vehicle Account--State Appropriation ..... \$1,048,000  
 County Arterial Preservation Account--State  
 Appropriation ..... \$31,400,000  
 TOTAL APPROPRIATION ..... ((\$83,448,000))  
 ..... \$105,448,000

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

(1) \$1,048,000 of the motor vehicle account--state appropriation may be used for county ferry projects as developed pursuant to RCW 47.56.725(4).

(2) The appropriations in this section include funding to counties to assist them in efforts to recover from federally declared emergencies, by providing capitalization advances and local match for federal emergency funding as determined by the county road administration board. The county road administration board shall specifically identify any such selected projects and shall include information concerning such selected projects in its next annual report to the legislature.

(3) \$22,000,000 of the rural arterial trust account--state appropriation is provided solely for additional grants for county road projects as approved by the county road administration board.

**Sec. 302.** 2009 c 470 s 303 (uncodified) is amended to read as follows:

**FOR THE TRANSPORTATION IMPROVEMENT BOARD**

Small City Pavement and Sidewalk Account--State

Appropriation ..... ((\$5,779,000))  
 ..... \$3,927,000

Urban Arterial Trust Account--State Appropriation ..... ((\$122,400,000))

.....	\$123,900,000
Transportation Improvement Account--State	
Appropriation .....	((\$85,643,000))
.....	<u>\$81,643,000</u>
TOTAL APPROPRIATION .....	((\$213,822,000))
.....	<u>\$209,470,000</u>

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

(1) The transportation improvement account--state appropriation includes up to \$7,143,000 in proceeds from the sale of bonds authorized in RCW 47.26.500.

(2) The urban arterial trust account--state appropriation includes up to ~~(\$15,000,000)~~ \$7,143,000 in proceeds from the sale of bonds authorized in RCW 47.26.420.

**Sec. 303.** 2009 c 470 s 306 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION--IMPROVEMENTS--PROGRAM I**

Multimodal Transportation Account--State	
Appropriation .....	((\$1,000))
.....	<u>\$98,000</u>
Transportation Partnership Account--State	
Appropriation .....	((\$1,723,834,000))
.....	<u>\$1,665,644,000</u>
Motor Vehicle Account--State Appropriation .....	((\$80,735,000))
.....	<u>\$85,534,000</u>
Motor Vehicle Account--Federal Appropriation .....	((\$410,341,000))
.....	<u>\$570,107,000</u>
Motor Vehicle Account--Private/Local	
Appropriation .....	((\$65,494,000))
.....	<u>\$70,714,000</u>
Special Category C Account--State Appropriation .....	((\$24,549,000))
.....	<u>\$25,221,000</u>
Transportation 2003 Account (Nickel Account)--State	
Appropriation .....	((\$703,708,000))
.....	<u>\$713,205,000</u>
Freight Mobility Multimodal Account--State	
Appropriation .....	((\$4,422,000))
.....	<u>\$4,574,000</u>
Tacoma Narrows Toll Bridge Account--State	
Appropriation .....	((\$788,000))
.....	<u>\$789,000</u>
State Route Number 520 Corridor Account--State	
Appropriation .....	((\$106,000,000))
.....	<u>\$231,763,000</u>
<u>State Route Number 520 Civil Penalties Account--State</u>	
Appropriation .....	<u>\$1,190,000</u>
.....	((\$3,119,872,000))
TOTAL APPROPRIATION .....	<u>\$3,368,839,000</u>

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

(1) Except as provided otherwise in this section, the entire transportation 2003 account (nickel account) appropriation and the entire transportation partnership account appropriation are provided solely for the projects and activities as listed by fund, project, and amount in LEAP Transportation Document ~~((2009-4))~~ 2010-1 as developed ~~((April 24, 2009))~~ March 8, 2010, Program - Highway Improvement Program (I). However, limited transfers of specific line-item project appropriations may occur between projects for those amounts listed subject to the conditions and limitations in section 603 of this act.

~~(2) ((As a result of economic changes since the initial development of the improvement program budget for the 2009-11 fiscal biennium, the department has received bids on construction contracts over the last several months that are favorable with respect to current estimates of project costs. National economic forecasts indicate that inflationary pressures are likely to remain lower than previously expected for the next several years. As a result, the nominal project cost totals shown in LEAP Transportation Document 2009-1 in aggregate for the 2009-11 fiscal biennium and the 2011-13 fiscal biennium are expected to exceed the likely amount necessary to deliver the projects listed within those biennia by \$63,500,000 in the 2009-11 fiscal biennium and \$52,700,000 in the 2011-13 fiscal biennium. The appropriations provided in this section for the projects in those biennia are therefore \$63,500,000 less in the 2009-11 fiscal biennium and \$52,700,000 less in the 2011-13 fiscal biennium than the aggregate total of project costs listed. It is the intent of the legislature that the department shall deliver the projects listed in LEAP Transportation Document 2009-1 within the time, scope, and budgets identified in that document, provided that the prices of commodities used in transportation projects do not differ significantly from those assumed for the 2009-11 and 2011-13 fiscal biennia in the March 2009 forecast of the economic and revenue forecast council.~~

~~—(3) (\$162,900,000) \$163,385,000 of the transportation partnership account--state appropriation and ((\$106,000,000)) \$231,763,000 of the state route number 520 corridor account--state appropriation are provided solely for the state route number 520 bridge replacement and HOV project. The department shall submit an application for the eastside transit and HOV project to the supplemental discretionary grant program for regionally significant projects as provided in the American Recovery and Reinvestment Act of 2009. ((Eastside state route number 520 improvements shall be designed and constructed to accommodate a future full interchange at 124th Avenue Northeast. Concurrent with the~~

~~eastside transit and HOV project, the department shall conduct engineering design of a full interchange at 124th Avenue Northeast. The amount provided in this subsection from the state route number 520 corridor account--state appropriation is contingent on the enactment of (a) Engrossed Substitute House Bill No. 2211 and (b) either Engrossed Substitute House Bill No. 2326 or other legislation authorizing bonds for the state route number 520 corridor projects. If the conditions of this subsection are not satisfied, the state route number 520 corridor account--state appropriation shall lapse.~~

~~---~~ ~~((4))~~ ~~(3)~~ As required under section 305(6), chapter 518, Laws of 2007, the department shall report by January 2010 to the transportation committees of the legislature on the findings of the King county noise reduction solutions pilot project.

~~((5))~~ ~~(4)~~ Funding allocated for mitigation costs is provided solely for the purpose of project impact mitigation, and shall not be used to develop or otherwise participate in the environmental assessment process.

~~((6))~~ ~~(5)~~ The department shall apply for surface transportation program (STP) enhancement funds to be expended in lieu of or in addition to state funds for eligible costs of projects in Programs I and P including, but not limited to, the SR 518, SR 520, Columbia river crossing, and Alaskan Way viaduct projects.

~~((7))~~ ~~(6)~~ The department shall, on a quarterly basis beginning July 1, 2009, provide to the office of financial management and the legislature reports providing the status on each active project funded in part or whole by the transportation 2003 account (nickel account) or the transportation partnership account. Funding provided at a programmatic level for transportation partnership account and transportation 2003 account (nickel account) projects relating to bridge rail, guard rail, fish passage barrier removal, and roadside safety projects should be reported on a programmatic basis. Projects within this programmatic level funding should be completed on a priority basis and scoped to be completed within the current programmatic budget. ~~((The department shall work with the office of financial management and the transportation committees of the legislature to agree on report formatting and elements. Elements must include, but not be limited to, project scope, schedule, and costs. For))~~ Report formatting and elements must be consistent with the October 2009 quarterly project report. On a representative sample of new construction contracts valued at fifteen million dollars or more, the department must also use an earned value method of project monitoring. ~~((The department shall also provide the information required under this subsection on a quarterly basis via the transportation executive information systems (TEIS)).~~

~~---~~ ~~((8))~~ ~~(7)~~ The transportation 2003 account (nickel account)--state appropriation includes up to ~~(((\$628,000,000))~~ \$653,630,000 in proceeds from the sale of bonds authorized by RCW 47.10.861.

~~((9))~~ ~~(8)~~ The transportation partnership account--state appropriation includes up to ~~(((\$1,360,528,000))~~ \$1,347,939,000 in proceeds from the sale of bonds authorized in RCW 47.10.873.

~~((10))~~ ~~(9)~~ The special category C account--state appropriation includes up to ~~(((\$22,127,000))~~ \$25,221,000 in proceeds from the sale of bonds authorized in RCW 47.10.812.

~~((11))~~ ~~(10)~~ The motor vehicle account--state appropriation includes up to ~~(((\$31,500,000))~~ \$43,000,000 in proceeds from the sale of bonds authorized in RCW 47.10.843.

(11) The state route number 520 corridor account--state appropriation includes up to \$231,763,000 in proceeds from the sale of bonds authorized in RCW 47.10.879.

(12) The department must prepare a tolling study for the Columbia river crossing project. While conducting the study, the department must coordinate with the Oregon department of transportation to perform the following activities:

(a) Evaluate the potential diversion of traffic from Interstate 5 to other parts of the transportation system when tolls are implemented on Interstate 5 in the vicinity of the Columbia river;

(b) Evaluate the most advanced tolling technology to maintain travel time speed and reliability for users of the Interstate 5 bridge;

(c) Evaluate available active traffic management technology to determine the most effective options for technology that could maintain travel time speed and reliability on the Interstate 5 bridge;

(d) Confer with the project sponsor's council, as well as local and regional governing bodies adjacent to the Interstate 5 Columbia river crossing corridor and the Interstate 205 corridor regarding the implementation of tolls, the impacts that the implementation of tolls might have on the operation of the corridors, the diversion of traffic to local streets, and potential mitigation measures;

(e) Regularly report to the Washington transportation commission regarding the progress of the study for the purpose of guiding the commission's potential toll setting on the facility;

(f) Research and evaluate options for a potential toll-setting framework between the Oregon and Washington transportation commissions;

(g) Conduct public work sessions and open houses to provide information to citizens, including users of the bridge and business and freight interests, regarding implementation of tolls on the Interstate 5 and to solicit citizen views on the following items:

(i) Funding a portion of the Columbia river crossing project with tolls;

(ii) Implementing variable tolling as a way to reduce congestion on the facility; and

(iii) Tolling Interstate 205 separately as a management tool for the broader state and regional transportation system; and

(h) Provide a report to the governor and the legislature by January 2010.

(13)(a) By January 2010, the department must prepare a traffic and revenue study for Interstate 405 in King county and Snohomish county that includes funding for improvements and high occupancy toll lanes, as defined in RCW 47.56.401, for traffic management. The department must develop a plan to operate up to two high occupancy toll lanes in each direction on Interstate 405.

(b) For the facility listed in (a) of this subsection, the department must:

(i) Confer with the mayors and city councils of jurisdictions in the vicinity of the project regarding the implementation of high occupancy toll lanes and the impacts that the implementation of these high occupancy toll lanes might have on the operation of the corridor and adjacent local streets;

(ii) Conduct public work sessions and open houses to provide information to citizens regarding implementation of high occupancy toll lanes and to solicit citizen views;

(iii) Regularly report to the Washington transportation commission regarding the progress of the study for the purpose of guiding the commission's toll setting on the facility; and

(iv) Provide a report to the governor and the legislature by January 2010.

(14)(((\$9,199,985)) \$6,488,000 of the motor vehicle account--state appropriation ((is)) and \$5,000 of the motor vehicle account--federal appropriation are provided solely for project 1002241, ((as identified in the LEAP transportation document in subsection (1) of this section.)) US



2 high priority safety project. Expenditure of these funds is for safety projects on state route number 2 between Monroe and Gold Bar, which may include median rumble strips, traffic cameras, and electronic message signs.

(15) Expenditures for the state route number 99 Alaskan Way viaduct replacement project must be made in conformance with Engrossed Substitute Senate Bill No. 5768.

(16) The department shall conduct a public outreach process to identify and respond to community concerns regarding the Belfair bypass. The process must include representatives from Mason county, the legislature, area businesses, and community members. The department shall use this process to consider and develop design alternatives that alter the project's scope so that the community's needs are met within the project budget. The department shall provide a report on the process and outcomes to the legislature by June 30, 2010.

(17) The legislature is committed to the timely completion of R8A which supports the construction of sound transit's east link. Following the completion of the independent analysis of the methodologies to value the reversible lanes on Interstate 90 which may be used for high capacity transit as directed in section 204 of this act, the department shall complete the process of negotiations with sound transit. Such agreement shall be completed no later than December 1, 2009.

(18) \$250,000 of the motor vehicle account--state appropriation is provided solely for the design and construction of a right turn lane to improve visibility and traffic flow on state route number 195 and Cheney-Spokane Road (project L1000001).

(19) ~~(\$846,700)~~ \$730,000 of the motor vehicle account--federal appropriation and ~~(\$17,280)~~ \$16,000 of the motor vehicle account--state appropriation are provided solely for the Westview school noise wall (project WESTV).

(20) ~~(\$1,360)~~ \$2,000 of the motor vehicle account--state appropriation and ~~(\$35,786)~~ \$131,000 of the motor vehicle account--federal appropriation are provided solely for interchange design and planning work on US 12 at A Street and Tank Farm Road (project PASCO).

(21) ~~(\$20,011,125)~~ \$21,566,000 of the transportation partnership account--state appropriation, ~~(\$2,550)~~ \$26,000 of the motor vehicle account--state appropriation, ~~(\$30,003,473)~~ \$30,000,000 of the motor vehicle account--private/local appropriation, and ~~(\$1,482,066)~~ \$4,334,000 of the motor vehicle account--federal appropriation are provided solely for project 400506A, the I-5/Columbia river crossing/Vancouver project. The funding described in this subsection includes a ~~(\$30,003,473)~~ \$30,000,000 contribution from the state of Oregon.

(22) It is important that the public and policymakers have accurate and timely access to information related to the Alaskan Way viaduct replacement project as it proceeds to, and during, the construction of all aspects of the project including, but not limited to, information regarding costs, schedules, contracts, project status, and neighborhood impacts. Therefore, it is the intent of the legislature that the state, city, and county departments of transportation establish a single source of accountability for integration, coordination, tracking, and information of all requisite components of the replacement project, which must include, at a minimum:

(a) A master schedule of all subprojects included in the full replacement project or program; and

(b) A single point of contact for the public, media, stakeholders, and other interested parties.

(23) ~~(The state route number 520 corridor account--state appropriation includes up to \$106,000,000 in proceeds from the sale of bonds authorized in Engrossed Substitute House Bill No. 2326 or in legislation authorizing bonds for the state route number 520 corridor projects. If Engrossed Substitute House Bill No. 2326, or legislation authorizing bonds for the state route number 520 corridor projects, is not enacted by June 30, 2009, the amount provided in this subsection shall lapse.~~

~~(24))~~ (24) The department shall evaluate a potential deep bore culvert for the state route number 305/Bjorgen creek fish barrier project identified as project 330514A in LEAP Transportation Document ALL PROJECTS 2009-2, as developed April 24, 2009. The department shall evaluate whether a deep bore culvert will be a less costly alternative than a traditional culvert since a traditional culvert would require extensive road detours during construction.

~~((25))~~ (24) Project number 330215A in the LEAP transportation document described in subsection (1) of this section is expanded to include safety and congestion improvements from the Key Peninsula Highway to the vicinity of Purdy. The department shall consult with the Washington traffic safety commission to ensure that this project includes improvements at intersections and along the roadway to reduce the frequency and severity of collisions related to roadway conditions and traffic congestion.

~~((26) \$10,600,000)~~ (25) \$8,890,000 of the transportation partnership account--state appropriation is provided solely for project 109040Q, the Interstate 90 Two Way Transit and HOV Improvements--Stage 2 and 3 project, as indicated in the LEAP transportation document referenced in subsection (1) of this section. ~~(Funds shall be used solely for preliminary engineering on stages 2 and 3 of this project.~~

~~(27))~~ (26) The department shall continue to work with the local partners in developing transportation solutions necessary for the economic growth in the Red Mountain American Viticulture Area of Benton county.

~~((28))~~ (27) For highway construction projects where the department considers agricultural lands of long-term commercial significance, as defined in RCW 36.70A.030, in reviewing and selecting sites to meet environmental mitigation requirements under the national environmental policy act (42 U.S.C. Sec. 4321 et seq.) and the state environmental policy act (chapter 43.21C RCW), the department shall, to the greatest extent possible, consider using public land first. If public lands are not available that meet the required environmental mitigation needs, the department may use other sites while making every effort to avoid any net loss of agricultural lands that have a designation of long-term commercial significance.

~~((29))~~ (28) Within the motor vehicle account--state appropriation and motor vehicle account--federal appropriation, the department may transfer funds between programs I and P, except for funds that are otherwise restricted in this act.

~~((30))~~ (29) Within the amounts provided in this section, \$200,000 of the transportation partnership account--state appropriation is provided solely for the department to prepare a comprehensive tolling study of the state route number 167 corridor to determine the feasibility of administering tolls within the corridor, identified as project number 316718A in the LEAP transportation document described in subsection (1) of this section. The department shall report to the joint transportation committee by September 30, 2010. The department shall regularly report to the Washington transportation commission regarding the progress of the study for the purpose of guiding the commission's potential toll setting on the facility. The elements of the study must include, at a minimum:

(a) The potential for value pricing to generate revenues for needed transportation facilities within the corridor;

(b) Maximizing the efficient operation of the corridor; and

(c) Economic considerations for future system investments.

~~((31))~~ (30) Within the amounts provided in this section, \$200,000 of the transportation partnership account--state appropriation is provided solely for the department to prepare a comprehensive tolling study of the state route number 509 corridor to determine the feasibility of

administering tolls within the corridor, identified as project number 850901F in the LEAP transportation document described in subsection (1) of this section. The department shall report to the joint transportation committee by September 30, 2010. The department shall regularly report to the Washington transportation commission regarding the progress of the study for the purpose of guiding the commission's potential toll setting on the facility. The elements of the study must include, at a minimum:

- (a) The potential for value pricing to generate revenues for needed transportation facilities within the corridor;
- (b) Maximizing the efficient operation of the corridor; and
- (c) Economic considerations for future system investments.

~~((32))~~ (31) Within the amounts provided in this section, \$28,000,000 of the transportation partnership account--state appropriation is for project 600010A, as identified in the LEAP transportation document in subsection (1) of this section: NSC-North Spokane corridor design and right-of-way - new alignment. Expenditure of these funds is for preliminary engineering and right-of-way purchasing to prepare for four lanes to be built from where existing construction ends at Francis Avenue for three miles to the Spokane river. Additionally, any savings realized on project 600001A, as identified in the LEAP transportation document in subsection (1) of this section: US 395/NSC-Francis Avenue to Farwell Road - New Alignment, must be applied to project 600010A.

~~((33))~~ (32) \$400,000 of the motor vehicle account--state appropriation is provided solely for the department to conduct a state route number 2 route development plan (project L2000016) that will identify essential improvements needed between the port of Everett/Naval station and approaching the state route number 9 interchange near the city of Snohomish.

~~((34))~~ (33) If the SR 26 - Intersection and Illumination Improvements are not completed by June 30, 2009, the department shall ensure that the improvements are completed as soon as practicable after June 30, 2009, and shall submit monthly progress reports on the improvements beginning July 1, 2009.

~~((35))~~ (34) \$200,000 of the transportation partnership account--state appropriation, identified on project number 400506A in the LEAP transportation document described in subsection (1) of this section, is provided solely for the department to work with the department of archaeology and historic preservation to ensure that the cultural resources investigation is properly conducted on the Columbia river crossing project. This project must be conducted with active archaeological management and result in one report that spans the single cultural area in Oregon and Washington. Additionally, the department shall establish a scientific peer review of independent archaeologists that are knowledgeable about the region and its cultural resources.

~~((36))~~ (35) The department shall work with the department of archaeology and historic preservation to ensure that the cultural resources investigation is properly conducted on all mega-highway projects and large ferry terminal projects. These projects must be conducted with active archaeological management. Additionally, the department shall establish a scientific peer review of independent archaeologists that are knowledgeable about the region and its cultural resources.

~~((37))~~ (36) Within the amounts provided in this section, \$1,500,000 of the motor vehicle account--state appropriation is provided solely for necessary work along the south side of SR 532, identified as project number 053255C in the LEAP transportation document described in subsection (1) of this section.

~~((38))~~ (37) \$10,000,000 of the transportation partnership account--state appropriation is provided solely for the Spokane street viaduct portion of project 809936Z, SR 99/Alaskan Way Viaduct - Replacement project as indicated in the LEAP transportation document referenced in subsection (1) of this section.

~~((39))~~ (38) The department shall conduct a public outreach process to identify and respond to community concerns regarding the portion of John's Creek Road that connects state route number 3 and state route number 101. The process must include representatives from Mason county, the legislature, area businesses, and community members. The department shall use this process to consider, develop, and design a project scope so that the community's needs are met for the lowest cost. The department shall provide a report on the process and outcomes to the legislature by June 30, 2010.

~~((40))~~ (39) The department shall apply for the competitive portion of federal transit administration funds for eligible transit-related costs of the state route number 520 bridge replacement and HOV project and the Columbia river crossing project. The federal funds described in this subsection must not include those federal transit administration funds distributed by formula. The department shall provide a report regarding this effort to the legislature by January 1, 2010.

(40) \$5,500,000 of the motor vehicle account--federal appropriation is provided solely for the Alaskan Way Viaduct - Automatic Shutdown project, identified as project L1000034.

(41) \$2,244,000 of the motor vehicle account--federal appropriation and \$122,000 of the motor vehicle account--state appropriation are provided solely for the US 12/Nine Mile Hill to Woodward Canyon Vic -Build New Highway project, identified as project 501210T.

(42) \$790,000 of the motor vehicle account--federal appropriation is provided solely for the Express Lanes System Concept Study project, identified as project 800020A. As part of this project, the department shall prepare a comprehensive tolling study of the Interstate 5 express lanes to determine the feasibility of administering tolls within the corridor. The department shall regularly report to the Washington transportation commission regarding the progress of the study. The elements of the study must include, at a minimum:

(i) The potential for value pricing to generate revenues for needed transportation facilities;

(ii) Maximizing the efficient operation of the corridor;

(iii) Economic considerations for future system investments; and

(iv) An analysis of the impacts to the regional transportation system.

(b) The department shall submit a final report on the study to the joint transportation committee by June 30, 2011.

(43) Any redistributed federal funds received by the department must, to the greatest extent possible, be first applied to offset planned expenditures of state funds, and second to offset planned expenditures of federal funds, on projects as identified in the LEAP transportation documents described in this act. If the redistributed federal funds cannot be used in this manner, the department must consult with the joint transportation committee prior to obligating any redistributed federal funds.

(44) \$226,000 of the motor vehicle account--federal appropriation and \$9,000 of the motor vehicle account--state appropriation are provided solely for the SR 16/Rosedale Street NW Vicinity - Frontage Road project (301639C). These funds must not be expended before an agreement stating that the city of Gig Harbor will take ownership of the road has been signed. The frontage road must be built for driving speeds of no more than thirty-five miles per hour.

(45) The department shall work with the Washington state transportation commission, the Oregon state department of transportation, and the Oregon state transportation commission to analyze and review potential options for a bistate, toll setting framework. As part of the analysis, the department shall undertake the following actions: Review statutory provisions and the governance structures of toll facilities in the United States that are located within two or more states; review relevant federal law regarding transportation facilities that are located within two or more states; consult with the state treasurers in Washington and Oregon regarding the appropriate structure for the issuance of debt for toll facilities that are located within two states; report findings and recommendations to the Columbia river project sponsor's council by October 1, 2010; and provide a final report to the governor and the legislature by June 30, 2011.

(46) \$750,000 of the motor vehicle account--state appropriation is provided solely for improvements from Allan Road to state route number 12 (501207Z).

(47) \$500,000 of the motor vehicle account--state appropriation is provided solely for a traffic signal at the intersection of state route number 7 and state route number 702 (300738A).

(48) \$750,000 of the motor vehicle account--state appropriation is provided solely for environmental work on the Belfair Bypass (project 300344C).

(49) The legislature finds that state route number 522 corridor provides an important link between Interstates 5 and 405 and will be impacted by diversion from tolling elsewhere in the region. State route number 522 must be reviewed as part of the scoping work conducted under section 220(4) of this act. As such, the legislature intends to provide additional funding for the corridor as a priority in the next revenue package. The state will work with the affected cities and the federal government to secure the necessary resources to address the needs of this critical corridor.

(50) \$500,000 of the motor vehicle account--state appropriation is provided solely for the US 12/SR 122/Mossyrock - Intersection project (401212R) for safety improvements.

(51) \$200,000 of the motor vehicle account--federal appropriation is provided solely for project US 97A/North of Wenatchee - Wildlife Fence (209790B), and an offsetting reduction is anticipated in the 2011-13 biennium.

(52) If a planned roundabout in the vicinity of state route number 526 and 40th Avenue West would divert commercial traffic onto neighborhood streets, the department may not proceed with improvements at state route number 526 and 84th Street SW until the traffic impacts in the vicinity of state route number 526 and 40th Avenue West are addressed.

(53) The department shall conduct a collision analysis corridor study on state route number 167 from milepost 0 to milepost 5 and report to the transportation committees of the legislature on the analysis results by December 1, 2010.

(54) \$2,600,000 of the motor vehicle account--federal appropriation is provided solely for the ITS Advanced Traveler Information System project in Whatcom county (100589B).

(55) \$900,000 of the motor vehicle account--federal appropriation is provided solely for the US 97/Cameron Lake Road intersection improvements project in Okanogan county (209700W).

(56) \$400,000 of the motor vehicle account--federal appropriation and \$100,000 of the motor vehicle account--state appropriation are provided solely for the SR 9/SR 204 Intersection Improvement project (L2000040).

(57) The legislature finds that the state route number 12 widening from state route number 124 to Walla Walla is an important east-west corridor in the southeast region of the state. Widening the highway to four lanes will increase safety and improve freight mobility. Therefore, the legislature intends for the department to use up to two million dollars in future redistributed federal obligation authority that may be received by the department for right-of-way purchase for the US 12/Nine Mile Hill to Woodward Canyon Vicinity - Phase 7-A project (501210T).

**Sec. 304.** 2009 c 470 s 307 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION--PRESERVATION--PROGRAM P**

Transportation Partnership Account--State

Appropriation .....	(\$103,077,000)
.....	\$75,305,000
Motor Vehicle Account--State Appropriation .....	(\$88,142,000)
.....	\$96,884,000
Motor Vehicle Account--Federal Appropriation .....	(\$524,954,000)
.....	\$556,705,000
Motor Vehicle Account--Private/Local Appropriation.....	(\$6,417,000)
.....	\$18,768,000
Transportation 2003 Account (Nickel Account)--State	
Appropriation .....	(\$7,237,000)
.....	\$6,328,000
Puyallup Tribal Settlement Account--State	
Appropriation .....	(\$6,500,000)
.....	\$6,636,000
TOTAL APPROPRIATION .....	(\$736,327,000)
.....	\$760,626,000

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

(1) Except as provided otherwise in this section, the entire transportation 2003 account (nickel account) appropriation and the entire transportation partnership account appropriation are provided solely for the projects and activities as listed by fund, project, and amount in LEAP Transportation Document ((2009-4)) 2010-1 as developed ((April 24, 2009)) March 8, 2010, Program - Highway Preservation Program (P). However, limited transfers of specific line-item project appropriations may occur between projects for those amounts listed subject to the conditions and limitations in section 603 of this act.

(2) (((\$544,639)) \$542,000 of the motor vehicle account--federal appropriation and (((\$455,364)) \$453,000 of the motor vehicle account--state appropriation are provided solely for project 602110F, ((as identified in the LEAP transportation document in subsection (1) of this section:)) SR 21/Keller ferry boat - Preservation. Funds are provided solely for preservation work on the existing vessel, the Martha S.

(3) The department shall apply for surface transportation program (STP) enhancement funds to be expended in lieu of or in addition to state funds for eligible costs of projects in Programs I and P.

(4) ~~(\$6,500,000)~~ \$6,636,000 of the Puyallup tribal settlement account--state appropriation is provided solely for ~~((mitigation))~~ costs associated with the Murray Morgan/11th Street bridge ~~((demolition--The department may negotiate with the city of Tacoma for the purpose of transferring ownership of the Murray Morgan/11th Street bridge to the city. If the city agrees to accept ownership of the bridge, the department))~~ project. The city of Tacoma may use the Puyallup tribal settlement account appropriation and other appropriated funds for bridge rehabilitation, bridge replacement, bridge demolition, and related mitigation. The department's participation, including prior expenditures, may not exceed ~~(\$39,953,000)~~ \$40,270,000. ~~((Funds may not be expended unless))~~ The city of Tacoma ~~((agrees to take))~~ has taken ownership of the bridge in its entirety, and ~~((provides that))~~ the payment of these funds extinguishes any real or implied agreements regarding future bridge expenditures.

(5) The department and the city of Tacoma must present to the legislature an agreement on the timing of the transfer of ownership of the Murray Morgan/11th Street bridge and any additional necessary state funding required to achieve the transfer and rehabilitation of the bridge by January 1, 2010.

(6) The department shall, on a quarterly basis beginning July 1, 2009, provide to the office of financial management and the legislature reports providing the status on each active project funded in part or whole by the transportation 2003 account (nickel account) or the transportation partnership account. Funding provided at a programmatic level for transportation partnership account projects relating to seismic bridges should be reported on a programmatic basis. Projects within this programmatic level funding should be completed on a priority basis and scoped to be completed within the current programmatic budget. The department shall work with the office of financial management and the transportation committees of the legislature to agree on report formatting and elements. Elements must include, but not be limited to, project scope, schedule, and costs. For new construction contracts valued at fifteen million dollars or more, the department must also use an earned value method of project monitoring. The department shall also provide the information required under this subsection on a quarterly basis via the transportation executive information systems (TEIS).

(7) The department of transportation shall continue to implement the lowest life cycle cost planning approach to pavement management throughout the state to encourage the most effective and efficient use of pavement preservation funds. Emphasis should be placed on increasing the number of roads addressed on time and reducing the number of roads past due.

(8)(a) The department shall conduct an analysis of state highway pavement replacement needs for the next ten years. The report must include:

- (i) The current backlog of asphalt and concrete pavement preservation projects;
- (ii) The level of investment needed to reduce or eliminate the backlog and resume the lowest life-cycle cost;
- (iii) Strategies for addressing the recent rapid escalation of asphalt prices, including alternatives to using hot mix asphalt;
- (iv) Criteria for determining which type of pavement will be used for specific projects, including annualized cost per mile, traffic volume per lane mile, and heavy truck traffic volume per lane mile; and
- (v) The use of recycled asphalt and concrete in state highway construction and the effect on highway pavement replacement needs.

(b) Additionally, the department shall work with the department of ecology, the county road administration board, and the transportation improvement board to explore and explain the potential use of permeable asphalt and concrete pavement in state highway construction as an alternative method of storm water mitigation and the potential effects on highway pavement replacement needs.

(c) The department shall submit the report to the office of financial management and the transportation committees of the legislature by ~~((December))~~ September 1, 2010, in order to inform the development of the 2011-13 omnibus transportation appropriations act.

(9) ~~(\$1,722)~~ \$299,000 of the motor vehicle account--state appropriation, ~~(\$9,608,145)~~ \$23,425,000 of the motor vehicle account--federal appropriation, and ~~(\$272,141)~~ \$373,000 of the transportation partnership account--state appropriation are provided solely for the SR 104/Hood Canal bridge - replace east half project, identified as project 310407B in the LEAP transportation document described in subsection (1) of this section.

(10) Within the motor vehicle account--state appropriation and motor vehicle account--federal appropriation, the department may transfer funds between programs I and P, except for funds that are otherwise restricted in this act.

(11) Within the amounts provided in this section, \$1,510,000 of the motor vehicle account--state appropriation is provided solely to complete the rehabilitation of the SR 532/84th Avenue NW bridge deck.

(12) ~~(\$1,500,000)~~ \$1,440,000 of the motor vehicle account--federal appropriation ~~((is))~~ and \$60,000 of the motor vehicle account--state appropriation are provided solely for the environmental impact statement and preliminary planning for the replacement of the state route number 9 Snohomish river bridge (project L2000018).

(13) \$12,503,000 of the motor vehicle account--federal appropriation and \$497,000 of the motor vehicle account--state appropriation are provided solely for the SR 410/Nile Valley Landslide - Establish Interim Detour project (541002R).

(14) \$4,239,000 of the motor vehicle account--federal appropriation and \$662,000 of the motor vehicle account--state appropriation are provided solely for the SR 410/Nile Valley Landslide - Reconstruct Route project (541002T).

(15) Any redistributed federal funds received by the department must, to the greatest extent possible, be first applied to offset planned expenditures of state funds, and second, to offset planned expenditures of federal funds, on projects as identified in the LEAP transportation documents described in this act. If the redistributed federal funds cannot be used in this manner, the department must consult with the joint transportation committee prior to obligating any redistributed federal funds.

(16) The legislature anticipates a report in September 2010 that will outline the department's recommendation for developing a Keller Ferry replacement at the lowest cost. The legislature supports the request to the federal government for federal aid for a replacement vessel and intends to provide reasonable matching amounts as necessary.

(17) \$2,100,000 of the motor vehicle account--federal appropriation is provided solely for the SR 21/Kettle River to Malo paving project in Ferry county (602117A).

Sec. 305. 2009 c 470 s 308 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION--TRAFFIC OPERATIONS--PROGRAM Q--CAPITAL**

Motor Vehicle Account--State Appropriation .....	<del>(\$6,394,000)</del>
.....	<u>\$8,158,000</u>
Motor Vehicle Account--Federal Appropriation .....	<del>(\$9,262,000)</del>
.....	<u>\$18,037,000</u>
Motor Vehicle Account--Private/Local Appropriation .....	<u>\$173,000</u>

TOTAL APPROPRIATION..... (\$15,656,000)  
 ..... \$26,368,000

**Sec. 306.** 2009 c 470 s 309 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION--WASHINGTON STATE FERRIES CONSTRUCTION--PROGRAM W**

Puget Sound Capital Construction Account--State

Appropriation..... ((~~\$118,752,000~~))  
 ..... \$126,824,000

Puget Sound Capital Construction Account--Federal

Appropriation..... ((~~\$38,306,000~~))  
 ..... \$60,364,000

Puget Sound Capital Construction Account--Local

Appropriation..... ((~~\$8,492,000~~))  
 ..... \$200,000

Transportation 2003 Account (Nickel Account)--State

Appropriation..... \$51,734,000

Transportation Partnership Account--State

Appropriation..... ((~~\$67,234,000~~))  
 ..... \$66,879,000

Multimodal Transportation Account--State

Appropriation..... ((~~\$170,000~~))  
 ..... \$149,000

TOTAL APPROPRIATION..... ((~~\$284,688,000~~))  
 ..... \$306,150,000

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

(1) (~~(\$118,752,000)~~) \$126,824,000 of the Puget Sound capital construction account--state appropriation, (~~(\$38,306,000)~~) \$60,364,000 of the Puget Sound capital construction account--federal appropriation, (~~(\$8,492,000)~~) \$200,000 of the Puget Sound capital construction account--local appropriation, (~~(\$67,234,000)~~) \$66,879,000 of the transportation partnership account--state appropriation, \$51,734,000 of the transportation 2003 account (nickel account)--state appropriation, and (~~(\$170,000)~~) \$149,000 of the multimodal transportation account--state appropriation are provided solely for ferry capital projects, project support, and administration as listed in LEAP Transportation Document ALL PROJECTS (~~2009-2~~) 2010-2 as developed (~~April 24, 2009~~) March 8, 2010, Program - Ferries Construction Program (W). Of the total appropriation, a maximum of \$10,627,000 may be used for administrative support, a maximum of \$8,184,000 may be used for terminal project support, and a maximum of \$4,497,000 may be used for vessel project support. Of the total appropriation, \$5,851,000 is provided solely for a reservation system and associated communications projects.

(2) \$51,734,000 of the transportation 2003 account (nickel account)--state appropriation (~~and~~), \$63,100,000 of the transportation partnership account--state appropriation, and \$10,164,000 of the Puget Sound capital construction account--state appropriation are provided solely for the acquisition of three new Island Home class ferry vessels subject to the conditions of RCW 47.56.780. The department shall pursue a contract for the second and third Island Home class ferry vessels with an option to purchase a fourth Island Home class ferry vessel. However, if sufficient resources are available to build one 144-auto vessel prior to exercising the option to build the fourth Island Home class ferry vessel, procurement of the fourth Island Home class ferry vessel will be postponed and the department shall pursue procurement of a 144-auto vessel.

(a) The first two Island Home class ferry vessels must be placed on the Port Townsend-Keystone route.

(b) The department may add additional passenger capacity to one of the Island Home class ferry vessels to make it more flexible within the system in the future, if doing so does not require additional staffing on the vessel.

(c) Cost savings from the following initiatives will be included in the funding of these vessels: The department's review and update of the vessel life-cycle cost model as required under this section; and the implementation of technology efficiencies as required under section 602 of this act.

~~(3) (\$2,450,000 of the Puget Sound capital construction account--state appropriation is provided solely for contingencies associated with closing out the existing contract for the technical design of the 144 auto vessel and the storage and maintenance of vessel owner furnished equipment already procured. The department shall use as much of the already procured equipment as is practicable on the Island Home class ferry vessel if it is likely to be obsolete before it is used in procured 144 auto vessels.)~~ (a) \$8,450,000 of the Puget Sound capital construction account--state appropriation and \$2,450,000 of the transportation partnership account--state appropriation are provided solely for the following projects related to the design of a 144-vehicle vessel class: (i) \$1,380,000 is provided solely for completion of the contract for owner-furnished equipment; (ii) \$8,320,000 is provided solely for completion of the technical design, detail design, and production drawings, all of which must plan for an aluminum superstructure; (iii) \$480,000 is provided solely for the storage of owner-furnished equipment; and (iv) a maximum of \$720,000 is for construction engineering. In completing the contract for owner-furnished equipment, the department shall use as much of the already procured equipment as is practicable on the Island Home class ferry vessels if it is likely to be obsolete before it is used in procured 144-vehicle vessels.

(b) The department shall conduct a cost-benefit study on alternative furnishings and fittings for the 144-vehicle vessel class. The study must review the proposed interior furnishings and fittings for the long-term maintenance and out-of-service vessel costs and, if appropriate, propose alternative interior furnishings and fittings that will decrease long-term maintenance and out-of-service vessel costs. The study must include a projection of out-of-service time and a life-cycle cost analysis of planned out-of-service time, including the impact on fleet size. The department must submit the study to the joint transportation committee by August 1, 2010.

(c) The department shall identify costs for any additional detail design and production drawings costs related to incorporating the aluminum superstructure and any changes in the proposed furnishings and fittings.

(4) \$6,300,000 of the Puget Sound capital construction account--state appropriation is provided solely for emergency capital costs.

~~(5) (The Anacortes terminal may be replaced if additional federal funds are sought and received by the department. If federal funds received are not sufficient to replace the terminal, only usable, discrete phases of the project, up to the amount of federal funds received, may be~~

~~constructed with the funds.)~~ \$3,000,000 of the Puget Sound capital construction account--federal appropriation is provided solely for completing the Anacortes terminal design up to the maximum allowable construction cost phase. Beyond preparing environmental work, these funds may be spent only after the following conditions have been met: (a) A value engineering process is conducted on the existing design and the concept of a terminal building smaller than preferred alternative; (b) the office of financial management participates in the value engineering process; (c) the office of financial management concurs with the recommendations of the value engineering process; and (d) the office of financial management gives its approval to proceed with the design work.

(6) \$3,965,000 of the Puget Sound capital construction account--state appropriation is provided solely for the following vessel projects: Waste heat recovery pilot project for the Issaquah; jumbo Mark 1 class steering gear ventilation pilot project; and ((a new propulsion system for the MV Yakima)) improvements to the Yakima and Kaleetan propulsion controls to allow for two engine operation. Before beginning these projects, the Washington state ferries must ensure the vessels' out-of-service time does not negatively impact service to the system.

(7) The department shall pursue purchasing a foreign-flagged vessel for service on the Anacortes, Washington to Sidney, British Columbia ferry route.

(8) The department shall provide to the office of financial management and the legislature quarterly reports providing the status on each project listed in this section and in the project lists submitted pursuant to this act and on any additional projects for which the department has expended funds during the 2009-11 fiscal biennium. Elements must include, but not be limited to, project scope, schedule, and costs. The department shall also provide the information required under this subsection via the transportation executive information systems (TEIS). The quarterly report regarding the status of projects identified on the list referenced in subsection (1) of this section must be developed according to an earned value method of project monitoring.

(9) The department shall review and adjust its capital program staffing levels to ensure staffing is at the most efficient level necessary to implement the capital program in the omnibus transportation appropriations act. The Washington state ferries shall report this review and adjust to the office of financial management and the house and senate transportation committees of the legislature by July 2009.

~~(10) ((\$3,763,000 of the total appropriation is provided solely for the Washington state ferries to develop a reservation system. The department shall complete a predesign study and present the study to the joint transportation committee by November 1, 2009. This analysis must include an evaluation of the compatibility of the Washington state ferries' electronic fare system, proposed reservation system, and the implementation of smart card. The department may not implement a statewide reservation system until the department is authorized to do so in the 2010 supplemental omnibus transportation appropriations act.~~

~~---~~ ~~((11))~~ \$1,200,000 of the total appropriation is provided solely for improving the toll booth configuration at the Port Townsend and Keystone ferry terminals.

~~((12) \$3,249,915))~~ ((11) \$2,636,000 of the total appropriation is provided solely for continued permitting ((and archaeological work in order to determine the feasibility of relocating)) work on the Mukilteo ferry terminal. ((In order to ensure that the cultural resources investigation is properly conducted in a coordinated fashion, the department shall work with the department of archaeology and historic preservation and shall conduct work with active archaeological management.)) The department shall seek additional federal funding for this project.

~~((13))~~ (12) The department shall develop a proposed ferry vessel maintenance, preservation, and improvement program and present it to the transportation committees of the legislature by July 1, 2010. The proposal must:

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

(b) Limit the amount of planned out-of-service time to the greatest extent possible, including options associated with department staff as well as commercial shipyards. At a minimum, the department shall consider the following:

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

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

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

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

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

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

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

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

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

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

~~((14))~~ (13) \$247,000 of the Puget Sound capital construction account--state appropriation is provided solely for the Washington state ferries to review and update its vessel life-cycle cost model and report the results to the house of representatives and senate transportation committees of the legislature by ((December 1, 2009)) March 15, 2010. This review will evaluate the impact of the planned out-of-service periods scheduled for each vessel on the ability of the overall system to deliver uninterrupted service and will assess the risk of service disruption from unscheduled maintenance or longer than planned maintenance periods.

~~((15))~~ (14) The department shall work with the department of archaeology and historic preservation to ensure that the cultural resources investigation is properly conducted on all large ferry terminal projects. These projects must be conducted with active archaeological management. Additionally, the department shall establish a scientific peer review of independent archaeologists that are knowledgeable about the region and its cultural resources.

~~((16))~~ (15) The Puget Sound capital construction account--state appropriation includes up to ((\$148,000,000)) \$114,000,000 in proceeds from the sale of bonds authorized in RCW 47.10.843.

(16) The Puget Sound capital construction account--state appropriation reflects the reduction of three terminal positions due to decreased terminal activity and funding.

Sec. 307. 2009 c 470 s 310 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION--RAIL--PROGRAM Y--CAPITAL**

Essential Rail Assistance Account--State

Appropriation ..... ((\$675,000))  
 ..... \$333,000

Transportation Infrastructure Account--State

Appropriation ..... ((\$13,100,000))  
 ..... \$13,184,000

Multimodal Transportation Account--State

Appropriation ..... ((\$68,530,000))  
 ..... \$102,202,000

Multimodal Transportation Account--Federal

Appropriation ..... ((\$16,054,000))  
 ..... \$619,527,000

Multimodal Transportation Account--Private/Local

Appropriation ..... \$81,000

TOTAL APPROPRIATION ..... ((\$98,440,000))  
 ..... \$735,327,000

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

(1)(a) Except as provided otherwise in this section, the entire appropriations in this section are provided solely for the projects and activities as listed by ~~((fund))~~ project(;) and amount in LEAP Transportation Document ALL PROJECTS ~~((2009-2))~~ 2010-2 as developed ~~((April 24, 2009))~~ March 8, 2010, Program - Rail Capital Program (Y). ~~((However, limited transfers of specific line item project appropriations may occur between projects for those amounts listed subject to the conditions and limitations in section 603 of this act.))~~

(b)(i) Within the amounts provided in this section, \$116,000 of the transportation infrastructure account--state appropriation is for a low-interest loan through the freight rail investment bank program to the Port of Ephrata (BIN 722710A) for rehabilitation of a rail spur.

(ii) Within the amounts provided in this section, \$1,200,000 of the transportation infrastructure account--state appropriation is for a low-interest loan through the freight rail investment bank program to the Port of Everett (BIN 722810A) for a new rail track to connect a cement loading facility to the mainline.

~~((iii))~~ ~~((Within the amounts provided in this section, \$3,684,000 of the transportation infrastructure account--state appropriation is for a low-interest loan through the freight rail investment bank program to the Port of Quincy for construction of a rail loop.~~

~~((iv))~~ The department shall issue the loans referenced in this subsection (1)(b) with a repayment period of no more than ten years, and only so much interest as is necessary to recoup the department's costs to administer the loans.

(c)(i) Within the amounts provided in this section, ~~((1,712,022))~~ \$1,713,000 of the multimodal transportation account--state appropriation and ~~((175,000))~~ \$333,000 of the essential rail assistance account--state appropriation are for statewide - emergent freight rail assistance projects as follows: Port of Ephrata/Ephrata -additional spur rehabilitation (BIN 722710A) ~~((362,746))~~ \$363,000; Tacoma Rail/Tacoma - new refinery spur tracks (BIN 711010A) \$420,000; CW Line/Lincoln County - grade crossing rehabilitation (BIN 700610A) ~~((370,650))~~ \$371,000; ~~((Clark County))~~ Chelatchie Prairie owned railroad/Vancouver - track rehabilitation (BIN 710110A) ~~((366,813))~~ \$367,000; Tacoma Rail/Tacoma - improved locomotive facility (BIN 711010B) ~~((366,813))~~ \$525,000.

~~((ii))~~ ~~((Within the amounts provided in this section, \$500,000 of the essential rail assistance account--state appropriation and \$25,000 of the multimodal transportation account--state appropriation are for a statewide--emergent freight rail assistance project grant for the Tacoma Rail/Roy--new connection to BNSF and Yelm (BIN 711310A) project, provided that the grantee first executes a written instrument that imposes on the grantee the obligation to repay the grant within thirty days in the event that the grantee discontinues or significantly diminishes service along the line within a period of five years from the date that the grant is awarded.~~

~~((iii))~~ Within the amounts provided in this section, ~~((337,978))~~ \$338,000 of the multimodal transportation account--state appropriation is for a statewide - emergent freight rail assistance project grant for the Lincoln County PDA/Creston - new rail spur (BIN 710510A) project, provided that the grantee first documents to the satisfaction of the department sufficient commitments from the new shipper or shippers to locate in the publicly owned industrial park west of Creston to ensure that the net present value of the public benefits of the project is greater than the grant amount.

(d) Within the amounts provided in this section, ~~((8,100,000))~~ \$8,115,000 of the transportation infrastructure account--state appropriation is for grants to any intergovernmental entity or local rail district to which the department of transportation assigns the management and oversight responsibility for the business and economic development elements of existing operating leases on the Palouse River and Coulee City (PCC) rail lines. \$300,000 of the transportation infrastructure account--state appropriation is provided solely for the fence line replacement project on the CW line. The PCC rail line system is made up of the CW, P&L, and PV Hooper rail lines. Business and economic development elements include such items as levels of service and business operating plans, but must not include the state's oversight of railroad regulatory compliance, rail infrastructure condition, or real property management issues. The PCC rail system must be managed in a self-sustaining manner and best efforts must be used to ensure that it does not require state capital or operating subsidy beyond the level of state funding expended on it to date. The assignment of the stated responsibilities to an intergovernmental entity or rail district must be on terms and conditions as the department of transportation and the intergovernmental entity or rail district mutually agree. The grant funds may be used only to refurbish the rail lines. It is the intent of the legislature to make the funds appropriated in this section available as grants to an intergovernmental entity or local rail district for the purposes stated in this section at least until June 30, 2012, and to reappropriate as necessary any portion of the appropriation in this section that is not used by June 30, 2011.

(2)(a) The department shall issue a call for projects for the freight rail investment bank program and the emergent freight rail assistance program, and shall evaluate the applications according to the cost benefit methodology developed during the 2008 interim using the legislative priorities specified in (c) of this subsection. By November 1, 2010, the department shall submit a prioritized list of recommended projects to the office of financial management and the transportation committees of the legislature.

(b) When the department identifies a prospective rail project that may have strategic significance for the state, or at the request of a proponent of a prospective rail project or a member of the legislature, the department shall evaluate the prospective project according to the cost benefit methodology developed during the 2008 interim using the legislative priorities specified in (c) of this subsection. The department shall report its cost benefit evaluation of the prospective rail project, as well as the department's best estimate of an appropriate construction schedule and total project costs, to the office of financial management and the transportation committees of the legislature.

(c) The legislative priorities to be used in the cost benefit methodology are, in order of relative importance:

- (i) Economic, safety, or environmental advantages of freight movement by rail compared to alternative modes;
- (ii) Self-sustaining economic development that creates family-wage jobs;
- (iii) Preservation of transportation corridors that would otherwise be lost;
- (iv) Increased access to efficient and cost-effective transport to market for Washington's agricultural and industrial products;
- (v) Better integration and cooperation within the regional, national, and international systems of freight distribution; and
- (vi) Mitigation of impacts of increased rail traffic on communities.

(3) The department is directed to seek the use of unprogrammed federal rail crossing funds to be expended in lieu of or in addition to state funds for eligible costs of projects in program Y.

(4) At the earliest possible date, the department shall apply, and assist ports and local jurisdictions in applying, for any federal funding that may be available for any projects that may qualify for such federal funding. State projects must be (a) currently identified on the project list referenced in subsection (1)(a) of this section or (b) projects for which no state match is required to complete the project. Local or port projects must not require additional state funding in order to complete the project, with the exception of (c) state funds currently appropriated for such project if currently identified on the project list referenced in subsection (1)(a) of this section or (d) potential grants awarded in the competitive grant process for the essential rail assistance program. If the department receives any federal funding, the department is authorized to obligate and spend the federal funds in accordance with federal law. To the extent permissible by federal law, federal funds may be used (e) in addition to state funds appropriated for projects currently identified on the project list referenced in subsection (1)(a) of this section in order to advance funding from future biennia for such project(s) or (f) in lieu of state funds; however, the state funds must be redirected within the rail capital program to advance funding for other projects currently identified on the project list referenced in subsection (1)(a) of this section. State funds may be redirected only upon consultation with the transportation committees of the legislature and the office of financial management, and approval by the director of the office of financial management. The department shall spend the federal funds before the state funds, and shall consult the office of financial management and the transportation committees of the legislature regarding project scope changes.

(5) The department shall provide quarterly reports to the office of financial management and the transportation committees of the legislature regarding applications that the department submits for federal funds and the status of such applications ~~(and the status of projects identified on the list referenced in subsection (1)(a) of this section. The quarterly report regarding the status of projects identified on the list referenced in subsection (1)(a) of this section must be developed according to an earned value method of project monitoring).~~

(6) The department shall, on a quarterly basis, provide to the office of financial management and the legislature reports providing the status on active projects identified in the LEAP transportation document described in subsection (1)(a) of this section. Report formatting and elements must be consistent with the October 2009 quarterly project report.

~~(7) The multimodal transportation account--state appropriation includes up to ((20,000,000)) \$48,000,000 in proceeds from the sale of bonds authorized in RCW 47.10.867.~~

~~(8) When the balance of that portion of the miscellaneous program account apportioned to the department for the grain train program reaches \$1,180,000, the department shall acquire twenty-nine additional grain train railcars.~~

(9) \$590,000,000 of the multimodal transportation account--federal appropriation is provided solely for high-speed rail projects awarded to Washington state from the high-speed intercity passenger rail program under the American recovery and reinvestment act. Funding will allow for two additional round trips between Seattle and Portland, and other rail improvements.

(10) \$2,200,000 of the multimodal transportation account--state appropriation is provided solely for expenditures related to the capital high-speed passenger rail grant that are not federally reimbursable.

(11) The Burlington Northern Santa Fe Skagit river bridge is an integral part of the rail system. Constructed in 1916, the bridge does not meet current design standards and is at risk during flood events that occur on the Skagit river. The department shall work with Burlington Northern Santa Fe and local jurisdictions to secure federal funding for the Skagit river bridge and to develop an appropriate replacement plan and schedule.

(12) \$1,000,000 of the multimodal transportation account--state appropriation is provided solely for additional expenditures along the Chelatchie Prairie railroad (LN2000025).

**Sec. 308.** 2009 c 470 s 311 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION--LOCAL PROGRAMS--PROGRAM Z--CAPITAL**

Highway Infrastructure Account--State Appropriation .....	\$207,000
Highway Infrastructure Account--Federal	
Appropriation .....	\$1,602,000
Freight Mobility Investment Account--State	
Appropriation .....	((13,548,000))
.....	\$13,848,000
Transportation Partnership Account--State	
Appropriation .....	\$8,863,000
Motor Vehicle Account--State Appropriation .....	((12,954,000))
.....	\$14,068,000
Motor Vehicle Account--Federal Appropriation .....	((39,572,000))
.....	\$43,835,000
Freight Mobility Multimodal Account--State	
Appropriation .....	((14,920,000))
.....	\$15,620,000



Freight Mobility Multimodal Account--Local	
Appropriation .....	(\$3,135,000)
.....	\$3,258,000
Multimodal Transportation Account--Federal	
Appropriation .....	(\$2,098,000)
.....	\$2,118,000
Multimodal Transportation Account--State	
Appropriation .....	(\$28,262,000)
.....	\$28,855,000
Transportation 2003 Account (Nickel Account)--State	
Appropriation .....	(\$709,000)
.....	\$2,709,000
Passenger Ferry Account--State Appropriation .....	\$2,879,000
<u>Puyallup Tribal Settlement Account--State</u>	
<u>Appropriation .....</u>	<u>\$5,895,000</u>
.....	(\$128,749,000)
TOTAL APPROPRIATION .....	\$143,757,000

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

(1) The department shall, on a quarterly basis, provide status reports to the legislature on the delivery of projects as outlined in the project lists incorporated in this section. For projects funded by new revenue in the 2003 and 2005 transportation packages, reporting elements shall include, but not be limited to, project scope, schedule, and costs. Other projects may be reported on a programmatic basis. The department shall also provide the information required under this subsection on a quarterly basis via the transportation executive information system (TEIS).

(2) \$2,729,000 of the passenger ferry account--state appropriation is provided solely for near and long-term costs of capital improvements in a business plan approved by the governor for passenger ferry service.

(3) \$150,000 of the passenger ferry account--state appropriation is provided solely for the Port of Kingston for a one-time operating subsidy needed to retain a federal grant.

(4) \$3,000,000 of the motor vehicle account--federal appropriation is provided solely for the Coal Creek parkway project (L1000025).

(5) The department shall seek the use of unprogrammed federal rail crossing funds to be expended in lieu of or in addition to state funds for eligible costs of projects in local programs, program Z capital.

(6) The department shall apply for surface transportation program (STP) enhancement funds to be expended in lieu of or in addition to state funds for eligible costs of projects in local programs, program Z capital.

(7) Federal funds may be transferred from program Z to programs I and P and state funds shall be transferred from programs I and P to program Z to replace those federal funds in a dollar-for-dollar match. Fund transfers authorized under this subsection shall not affect project prioritization status. Appropriations shall initially be allotted as appropriated in this act. The department may not transfer funds as authorized under this subsection without approval of the office of financial management. The department shall submit a report on those projects receiving fund transfers to the office of financial management and the transportation committees of the legislature by December 1, 2009, and December 1, 2010.

(8) The city of Winthrop may utilize a design-build process for the Winthrop bike path project. Of the amount appropriated in this section for this project, \$500,000 of the multimodal transportation account--state appropriation is contingent upon the state receiving from the city of Winthrop \$500,000 in federal funds awarded to the city of Winthrop by its local planning organization.

(9) ~~(\$18,182,113)~~ \$18,289,000 of the multimodal transportation account--state appropriation, ~~(\$8,753,895)~~ \$8,810,000 of the motor vehicle account--federal appropriation, and \$4,000,000 of the transportation partnership account--state appropriation are provided solely for the pedestrian and bicycle safety program projects and safe routes to schools program projects identified in LEAP Transportation Document 2009-A, pedestrian and bicycle safety program projects and safe routes to schools program projects, as developed March 30, 2009, LEAP Transportation Document 2007-A, pedestrian and bicycle safety program projects and safe routes to schools program projects, as developed April 20, 2007, and LEAP Transportation Document 2006-B, pedestrian and bicycle safety program projects and safe routes to schools program projects, as developed March 8, 2006. Projects must be allocated funding based on order of priority. The department shall review all projects receiving grant awards under this program at least semiannually to determine whether the projects are making satisfactory progress. Any project that has been awarded funds, but does not report activity on the project within one year of the grant award must be reviewed by the department to determine whether the grant should be terminated. The department shall promptly close out grants when projects have been completed, and identify where unused grant funds remain because actual project costs were lower than estimated in the grant award.

(10) Except as provided otherwise in this section, the entire appropriations in this section are provided solely for the projects and activities as listed by ~~(fund)~~ project(s) and amount in LEAP Transportation Document ALL PROJECTS ~~(2009-2)~~ 2010-2 as developed ~~(April 24, 2009)~~ March 8, 2010, Program(s) - Local Program (Z).

(11) For the 2009-11 project appropriations, unless otherwise provided in this act, the director of financial management may authorize a transfer of appropriation authority between projects managed by the freight mobility strategic investment board in order for the board to manage project spending and efficiently deliver all projects in the respective program.

(12) \$913,386 of the motor vehicle account--state appropriation and ~~(\$2,858,216)~~ \$2,858,000 of the motor vehicle account--federal appropriation are provided solely for completion of the US 101 northeast peninsula safety rest area and associated roadway improvements east of Port Angeles at the Deer Park scenic view point. The department must surplus any right-of-way previously purchased for this project near Sequim. Approval to proceed with construction is contingent on surplus of previously purchased right-of-way. \$865,000 of the motor vehicle account--state appropriation is to be placed into unallotted status until such time as the right-of-way sale is completed.

(13) \$5,894,000 of the Puyallup tribal settlement account--state appropriation is provided solely for costs associated with the Murray Morgan/11th Street bridge project. The city of Tacoma may use the Puyallup tribal settlement account appropriation and other appropriated funds for bridge rehabilitation, bridge replacement, bridge demolition, and bridge mitigation. The department's participation,

including prior expenditures, may not exceed \$40,270,000. The city of Tacoma has taken ownership of the bridge in its entirety, and the payment of these funds extinguishes any real or implied agreements regarding future bridge expenditures.

(14) Up to \$3,702,000 of the motor vehicle account--federal appropriation and \$75,000 of the motor vehicle account--state appropriation are provided solely to reimburse the cities of Kirkland and Redmond for pavement and bridge deck rehabilitation on state route number 908 (project 1LP611A). These funds may not be expended unless the cities sign an agreement stating that the cities agree to take ownership of state route number 908 in its entirety and agree that the payment of these funds represents the entire state commitment to the cities for state route number 908 expenditures. The amount provided in this subsection is contingent on the enactment by June 30, 2010, of Senate Bill No. 6555.

(15) The department shall consider the condition of the Broadway bridge in the city of Everett when prioritizing bridge projects.

(16) In order to make the Hood Canal bridge safe for cyclists, the department must work with stakeholders to review bicycle safety needs on the bridge, including consideration of accident data and improvements already made to this project.

(17) \$250,000 of the multimodal transportation account--state appropriation is provided solely for the Shell Valley emergency access road and bicycle/pedestrian path.

(18) \$500,000 of the motor vehicle account--state appropriation is provided solely for improvements to the 150th and Murray Road intersection in the city of Lakewood.

(19) \$250,000 of the motor vehicle account--state appropriation is provided solely for flood reduction solutions on state route number 522 caused by the lower McAleer and Lyon creek basins.

(20) \$200,000 of the motor vehicle account--state appropriation is provided solely for improvements to the intersection of 39th Ave SE and state route number 96 in Snohomish county.

**TRANSFERS AND DISTRIBUTIONS**

**Sec. 401.** 2009 c 470 s 401 (uncodified) is amended to read as follows:

**FOR THE STATE TREASURER--BOND RETIREMENT AND INTEREST, AND ONGOING BOND REGISTRATION AND TRANSFER CHARGES: FOR BOND SALES DISCOUNTS AND DEBT TO BE PAID BY MOTOR VEHICLE ACCOUNT AND TRANSPORTATION FUND REVENUE**

Highway Bond Retirement Account Appropriation .....	(\$742,400,000)
.....	\$733,667,000
Ferry Bond Retirement Account Appropriation .....	\$33,771,000
<u>State Route Number 520 Corridor Account--State</u>	
<u>Appropriation .....</u>	<u>\$600,000</u>
Transportation Improvement Board Bond Retirement	
Account--State Appropriation .....	(\$22,541,000)
.....	\$22,962,000
Nondebt-Limit Reimbursable Account Appropriation .....	(\$18,400,000)
.....	\$18,451,000
Transportation Partnership Account--State	
Appropriation .....	(\$8,318,000)
.....	\$4,722,000
Motor Vehicle Account--State Appropriation .....	(\$901,900)
.....	\$732,000
Transportation 2003 Account (Nickel Account)--State	
Appropriation .....	(\$4,116,000)
.....	\$2,182,000
Special Category C Account--State Appropriation .....	(\$148,000)
.....	\$94,000
Urban Arterial Trust Account--State Appropriation .....	\$85,000
Transportation Improvement Account--State Appropriation .....	\$41,000
Multimodal Transportation Account--State	
Appropriation .....	(\$283,000)
.....	\$204,000
<b>TOTAL APPROPRIATION .....</b>	<b>(\$831,004,000)</b>
.....	<b>\$817,511,000</b>

**Sec. 402.** 2009 c 470 s 402 (uncodified) is amended to read as follows:

**FOR THE STATE TREASURER--BOND RETIREMENT AND INTEREST, AND ONGOING BOND REGISTRATION AND TRANSFER CHARGES: FOR BOND SALE EXPENSES AND FISCAL AGENT CHARGES**

<u>State Route Number 520 Corridor Account--State</u>	
<u>Appropriation .....</u>	<u>\$40,000</u>
Transportation Partnership Account--State	
Appropriation .....	(\$523,000)
.....	\$787,000
Motor Vehicle Account--State Appropriation .....	(\$57,900)
.....	\$122,000
Transportation 2003 Account (Nickel Account)--State	
Appropriation .....	(\$259,000)
.....	\$364,000
Special Category C Account--State Appropriation .....	(\$10,000)

.....	<u>\$15,000</u>
Urban Arterial Trust Account--State Appropriation.....	\$5,000
Transportation Improvement Account--State Appropriation .....	\$3,000
Multimodal Transportation Account--State Appropriation .....	(((\$18,000))
.....	<u>\$34,000</u>
TOTAL APPROPRIATION.....	(((\$875,000))
.....	<u>\$1,370,000</u>

Sec. 403. 2009 c 470 s 403 (uncodified) is amended to read as follows:

**FOR THE STATE TREASURER--BOND RETIREMENT AND INTEREST, AND ONGOING BOND REGISTRATION AND TRANSFER CHARGES: FOR MVFT BONDS AND TRANSFERS**

Motor Vehicle Account--State Appropriation:

For transfer to the Puget Sound Capital Construction

Account.....	(((\$118,000,000))
.....	<u>\$114,000,000</u>

The department of transportation is authorized to sell up to (((\$118,000,000)) \$114,000,000 in bonds authorized by RCW 47.10.843 for vessel and terminal acquisition, major and minor improvements, and long lead-time materials acquisition for the Washington state ferries.

Sec. 404. 2009 c 470 s 404 (uncodified) is amended to read as follows:

**FOR THE STATE TREASURER--STATE REVENUES FOR DISTRIBUTION**

Motor Vehicle Account Appropriation for

motor vehicle fuel tax distributions to cities

and counties .....	(((\$488,843,000))
.....	<u>\$478,753,000</u>

Sec. 405. 2009 c 470 s 405 (uncodified) is amended to read as follows:

**FOR THE STATE TREASURER--TRANSFERS**

Motor Vehicle Account--State

Appropriation: For motor vehicle fuel tax

refunds and statutory transfers.....	(((\$1,310,279,000))
.....	<u>\$1,247,260,000</u>

Sec. 406. 2009 c 470 s 406 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF LICENSING--TRANSFERS**

Motor Vehicle Account--State

Appropriation: For motor vehicle fuel tax

refunds and transfers .....	(((\$129,178,000))
.....	<u>\$120,688,000</u>

Sec. 407. 2009 c 470 s 407 (uncodified) is amended to read as follows:

**FOR THE STATE TREASURER--ADMINISTRATIVE TRANSFERS**

(1) Tacoma Narrows Toll Bridge Account--State

Appropriation: For transfer to the Motor Vehicle

Account--State .....	\$5,288,000
----------------------	-------------

(2) Motor Vehicle Account--State Appropriation:

For transfer to the Puget Sound Ferry Operations

Account--State .....	(((\$17,000,000))
.....	<u>\$54,000,000</u>

(3) Recreational Vehicle Account--State

Appropriation: For transfer to the Motor Vehicle

Account--State .....	\$2,000,000
----------------------	-------------

(4) License Plate Technology Account--State

Appropriation: For transfer to the Highway Safety

Account--State .....	\$2,750,000
----------------------	-------------

(5) Multimodal Transportation Account--State

Appropriation: For transfer to the Puget Sound

Ferry Operations Account--State .....	\$9,000,000
---------------------------------------	-------------

(6) Highway Safety Account--State Appropriation:

For transfer to the Multimodal Transportation

Account--State .....	\$18,750,000
----------------------	--------------

(7) Department of Licensing Services Account--State

Appropriation: For transfer to the Motor Vehicle

Account--State .....	(((\$2,000,000))
.....	<u>\$1,300,000</u>

(8) Advanced Right-of-Way Account: For transfer to the Motor Vehicle Account--State.....

.....	\$14,000,000
-------	--------------

(9) ~~Motor Vehicle Account--State Appropriation:~~

~~For transfer to the Transportation Partnership~~

<del>Account--State .....</del>	<del>(\$8,000,000))</del>
---------------------------------	---------------------------

(10) State Route Number 520 Civil Penalties

Account--State Appropriation: For transfer to the State Route Number 520 Corridor Account--State..... \$190,000  
(11) Advanced Environmental Mitigation Revolving Account--State Appropriation: For transfer to the Motor Vehicle Account--State..... \$5,000,000  
(12) Regional Mobility Grant Program Account--State Appropriation: For transfer to the Multimodal Transportation Account--State..... \$4,000,000  
(13) Motor Vehicle Account--State Appropriation: For transfer to the State Patrol Highway Account--State ..... \$4,000,000  
(14) The transfers identified in this section are subject to the following conditions and limitations:  
(a) The amount transferred in subsection (1) of this section represents repayment of operating loans and reserve payments provided to the Tacoma Narrows toll bridge account from the motor vehicle account in the 2005-07 fiscal biennium. However, if Engrossed Substitute Senate Bill No. 6499 is enacted by June 30, 2010, the transfer in subsection (1) of this section shall not occur.  
(b) Any cash balance in the waste tire removal account in excess of one million dollars must be transferred to the motor vehicle account for the purpose of road wear-related maintenance on state and local public highways.  
(c) The transfer in subsection (10) of this section represents toll revenue collected from toll violations.

**COMPENSATION**

Sec. 501. 2009 c 470 s 501 (uncodified) is amended to read as follows:

**FOR THE OFFICE OF FINANCIAL MANAGEMENT-- REVISED PENSION CONTRIBUTION RATES**

<del>((Aeronautics Account--State</del> .....	<del>(\$40,000)</del>
<del>Grade Crossing Protective Account--State</del> .....	<del>(\$2,000)</del>
<del>State Patrol Highway Account--State</del> .....	<del>(\$5,593,000)</del>
<del>Motorcycle Safety Education Account--State</del> .....	<del>(\$18,000)</del>
<del>High Occupancy Toll Lanes Operations Account--State</del> .....	<del>(\$20,000)</del>
<del>Rural Arterial Trust Account--State</del> .....	<del>(\$20,000)</del>
<del>Wildlife Account--State</del> .....	<del>(\$16,000)</del>
<del>Highway Safety Account--State</del> .....	<del>(\$1,869,000)</del>
<del>Highway Safety Account--Federal</del> .....	<del>(\$56,000)</del>
<del>Motor Vehicle Account--State</del> .....	<del>(\$11,348,000)</del>
<del>Puget Sound Ferry Operations Account--State</del> .....	<del>(\$5,019,000)</del>
<del>Urban Arterial Trust Account--State</del> .....	<del>(\$26,000)</del>
<del>Transportation Improvement Account--State</del> .....	<del>(\$26,000)</del>
<del>County Arterial Preservation Account--State</del> .....	<del>(\$22,000)</del>
<del>Department of Licensing Services Account--State</del> .....	<del>(\$36,000)</del>
<del>Multimodal Transportation Account--State</del> .....	<del>(\$220,000)</del>
<del>Tacoma Narrows Toll Bridge Account--State</del> .....	<del>(\$28,000)</del>
<del>Puget Sound Capital Construction Account--State</del> .....	<del>(\$459,000)</del>
<del>Motor Vehicle Account--Federal</del> .....	<del>(\$8,791,000)</del>

~~Appropriations are adjusted to reflect changes to appropriations to reflect savings resulting from pension funding. The office of financial management shall update agency appropriations schedules to reflect the changes to funding levels in this section as identified by agency and fund in LEAP transportation document Z9R-2009. From the applicable accounts, the office of financial management shall adjust allotments to the respective agencies by an amount that conforms with funding adjustments enacted in the 2009-11 omnibus operating appropriations act. Any allotment reductions under this section shall be placed in reserve status and remain unexpended.)) Appropriations in this act include agency appropriations to reflect increased employer contribution rates in the public employees' retirement system as a result of the provisions in chapter 430, Laws of 2009 (calculating compensation for public retirement purpose).~~

**NEW SECTION. Sec. 502. FOR THE OFFICE OF FINANCIAL MANAGEMENT--REVISED EMPLOYER HEALTH BENEFIT RATES**

Aeronautics Account--State.....	\$3,000
State Patrol Highway Account--State.....	\$618,000
Motorcycle Safety Education Account--State.....	\$2,000
High Occupancy Toll Lanes Operations Account--State.....	\$2,000
Rural Arterial Trust Account--State.....	\$2,000
Wildlife Account--State.....	\$2,000
Highway Safety Account--State.....	\$261,000
Highway Safety Account--Federal.....	\$6,000
Motor Vehicle Account--State.....	\$1,076,000
Puget Sound Ferry Operations Account--State.....	\$527,000
Urban Arterial Trust Account--State.....	\$2,000
Transportation Improvement Account--State.....	\$2,000
County Arterial Preservation Account--State.....	\$2,000
Department of Licensing Services Account--State.....	\$3,000
Multimodal Transportation Account--State.....	\$13,000
Tacoma Narrows Toll Bridge Account--State.....	\$3,000

Appropriations are adjusted to reflect changes to appropriations to reflect changes in the employer cost of providing health benefit coverage. The office of financial management shall update agency appropriations schedules to reflect the changes in funding levels in this section as

identified by agency and fund in LEAP transportation document GLB-2010. From the applicable accounts, the office of financial management shall adjust allotments to the respective agencies by an amount that conforms with funding adjustments enacted in the 2010 supplemental omnibus operating appropriations act. Any allotment reductions under this section must be placed in reserve status and remain unexpended.

**Sec. 503.** 2009 c 470 s 503 (uncodified) is amended to read as follows:

**COMPENSATION--INSURANCE BENEFITS.** Appropriations for state agencies in this act are sufficient for nonrepresented and represented state employee health benefits for state agencies, and are subject to the following conditions and limitations:

(1)(a) Unless otherwise provided in the 2010 supplemental omnibus operating appropriations act, the monthly employer funding rate for insurance benefit premiums, public employees' benefits board administration, and the uniform medical plan, shall not exceed \$745 per eligible employee for fiscal year 2010. For fiscal year 2011, the monthly employer funding rate shall not exceed ~~(\$768)~~ \$795 per eligible employee.

(b) In order to achieve the level of funding provided for health benefits, the public employees' benefits board shall require any or all of the following: Employee premium copayments; increases in point-of-service cost sharing; the implementation of managed competition; or make other changes to benefits consistent with RCW 41.05.065. During the 2009-11 fiscal biennium, the board may only authorize benefit plans and premium contributions for an employee and the employee's dependents that are the same, regardless of an employee's status as represented or nonrepresented under the personnel system reform act of 2002.

(c) The health care authority shall deposit any moneys received on behalf of the uniform medical plan as a result of rebates on prescription drugs, audits of hospitals, subrogation payments, or any other moneys recovered as a result of prior uniform medical plan claims payments into the public employees' and retirees' insurance account to be used for insurance benefits. Such receipts shall not be used for administrative expenditures.

(d) The conditions in this section apply to benefits for nonrepresented employees, employees represented by the super coalition, and represented employees outside of the super coalition, including employees represented under chapter 47.64 RCW.

(2) Unless otherwise provided in the 2010 supplemental omnibus operating appropriations act, the health care authority, subject to the approval of the public employees' benefits board, shall provide subsidies for health benefit premiums to eligible retired or disabled public employees and school district employees who are eligible for medicare, pursuant to RCW 41.05.085. From January 1, 2010, through December 31, 2010, the subsidy shall be \$182.89. Beginning January 1, 2011, the subsidy shall be \$182.89 per month.

#### IMPLEMENTING PROVISIONS

**Sec. 601.** 2009 c 470 s 304 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION.** As part of its budget submittal (~~for the 2011-13 fiscal biennium~~), the department shall provide an annual update to the report provided to the legislature and the office of financial management in 2008 that:

(1) Compares the original project cost estimates approved in the 2003 and 2005 project lists to the completed cost of the project, or the most recent legislatively approved budget and total project costs for projects not yet completed;

(2) Identifies highway projects that may be reduced in scope and still achieve a functional benefit;

(3) Identifies highway projects that have experienced scope increases and that can be reduced in scope;

(4) Identifies highway projects that have lost significant local or regional contributions that were essential to completing the project; and

(5) Identifies contingency amounts allocated to projects.

**NEW SECTION. Sec. 602.** Any redistributed federal funds received by the department of transportation must, to the greatest extent possible, be first applied to offset planned expenditures of state funds, and second, to offset planned expenditures of federal funds, on projects as identified in the LEAP transportation documents described in this act. If the redistributed federal funds cannot be used in this manner, the department of transportation must consult with the joint transportation committee prior to obligating any redistributed federal funds.

**Sec. 603.** 2009 c 470 s 603 (uncodified) is amended to read as follows:

**FUND TRANSFERS.** (1) The transportation 2003 projects or improvements and the 2005 transportation partnership projects or improvements are listed in LEAP Transportation Document (~~(2009-1)~~) 2010-1 as developed (~~(April 24, 2009)~~) March 8, 2010, which consists of a list of specific projects by fund source and amount over a sixteen year period. Current fiscal biennium funding for each project is a line item appropriation, while the outer year funding allocations represent a sixteen year plan. The department is expected to use the flexibility provided in this section to assist in the delivery and completion of all transportation partnership account and transportation 2003 (nickel) account projects on the LEAP lists referenced in this act. For the 2009-11 project appropriations, unless otherwise provided in this act, the director of financial management may authorize a transfer of appropriation authority between projects funded with transportation 2003 account (nickel account) appropriations~~(s)~~ or transportation partnership account appropriations, (~~or multimodal transportation account appropriations,~~) in order to manage project spending and efficiently deliver all projects in the respective program under the following conditions and limitations:

(a) Transfers may only be made within each specific fund source referenced on the respective project list;

(b) Transfers from a project may not be made as a result of the reduction of the scope of a project, nor shall a transfer be made to support increases in the scope of a project;

(c) Each transfer between projects may only occur if the director of financial management finds that any resulting change will not hinder the completion of the projects as approved by the legislature. Until the legislature reconvenes to consider the 2010 supplemental budget, any unexpended 2007-09 appropriation balance as approved by the office of financial management, in consultation with the legislative staff of the house of representatives and senate transportation committees, may be considered when transferring funds between projects;

(d) Transfers from a project may be made if the funds appropriated to the project are in excess of the amount needed to complete the project;

(e) Transfers may not occur to projects not identified on the applicable project list, except for those projects that were expected to be completed in the 2007-09 fiscal biennium; ~~(and)~~

(f) Transfers may not be made while the legislature is in session; and

\_\_\_\_\_ (g) Transfers between projects may be made by the department of transportation until the transfer amount by project exceeds two hundred fifty thousand dollars, or ten percent of the project, whichever is less. These transfers must be reported quarterly to the director of financial management and the chairs of the house of representatives and senate transportation committees.

(2) At the time the department submits a request to transfer funds under this section a copy of the request shall be submitted to the transportation committees of the legislature.

(3) The office of financial management shall work with legislative staff of the house of representatives and senate transportation committees to review the requested transfers.

(4) The office of financial management shall document approved transfers and/or schedule changes in the transportation executive information system (TEIS), compare changes to the legislative baseline funding and schedules identified by project identification number identified in the LEAP lists adopted in this act, and transmit revised project lists to chairs of the transportation committees of the legislature on a quarterly basis.

#### MISCELLANEOUS 2009-11 FISCAL BIENNIUM

**Sec. 701.** RCW 43.19.642 and 2009 c 470 s 716 are each amended to read as follows:

(1) Effective June 1, 2006, for agencies complying with the ultra-low sulfur diesel mandate of the United States environmental protection agency for on-highway diesel fuel, agencies shall use biodiesel as an additive to ultra-low sulfur diesel for lubricity, provided that the use of a lubricity additive is warranted and that the use of biodiesel is comparable in performance and cost with other available lubricity additives. The amount of biodiesel added to the ultra-low sulfur diesel fuel shall be not less than two percent.

(2) Effective June 1, 2009, state agencies are required to use a minimum of twenty percent biodiesel as compared to total volume of all diesel purchases made by the agencies for the operation of the agencies' diesel-powered vessels, vehicles, and construction equipment.

(3) All state agencies using biodiesel fuel shall, beginning on July 1, 2006, file biannual reports with the department of general administration documenting the use of the fuel and a description of how any problems encountered were resolved.

(4) For the 2009-2011 fiscal biennium, ~~((the Washington state ferries is required to use a minimum of five percent biodiesel as compared to total volume of all diesel purchases made by the Washington state ferries for the operation of the Washington state ferries diesel powered vessels))~~ all fuel purchased by the Washington state ferries at Harbor Island for the operation of the Washington state ferries diesel powered vessels must be a minimum of five percent biodiesel blend so long as the per gallon price of diesel containing a five percent biodiesel blend level does not exceed the per gallon price of diesel by more than five percent. If the per gallon price of diesel containing a five percent biodiesel blend level exceeds the per gallon price of diesel by more than five percent, the requirements of this section do not apply to vessel fuel purchases by the Washington state ferries.

(5) By December 1, 2009, the department of general administration shall:

(a) Report to the legislature on the average true price differential for biodiesel by blend and location; and

(b) Examine alternative fuel procurement methods that work to address potential market barriers for in-state biodiesel producers and report these findings to the legislature.

**Sec. 702.** RCW 46.68.320 and 2006 c 337 s 8 are each amended to read as follows:

(1) The regional mobility grant program account is hereby created in the state treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the grants provided under RCW 47.66.030.

(2) Beginning with September 2007, by the last day of September, December, March, and June of each year, the state treasurer shall transfer from the multimodal transportation account to the regional mobility grant program account five million dollars.

(3) Beginning with September 2015, by the last day of September, December, March, and June of each year, the state treasurer shall transfer from the multimodal transportation account to the regional mobility grant program account six million two hundred fifty thousand dollars.

(4) During the 2009-2011 fiscal biennium, the legislature may transfer from the regional mobility grant program account to the multimodal transportation account such amounts as reflect the excess fund balance of the regional mobility grant program account.

**Sec. 703.** RCW 47.12.340 and 1997 c 140 s 3 are each amended to read as follows:

The advanced environmental mitigation revolving account is created in the custody of the treasurer, into which the department shall deposit directly and may expend without appropriation:

(1) An initial appropriation included in the department of transportation's 1997-99 budget, and deposits from other identified sources;

(2) All moneys received by the department from internal and external sources for the purposes of conducting advanced environmental mitigation; and

(3) Interest gained from the management of the advanced environmental mitigation revolving account.

(4) During the 2009-2011 fiscal biennium, the legislature may transfer from the advanced environmental mitigation revolving account to the motor vehicle account such amounts as reflect the excess fund balance of the advanced environmental mitigation revolving account.

**Sec. 704.** RCW 70.95.532 and 2009 c 261 s 4 are each amended to read as follows:

(1) All receipts from tire fees imposed under RCW 70.95.510, except as provided in subsection (2) of this section, must be deposited in the waste tire removal account created under RCW 70.95.521. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used for the cleanup of unauthorized waste tire piles and measures that prevent future accumulation of unauthorized waste tire piles.

(2) On September 1st of odd-numbered years, the state treasurer must transfer any cash balance in excess of one million dollars from the waste tire removal account created under RCW 70.95.521 to the motor vehicle account for the purpose of road wear related maintenance on state and local public highways.

(3) During the 2009-2011 fiscal biennium, the legislature may transfer any cash balance in excess of one million dollars from the waste tire removal account to the motor vehicle account for the purpose of road wear-related maintenance on state and local public highways.

NEW SECTION. **Sec. 705.** 2009 c 470 s 502 is repealed.

#### MISCELLANEOUS

NEW SECTION. **Sec. 801.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 802.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Correct the title.

Representative Shea moved the adoption of amendment (1534) to amendment (1527).

On page 29, line 24 of the striking amendment, after "request." insert "If the department determines that all or a portion of real property or an interest in real property that was acquired through condemnation within the previous ten years is no longer necessary for a transportation purpose, the former owner has a right of repurchase as described in this subsection. For the purposes of this subsection, "former owner" means the person or entity from whom the department acquired title. At least ninety days prior to the date on which the property is intended to be sold by the department, the department must mail notice of the planned sale to the former owner of the property at the former owner's last known address or to a forwarding address if that owner has provided the department with a forwarding address. If the former owner of the property's last known address, or forwarding address if a forwarding address has been provided, is no longer the former owner of the property's address, the right of repurchase is extinguished. If the former owner notifies the department within thirty days of the date of the notice that the former owner intends to repurchase the property, the department shall proceed with the sale of the property to the former owner for fair market value and shall not list the property for sale to other owners. If the former owner does not provide timely written notice to the department of the intent to exercise a repurchase right, or if the sale to the former owner is not completed within seven months of the date of notice that the former owner intends to repurchase the property, the right of repurchase is extinguished."

Representatives Shea and Clibborn spoke in favor of the adoption of the amendment to the amendment.

Amendment (1534) to amendment (1527) was adopted.

Representative Simpson moved the adoption of amendment (1541) to amendment (1527).

On page 37, line 4 of the striking amendment, after "program" insert ", after obtaining certain assurances from the federal transit authority in writing."

On page 37, line 5 of the striking amendment, after "lanes." insert "Prior to implementing the pilot program, the department must first obtain assurances in writing from the federal transit authority that the pilot program will not threaten or otherwise compromise receipt or use of any federal funding for any state or local transportation agency or provider."

On page 37, line 9 of the striking amendment, after "carry" strike "eight" and insert "sixteen"

Representative Simpson spoke in favor of the adoption of the amendment to the amendment.

Representatives Clibborn and Roach spoke against the adoption of the amendment to the amendment.

Amendment (1541) to amendment (1527) was not adopted.

Representative Simpson moved the adoption of amendment (1540) to amendment (1527).

On page 37, line 23 of the striking amendment, after "lanes." insert "Nothing in this subsection is intended to authorize the conversion of public infrastructure to private, for-profit purposes or to otherwise create an entitlement or other claim by private users to public infrastructure."

Representatives Simpson and Clibborn spoke in favor of the adoption of the amendment to the amendment.

Amendment (1540) to amendment (1527) was adopted.

Representative Simpson moved the adoption of amendment (1539) to amendment (1527)

On page 37, beginning on line 3 of the striking amendment, strike all of subsection (7) and insert the following:

"(7)(a) The department of transportation shall conduct a pilot project in the central Puget Sound region to assess the impact on the performance of the transportation system of authorizing the following vehicles to use high occupancy vehicle lanes regardless of the number of passengers in the vehicle: (i) Auto transportation company vehicles regulated under chapter 81.68 RCW; (ii) passenger charter carrier vehicles regulated under chapter 81.70 RCW, except marked or unmarked stretch limousines and stretch sport utility vehicles as defined under department rules; (iii) private nonprofit transportation provider vehicles regulated under chapter 81.66 RCW; and (iv) private employer transportation service vehicles.

(b) In conducting the pilot project, the department must compare existing speed and reliability of the system during peak and off-peak periods based on current data as compared to system performance six months after the effective date of this act. In making this comparison, the department must evaluate the current and projected capacity and use by public transportation and by vehicles that meet the occupancy requirements; identify the intended non-public transportation users and use by type and size of vehicle and by time of day and frequency of use; and assess whether such use conflicts with public transportation's safe and effective use of the facility.

(c) The department shall report the results of the pilot project to the transportation committees of the legislature by December 15, 2010. The report shall include a system performance rating that compares current speed and reliability of the system prior to and six months after the effective date of this act."

Representatives Simpson and Simpson (again) spoke in favor of the adoption of the amendment to the amendment.

Representatives Clibborn and Wallace spoke against the adoption of the amendment to the amendment.

Amendment (1539) to amendment (1527) was not adopted.

Representative Simpson moved the adoption of amendment (1537) to amendment (1527).

On page 45, line 29 of the striking amendment, after "facilities." insert "Nothing in this subsection is intended to authorize the conversion of public infrastructure to private, for-profit purposes or to otherwise create an entitlement or other claim by private users to public infrastructure."

Representatives Simpson and Clibborn spoke in favor of the adoption of the amendment to the amendment.

The Speaker (Representative Moeller presiding) stated the question before the House to be the adoption of amendment (1537) to amendment (1527).

Division was demanded and the demand was sustained. The Speaker (Representative Moeller presiding) divided the House. The result was 57 - YEAS; 40 - NAYS.

Amendment (1537) to amendment (1527) was adopted.

Representative Simpson moved the adoption of amendment (1536) to amendment (1527).

On page 45, beginning on line 26 of the striking amendment, strike all of subsection (13) and insert the following:

"(13) During the 2009-11 biennium, the department shall implement a pilot project that expands opportunities for private transportation providers' use of high occupancy vehicle lanes, transit-only lanes, and certain park and ride facilities. The pilot project must establish that to receive grant funding from a program administered by the public transportation office of the department during the 2009-11 biennium, the local jurisdiction in which the applicant is located must be able to show that it has in place an application process for the reasonable use by private transportation providers of high occupancy vehicle lanes, transit-only lanes, and certain park and ride facilities that are regulated by the local jurisdiction. If a private transportation provider clearly demonstrates that the local jurisdiction failed to consider an application in good faith, the department may not award the jurisdiction any grant funding. Reasonable use exists if the private transportation provider has applied for the use of: (a) High occupancy vehicle or transit-only lanes, and such use will not interfere with safe and efficient public transportation operations and not reduce the speed of the lanes more than five percent during peak hours; or (b) a park and ride lot (i) during peak hours at a lot that is below ninety percent capacity during peak hours or (ii) during off-peak hours only; and (c) the use described under subsections (a) and (b) is consistent with applicable federal requirements. A transit agency may require that a private transportation provider enter into an agreement for use of the park and ride lot as provided in RCW 47.04.290. For purposes of this subsection: A "private transportation provider" means an auto transportation company regulated under chapter 81.68 RCW; a passenger charter carrier regulated under chapter 81.70 RCW; a private nonprofit transportation provider regulated under chapter 81.66 RCW; or a private employer transportation service provider; and "private employer transportation service" means regularly scheduled, fixed-route transportation service that is offered by an employer for the benefit of its employees."

Representative Simpson spoke in favor of the adoption of the amendment to the amendment.

Representative Clibborn spoke against the adoption of the amendment to the amendment.

Amendment (1536) to amendment (1527) was not adopted.

Representative Simpson moved the adoption of amendment (1535) to amendment (1527).

On page 46, line 7 of the striking amendment, after "only," insert "A transit agency need not negotiate reasonable use of such facilities if it has written confirmation from the federal transit authority that such use will conflict with any federal regulation or jeopardize any existing or future federal funding."

On page 46, line 12 of the striking amendment, after "means" insert "vehicles with the capacity to carry sixteen or more passengers that is owned by"

Representatives Simpson and Simpson (again) spoke in favor of the adoption of the amendment to the amendment.

Representative Clibborn spoke against the adoption of the amendment to the amendment.

Amendment (1535) to amendment (1527) was not adopted.

Representative Simpson moved the adoption of amendment (1538) to amendment (1527).

On page 46, line 18 of the striking amendment, after "employees," insert "This pilot project shall be known as 'The Legislature Forces Public Transit Providers to Convert Publicly Purchased Infrastructure into Private Property or Risk Losing State Grants and the Gift of Public Funds Pilot Project.'"

Representative Simpson spoke in favor of the adoption of the amendment to the amendment.

Representative Clibborn spoke against the adoption of the amendment to the amendment.

Amendment (1538) to amendment (1527) was not adopted.

Representative Liias moved the adoption of amendment (1542) to amendment (1527).

On page 66, line 8 of the striking amendment, after "526 and" strike "40th Avenue West" and insert "84th Street SW"

Representatives Liias and Roach spoke in favor of the adoption of the amendment to the amendment.

Amendment (1542) to amendment (1527) was adopted.

Representative Short moved the adoption of amendment (1533) to amendment (1527).

On page 99, after line 30 of the striking amendment, insert the following:

**NEW SECTION. Sec. 705.** During the 2009-11 fiscal biennium, highway construction projects are exempt from the requirement to purchase mitigation credits under chapter 47.01 RCW where the department demonstrates the impacts of the construction project have previously been offset by land purchases or projects that used state funds and those projects were located within the same water resource inventory area of the construction project."

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

Representatives Short, Taylor and Walsh spoke in favor of the adoption of the amendment to the amendment.

Representative Liias spoke against the adoption of the amendment to the amendment.

Amendment (1533) to amendment (1527) was not adopted.

Amendment (1527) was adopted as amended.

There being no objection, the rules were suspended, the second reading considered the third and Engrossed Substitute Senate Bill No. 6381, as amended by the House, was placed on final passage.

Representatives Clibborn, Roach, Rolfes, Armstrong, Liias and Campbell spoke in favor of the passage of the bill.



The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Engrossed Substitute Senate Bill No. 6381, as amended by the House.

and the same are herewith transmitted.

Thomas Hoemann, Secretary

March 8, 2010

**ROLL CALL**

Mr. Speaker:

The Clerk called the roll on the final passage of Engrossed Substitute Senate Bill No. 6381, as amended by the House, and the bill passed the House by the following vote: Yeas, 78; Nays, 19; Absent, 0; Excused, 1.

The President has signed:

- ENGROSSED SUBSTITUTE SENATE BILL 5543
- SUBSTITUTE SENATE BILL 6208
- ENGROSSED SENATE BILL 6261
- SUBSTITUTE SENATE BILL 6346
- SUBSTITUTE SENATE BILL 6356
- ENGROSSED SUBSTITUTE SENATE BILL 6359
- SUBSTITUTE SENATE BILL 6361
- SENATE BILL 6379
- SENATE BILL 6540

and the same are herewith transmitted.

Thomas Hoemann, Secretary

**MESSAGE FROM THE SENATE**

March 4, 2010

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 2776 with the following amendment:

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** (1) It is the legislature's intent to continue implementation of chapter 548, Laws of 2009, by adopting the technical details of a new distribution formula for the instructional program of basic education. The legislature intends to continue to review and revise the formulas and may make revisions as necessary for technical purposes and consistency in the event of mathematical or other technical errors.

(2) The legislature further intends to adjust the timelines for the working groups created under chapter 548, Laws of 2009, so that their expertise and advice can be received as soon as possible and to make adjustments to the composition of the local finance working group. The legislature further intends to clarify the legislature's intent to fully fund all-day kindergarten by the 2018-19 school year.

**Sec. 2.** RCW 28A.150.315 and 2009 c 548 s 107 are each amended to read as follows:

(1) Beginning with the 2007-08 school year, funding for voluntary all-day kindergarten programs shall be phased-in beginning with schools with the highest poverty levels, defined as those schools with the highest percentages of students qualifying for free and reduced-price lunch support in the prior school year. The funding shall continue to be phased-in until full statewide implementation of all-day kindergarten is achieved in the 2018-19 school year. Once a school receives funding for the all-day kindergarten program, that school shall remain eligible for funding in subsequent school years regardless of changes in the school's percentage of students eligible for free and reduced-price lunches as long as other program requirements are fulfilled. Additionally, schools receiving all-day kindergarten program support shall agree to the following conditions:

- (a) Provide at least a one thousand-hour instructional program;
- (b) Provide a curriculum that offers a rich, varied set of experiences that assist students in:
  - (i) Developing initial skills in the academic areas of reading, mathematics, and writing;
  - (ii) Developing a variety of communication skills;
  - (iii) Providing experiences in science, social studies, arts, health and physical education, and a world language other than English;
  - (iv) Acquiring large and small motor skills;

Excused: Representative Condotta.

ENGROSSED SUBSTITUTE SENATE BILL NO. 6381, as amended by the House, having received the necessary constitutional majority, was declared passed.

The Speaker (Representative Moeller presiding) called upon Representative Morris to preside.

**MESSAGES FROM THE SENATE**

March 8, 2010

Mr. Speaker:

The Senate concurred in the House amendments to the following bills and passed the bills as amended by the House:

- SECOND ENGROSSED SUBSTITUTE SENATE BILL 5742
- SUBSTITUTE SENATE BILL 6192
- SUBSTITUTE SENATE BILL 6202
- SENATE BILL 6206
- SUBSTITUTE SENATE BILL 6332
- SUBSTITUTE SENATE BILL 6340
- SUBSTITUTE SENATE BILL 6342
- SUBSTITUTE SENATE BILL 6343
- ENGROSSED SUBSTITUTE SENATE BILL 6392
- SUBSTITUTE SENATE BILL 6590
- SUBSTITUTE SENATE BILL 6673
- ENGROSSED SUBSTITUTE SENATE BILL 6724
- ENGROSSED SENATE BILL 6764

and the same are herewith transmitted.

Thomas Hoemann, Secretary

March 8, 2010

Mr. Speaker:

The Senate has passed:

- SUBSTITUTE SENATE BILL 6339
- SECOND SUBSTITUTE SENATE BILL 6578
- SUBSTITUTE SENATE BILL 6614
- SENATE BILL 6833
- SUBSTITUTE SENATE BILL 6844
- SENATE BILL 6870

(v) Acquiring social and emotional skills including successful participation in learning activities as an individual and as part of a group; and

(vi) Learning through hands-on experiences;

(c) Establish learning environments that are developmentally appropriate and promote creativity;

(d) Demonstrate strong connections and communication with early learning community providers; and

(e) Participate in kindergarten program readiness activities with early learning providers and parents.

(2) Subject to funds appropriated for this purpose, the superintendent of public instruction shall designate one or more school districts to serve as resources and examples of best practices in designing and operating a high-quality all-day kindergarten program. Designated school districts shall serve as lighthouse programs and provide technical assistance to other school districts in the initial stages of implementing an all-day kindergarten program. Examples of topics addressed by the technical assistance include strategic planning, developing the instructional program and curriculum, working with early learning providers to identify students and communicate with parents, and developing kindergarten program readiness activities.

**Sec. 3.** 2009 c 548 s 302 (uncodified) is amended to read as follows:

(1) Beginning ~~((July))~~ April 1, 2010, the office of financial management, with assistance and support from the office of the superintendent of public instruction, shall convene a technical working group to develop options for a new system of supplemental school funding through local school levies and local effort assistance.

(2) The working group shall consider the impact on overall school district revenues of the new basic education funding system established ~~((under this act))~~ by the legislature based on prototypical schools and shall recommend a phase-in plan that ensures that no school district suffers a decrease in funding from one school year to the next due to implementation of the new system of supplemental funding.

(3) The working group shall also:

(a) Examine local school district capacity to address facility needs associated with phasing-in full-day kindergarten across the state and reducing class size in kindergarten through third grade;

(b) Provide technical advice to the quality education council including an analysis on the potential use of local funds that may become available for redeployment and redirection as a result of increased state funding allocations for pupil transportation and maintenance, supplies, and operating costs; and

(c) Advise the quality education council and the legislature on further development and implementation of the funding formulas under RCW 28A.150.260, as appropriate.

(4) The working group shall be composed of representatives from the department of revenue, the legislative evaluation and accountability program committee, school district and educational service district financial managers, and representatives of the Washington association of school business officers, the Washington education association, the Washington association of school administrators, the association of Washington school principals, the Washington state school directors' association, the public school employees of Washington, and other interested stakeholders with expertise in education finance. When choosing the individuals to serve on the working group, the office of financial management and the office of the superintendent of public instruction are encouraged, as appropriate, to include members of the funding formula technical working group convened in accordance with section 112, chapter 548, Laws of 2009. The working group may convene advisory subgroups on specific topics as necessary to assure participation and input from a broad array of diverse stakeholders. In addition to the staff support provided by the office of financial management and the office of the

superintendent of public instruction, the department of revenue shall provide technical assistance, including financial and legal analysis, to support the working group's findings and analysis under subsection (3) of this section.

~~((4))~~ (5) The local funding working group shall be monitored and overseen by the legislature and by the quality education council created in ~~((section 114 of this act))~~ RCW 28A.290.010. The working group shall submit an initial report to the legislature ~~((December 1))~~ and the quality education council by November 30, 2010, and a final report by June 30, 2011.

**Sec. 4.** RCW 43.41.398 and 2009 c 548 s 601 are each amended to read as follows:

(1) The legislature recognizes that providing students with the opportunity to access a world-class educational system depends on our continuing ability to provide students with access to world-class educators. The legislature also understands that continuing to attract and retain the highest quality educators will require increased investments. The legislature intends to enhance the current salary allocation model and recognizes that changes to the current model cannot be imposed without great deliberation and input from teachers, administrators, and classified employees. Therefore, it is the intent of the legislature to begin the process of developing an enhanced salary allocation model that is collaboratively designed to ensure the rationality of any conclusions regarding what constitutes adequate compensation.

(2) Beginning July 1, 2011, the office of financial management in collaboration with the office of the superintendent of public instruction, shall convene a technical working group to recommend the details of an enhanced salary allocation model that aligns state expectations for educator development and certification with the compensation system and establishes recommendations for a concurrent implementation schedule. In addition to any other details the technical working group deems necessary, the technical working group shall make recommendations on the following:

(a) How to reduce the number of tiers within the existing salary allocation model;

(b) How to account for labor market adjustments;

(c) How to account for different geographic regions of the state where districts may encounter difficulty recruiting and retaining teachers;

(d) The role of and types of bonuses available;

(e) Ways to accomplish salary equalization over a set number of years; and

(f) Initial fiscal estimates for implementing the recommendations including a recognition that staff on the existing salary allocation model would have the option to grandfather in permanently to the existing schedule.

(3) As part of its work, the technical working group shall conduct or contract for a preliminary comparative labor market analysis of salaries and other compensation for school district employees to be conducted and shall include the results in any reports to the legislature. For the purposes of this subsection, "salaries and other compensation" includes average base salaries, average total salaries, average employee basic benefits, and retirement benefits.

(4) The analysis required under subsection (1) of this section must:

(a) Examine salaries and other compensation for teachers, other certificated instructional staff, principals, and other building-level certificated administrators, and the types of classified employees for whom salaries are allocated;

(b) Be calculated at a statewide level that identifies labor markets in Washington through the use of data from the United States bureau of the census and the bureau of labor statistics; and

(c) Include a comparison of salaries and other compensation to the appropriate labor market for at least the following subgroups of

educators: Beginning teachers and types of educational staff associates.

(5) The working group shall include representatives of the department of personnel, the professional educator standards board, the office of the superintendent of public instruction, the Washington education association, the Washington association of school administrators, the association of Washington school principals, the Washington state school directors' association, the public school employees of Washington, and other interested stakeholders with appropriate expertise in compensation related matters. The working group may convene advisory subgroups on specific topics as necessary to assure participation and input from a broad array of diverse stakeholders.

(6) The working group shall be monitored and overseen by the legislature and the quality education council created in RCW 28A.290.010. The working group shall make an initial report to the legislature by December 1, 2012, and shall include in its report recommendations for whether additional further work of the group is necessary.

**NEW SECTION. Sec. 5.** A new section is added to chapter 28A.300 RCW to read as follows:

The office of the superintendent of public instruction shall implement and maintain an internet-based portal that provides ready public access to the state's prototypical school funding model for basic education under RCW 28A.150.260. The portal must provide citizens the opportunity to view, for each local school building, the staffing levels and other prototypical school funding elements that are assumed under the state funding formula. The portal must also provide a matrix displaying how individual school districts are deploying those same state resources through their allocation of staff and other resources to school buildings, so that citizens are able to compare the state assumptions to district allocation decisions for each local school building.

**NEW SECTION. Sec. 6.** The legislature intends to continue to refine and provide greater detail to the distribution formula for the basic education instructional allocation, which shall be based on minimum staffing and nonstaff costs that the legislature deems necessary to support instruction and operations in prototypical schools as defined by the legislature. The legislature expects that the detailed prototype school model will bring greater transparency, understanding, and public accountability to the funding system because it displays funding assumptions in understandable terms centered on the operations of school buildings.

**Sec. 7.** RCW 28A.150.260 and 2009 c 548 s 106 are each amended to read as follows:

The purpose of this section is to provide for the allocation of state funding that the legislature deems necessary to support school districts in offering the minimum instructional program of basic education under RCW 28A.150.220. The allocation shall be determined as follows:

(1) The governor shall and the superintendent of public instruction may recommend to the legislature a formula for the distribution of a basic education instructional allocation for each common school district.

(2) The distribution formula under this section shall be for allocation purposes only. Except as may be required under chapter ~~28A.155~~, 28A.165, 28A.180, or ~~((28A.155))~~ 28A.185 RCW, or federal laws and regulations, nothing in this section requires school districts to use basic education instructional funds to implement a particular instructional approach or service. Nothing in this section requires school districts to maintain a particular classroom teacher-to-student ratio or other staff-to-student ratio or to use allocated funds to pay for particular types or classifications of staff. Nothing in this section entitles an individual teacher to a particular teacher planning period.

(3)(a) To the extent the technical details of the formula have been adopted by the legislature and except when specifically provided as a school district allocation, the distribution formula for the basic education instructional allocation shall be based on minimum staffing and nonstaff costs the legislature deems necessary to support instruction and operations in prototypical schools serving high, middle, and elementary school students as provided in this section. The use of prototypical schools for the distribution formula does not constitute legislative intent that schools should be operated or structured in a similar fashion as the prototypes. Prototypical schools illustrate the level of resources needed to operate a school of a particular size with particular types and grade levels of students using commonly understood terms and inputs, such as class size, hours of instruction, and various categories of school staff. It is the intent that the funding allocations to school districts be adjusted from the school prototypes based on the actual number of annual average full-time equivalent students in each grade level at each school in the district and not based on the grade-level configuration of the school to the extent that data is available. The allocations shall be further adjusted from the school prototypes with minimum allocations for small schools and to reflect other factors identified in the omnibus appropriations act.

(b) For the purposes of this section, prototypical schools are defined as follows:

(i) A prototypical high school has six hundred average annual full-time equivalent students in grades nine through twelve;

(ii) A prototypical middle school has four hundred thirty-two average annual full-time equivalent students in grades seven and eight; and

(iii) A prototypical elementary school has four hundred average annual full-time equivalent students in grades kindergarten through six.

~~((e))~~ (4)(a) The minimum allocation for each level of prototypical school shall be based on the number of full-time equivalent classroom teachers needed to provide instruction over the minimum required annual instructional hours under RCW 28A.150.220 and provide at least one teacher planning period per school day, and based on ~~((a))~~ the following general education average class size ~~((as specified in the omnibus appropriations act.))~~ of full-time equivalent students per teacher:

<u>General education</u>	
<u>average</u>	
<u>class size</u>	
<u>Grades K-3</u> .....	
<u>Grade 4</u>	<u>27.00</u>
<u>Grades 5-6</u>	<u>27.00</u>
<u>Grades 7-8</u>	<u>28.53</u>
<u>Grades 9-12, except in cases when lower average class sizes are specified for approved career and technical education programs and skill centers</u> .....	
<u>(b) The minimum allocation for each prototypical middle and high school shall also provide for full-time equivalent classroom teachers based on the following number of full-time equivalent students per teacher in career and technical education:</u>	
<u>Career and technical</u>	
<u>education average</u>	
<u>class size</u>	
<u>Approved career and technical education offered at the middle school and high school level</u>	
<u>26.57</u>	
<u>Skill center programs meeting the standards established by the office of the superintendent of public instruction</u> .....	

(c) According to an implementation schedule adopted by the legislature, the omnibus appropriations act shall at a minimum specify:

(i) ~~((Basic average class size;~~

~~(ii) Basic~~) A high-poverty average class size in schools where more than fifty percent of the students are eligible for free and reduced-price meals; and

~~((iii)) (ii) A specialty average class size for ((exploratory and preparatory career and technical education,)) laboratory science, advanced placement, and international baccalaureate courses(;~~  
~~(iv) Average class size in grades kindergarten through three).~~

~~((4)) (5)(a) The minimum allocation for each level of prototypical school shall include allocations for the following types of staff in addition to classroom teachers:~~

~~((i) Principals, including assistant principals, and other certificated building-level administrators;~~

~~(ii) Teacher librarians, performing functions including information literacy, technology, and media to support school library media programs;~~

~~(iii) Student health services, a function that includes school nurses, whether certificated instructional or classified employee, and social workers;~~

~~(iv) Guidance counselors, performing functions including parent outreach and graduation advisor;~~

~~(v) Professional development coaches;~~

~~(vi) Teaching assistance, which includes any aspect of educational instructional services provided by classified employees;~~

~~(vii) Office support, technology support, and other noninstructional aides;~~

~~(viii) Custodians, warehouse, maintenance, laborer, and professional and technical education support employees; and~~

~~(ix) Classified staff providing student and staff safety.~~

~~(4)(a))~~

	<u>Elem</u> <u>ntary</u> <u>Schoo</u> <u>l</u>	<u>Mid</u> <u>dle</u> <u>Sch</u> <u>ool</u>	<u>Hig</u> <u>h</u> <u>Sch</u> <u>ool</u>
<u>Principals, assistant principals, and other certificated building-level administrators, except administrators for approved career and technical programs and skill centers</u> .....	<u>1.253</u>	<u>1.3</u> <u>53</u>	<u>1.8</u> <u>80</u>
<u>Teacher librarians, a function that includes information literacy, technology, and media to support school library media programs</u> .....	<u>0.663</u>	<u>0.5</u> <u>19</u>	<u>0.5</u> <u>23</u>
<u>Health and social services:</u>			
<u>School nurses</u> .....	<u>0.076</u>	<u>0.0</u> <u>60</u>	<u>0.0</u> <u>96</u>
<u>Social workers</u> .....	<u>0.042</u>	<u>0.0</u> <u>06</u>	<u>0.0</u> <u>15</u>
<u>Psychologists</u> .....	<u>0.017</u>	<u>0.0</u> <u>02</u>	<u>0.0</u> <u>07</u>
<u>Guidance counselors, a function that includes parent outreach and graduation advising</u> .....	<u>0.493</u>	<u>1.1</u> <u>16</u>	<u>1.9</u> <u>09</u>
<u>Professional development coaches</u> .....	<u>0.00</u>	<u>0.0</u> <u>0</u>	<u>0.0</u> <u>0</u>
<u>Teaching assistance, including any aspect of educational instructional services provided by classified employees</u> .....	<u>0.917</u>	<u>0.6</u> <u>85</u>	<u>0.6</u> <u>38</u>
<u>Office support and other noninstructional aides</u> .....	<u>1.971</u>	<u>2.2</u> <u>77</u>	<u>3.2</u> <u>01</u>
<u>Custodians</u> .....	<u>1.622</u>	<u>1.9</u> <u>02</u>	<u>2.9</u> <u>03</u>
<u>Classified staff providing student and staff safety</u> .....	<u>0.077</u>	<u>0.0</u> <u>90</u>	<u>0.1</u> <u>38</u>
<u>Parent involvement coordinators</u> .....	<u>0.000</u>	<u>0.0</u> <u>00</u>	<u>0.0</u> <u>00</u>

(b) For career and technical education programs approved by the superintendent of public instruction, the minimum allocation for administrative staff shall be allocated at 0.410 per one hundred full-time equivalent career and technical education students and for other school-level certificated staff at 0.202 per one hundred full-time equivalent career and technical education students, regardless of the grade level at which the program is delivered, in lieu of the certificated allocations in (a) of this subsection.

(c) For skill center programs meeting the standards for skill center funding established in January 1999 by the superintendent of public instruction, the minimum allocation for administrative staff shall be allocated at 0.490 per one hundred full-time equivalent skill center students and for other school-level certificated staff at 0.236 per one hundred full-time equivalent skill center students in lieu of the certificated allocations in (a) of this subsection.

(6)(a) The minimum staffing allocation for each school district to provide district-wide support services shall be allocated per one thousand full-time equivalent students in grades K-12 as follows:

<u>Staff per 1,000</u> <u>K-12 students</u>
<u>Technology</u> .....
<u>Facilities, maintenance, and grounds</u> .....
<u>Warehouse, laborers, and mechanics</u> .....

(b) The minimum allocation of staff units for each school district to support certificated and classified staffing of central administration shall be 5.39 percent of the staff units generated under subsections (4)(a) and (5)(a) of this section and (a) of this subsection.

(7)(a) Except as provided in subsection (8) of this section, the minimum allocation for each school district shall include allocations per annual average full-time equivalent student for the following materials, supplies, and operating costs: ((Student technology; utilities; curriculum, textbooks, library materials, and instructional supplies; instructional professional development for both certificated and classified staff; other building-level costs including maintenance, custodial, and security; and central office administration.))

<u>Per annual average</u> <u>full-time equivalent student</u> <u>in grades K-12</u>
<u>Technology</u> .....
<u>Utilities and insurance</u> .....
<u>Curriculum and textbooks</u> .....
<u>Other supplies and library materials</u> .....
<u>Instructional professional development for certified and classified staff</u> .....
<u>Facilities maintenance</u> .....
<u>Security and central office</u> .....

(b) ((The annual average full-time equivalent student amounts in (a) of this subsection shall be enhanced)) According to an implementation schedule adopted by the legislature and in addition to the amounts provided in (a) of this subsection, the omnibus appropriations act shall provide an amount based on the full-time equivalent student enrollment ((~~in~~)) for each of the following: (i) Exploratory career and technical education courses for students in grades seven through twelve; (ii) laboratory science courses for students in grades nine through twelve; (iii) preparatory career and technical education courses for students in grades nine through twelve offered in a high school; and (iv) preparatory career and technical education courses for students in grades eleven and twelve offered through a skill center.

((~~5~~)) (8) In addition to the allocations otherwise provided under ((subsections (3) and (4) of)) this section ((shall be enhanced as follows to provide additional allocations for classroom teachers and maintenance, supplies, and operating costs)) amounts shall be provided to support the following programs and services:

(a) To provide supplemental instruction and services for underachieving students through the learning assistance program

under RCW 28A.165.005 through 28A.165.065, allocations shall be based on the ~~((percent))~~ district percentage of students in ~~((each school))~~ grades K-12 who ~~((are))~~ were eligible for free ~~((and))~~ or reduced-price meals in the prior school year. The minimum allocation for the ~~((learning assistance))~~ program shall provide ~~((an extended school day and extended school year))~~ for each level of prototypical school ~~((and a per student allocation for maintenance, supplies, and operating costs))~~ resources to provide, on a statewide average, 1.5156 hours per week in extra instruction with a class size of fifteen learning assistance program students per teacher and zero hours per week of instruction during vacation periods.

(b) To provide supplemental instruction and services for students whose primary language is other than English, allocations shall be based on the head count number of students in each school who are eligible for and enrolled in the transitional bilingual instruction program under RCW 28A.180.010 through 28A.180.080. The minimum allocation for each level of prototypical school shall provide ~~((for supplemental instruction based on percent of the school day a student is assumed to receive supplemental instruction and a per student allocation for maintenance, supplies, and operating costs))~~ resources to provide, on a statewide average, 4.7780 hours per week in extra instruction with fifteen transitional bilingual instruction program students per teacher and zero hours per week of instruction during vacation periods.

~~((6))~~ The allocations provided under subsections (3) and (4) of this section shall be enhanced) (c) To provide additional allocations to support programs for highly capable students under RCW 28A.185.010 through 28A.185.030, allocations shall be based on two and three hundred fourteen one-thousandths percent of each school district's full-time equivalent basic education enrollment. The minimum allocation for the programs shall provide ~~((an extended school day and extended school year for each level of prototypical school and a per student allocation for maintenance, supplies, and operating costs))~~ resources to provide, on a statewide average, 2.1590 hours per week in extra instruction with fifteen highly capable program students per teacher and zero hours per week of instruction during vacation periods.

~~((7))~~ (9) The allocations under subsections ((3)(b), (e)(i), and (d), (4), and (8)) (4)(a), (5)(a), (6), and (7) of this section shall be enhanced as provided under RCW 28A.150.390 on an excess cost basis to provide supplemental instructional resources for students with disabilities.

~~((8))~~ The distribution formula shall include allocations to school districts to support certificated and classified staffing of central office administration. The minimum allocation shall be calculated as a percentage, identified in the omnibus appropriations act, of the total allocations for staff under subsections (3) and (6) of this section for all schools in the district.

~~((9))~~ (10)(a) For the purposes of allocations for prototypical high schools and middle schools under subsections (3) and ((5)) (8) of this section that are based on the percent of students in the school who are eligible for free and reduced-price meals, the actual percent of such students in a school shall be adjusted by a factor identified in the omnibus appropriations act to reflect underreporting of free and reduced-price meal eligibility among middle and high school students.

(b) Allocations or enhancements provided under subsections ~~((3) and))~~ (4), (5), and (7) of this section for exploratory and preparatory career and technical education courses shall be provided only for courses approved by the office of the superintendent of public instruction under chapter 28A.700 RCW.

~~((10))~~ (11)(a) This formula for distribution of basic education funds shall be reviewed biennially by the superintendent and governor. The recommended formula shall be subject to approval, amendment or rejection by the legislature.

(b) In the event the legislature rejects the distribution formula recommended by the governor, without adopting a new distribution formula, the distribution formula for the previous school year shall remain in effect.

(c) The enrollment of any district shall be the annual average number of full-time equivalent students and part-time students as provided in RCW 28A.150.350, enrolled on the first school day of each month, including students who are in attendance pursuant to RCW 28A.335.160 and 28A.225.250 who do not reside within the servicing school district. The definition of full-time equivalent student shall be determined by rules of the superintendent of public instruction and shall be included as part of the superintendent's biennial budget request. The definition shall be based on the minimum instructional hour offerings required under RCW 28A.150.220. Any revision of the present definition shall not take effect until approved by the house ways and means committee and the senate ways and means committee.

(d) The office of financial management shall make a monthly review of the superintendent's reported full-time equivalent students in the common schools in conjunction with RCW 43.62.050.

**Sec. 8.** RCW 28A.150.390 and 2009 c 548 s 108 are each amended to read as follows:

(1) The superintendent of public instruction shall submit to each regular session of the legislature during an odd-numbered year a programmed budget request for special education programs for students with disabilities. Funding for programs operated by local school districts shall be on an excess cost basis from appropriations provided by the legislature for special education programs for students with disabilities and shall take account of state funds accruing through RCW 28A.150.260 ~~((3)(b), (e)(i), and (d), (4), and (8))~~ and federal medical assistance and private funds accruing under RCW 74.09.5249 through 74.09.5253 and 74.09.5254 through 74.09.5256) (4)(a), (5)(a), (6), and (7).

(2) The excess cost allocation to school districts shall be based on the following:

(a) A district's annual average headcount enrollment of students ages birth through four and those five year olds not yet enrolled in kindergarten who are eligible for and enrolled in special education, multiplied by the district's base allocation per full-time equivalent student, multiplied by 1.15; and

(b) A district's annual average full-time equivalent basic education enrollment, multiplied by the district's funded enrollment percent, multiplied by the district's base allocation per full-time equivalent student, multiplied by 0.9309.

(3) As used in this section:

(a) "Base allocation" means the total state allocation to all schools in the district generated by the distribution formula under RCW 28A.150.260 ~~((3)(b), (e)(i), and (d), (4), and (8))~~ (4)(a), (5)(a), (6), and (7), to be divided by the district's full-time equivalent enrollment.

(b) "Basic education enrollment" means enrollment of resident students including nonresident students enrolled under RCW 28A.225.225 and students from nonhigh districts enrolled under RCW 28A.225.210 and excluding students residing in another district enrolled as part of an interdistrict cooperative program under RCW 28A.225.250.

(c) "Enrollment percent" means the district's resident special education annual average enrollment, excluding students ages birth through four and those five year olds not yet enrolled in kindergarten, as a percent of the district's annual average full-time equivalent basic education enrollment.

(d) "Funded enrollment percent" means the lesser of the district's actual enrollment percent or twelve and seven-tenths percent.

**Sec. 9.** RCW 28A.150.410 and 2007 c 403 s 1 are each amended to read as follows:

(1) The legislature shall establish for each school year in the appropriations act a statewide salary allocation schedule, for

allocation purposes only, to be used to distribute funds for basic education certificated instructional staff salaries under RCW 28A.150.260. For the purposes of this section, the staff allocations for classroom teachers, teacher librarians, professional development coaches, guidance counselors, and student health services staff under RCW 28A.150.260 are considered allocations for certificated instructional staff.

(2) Salary allocations for state-funded basic education certificated instructional staff shall be calculated by the superintendent of public instruction by determining the district's average salary for certificated instructional staff, using the statewide salary allocation schedule and related documents, conditions, and limitations established by the omnibus appropriations act.

(3) Beginning January 1, 1992, no more than ninety college quarter-hour credits received by any employee after the baccalaureate degree may be used to determine compensation allocations under the state salary allocation schedule and LEAP documents referenced in the omnibus appropriations act, or any replacement schedules and documents, unless:

(a) The employee has a master's degree; or

(b) The credits were used in generating state salary allocations before January 1, 1992.

(4) Beginning in the 2007-08 school year, the calculation of years of service for occupational therapists, physical therapists, speech-language pathologists, audiologists, nurses, social workers, counselors, and psychologists regulated under Title 18 RCW may include experience in schools and other nonschool positions as occupational therapists, physical therapists, speech-language pathologists, audiologists, nurses, social workers, counselors, or psychologists. The calculation shall be that one year of service in a nonschool position counts as one year of service for purposes of this chapter, up to a limit of two years of nonschool service. Nonschool years of service included in calculations under this subsection shall not be applied to service credit totals for purposes of any retirement benefit under chapter 41.32, 41.35, or 41.40 RCW, or any other state retirement system benefits.

**Sec. 10.** RCW 28A.150.100 and 1990 c 33 s 103 are each amended to read as follows:

(1) For the purposes of this section and RCW 28A.150.410 and 28A.400.200, "basic education certificated instructional staff" ~~((shall))~~ means all full-time equivalent classroom teachers, teacher librarians, guidance counselors, certificated student health services staff, and other certificated instructional staff in the following programs as defined for statewide school district accounting purposes: Basic education, secondary vocational education, general instructional support, and general supportive services.

~~((In the 1988-89 school year and thereafter,))~~ Each school district shall maintain a ratio of at least forty-six basic education certificated instructional staff to one thousand annual average full time equivalent students.

**Sec. 11.** 2009 c 548 s 710 (uncodified) is amended to read as follows:

(1) RCW 28A.150.030 (School day) and 1971 ex.s. c 161 s 1 & 1969 ex.s. c 223 s 28A.01.010;

(2) RCW 28A.150.060 (Certificated employee) and 2005 c 497 s 212, 1990 c 33 s 102, 1977 ex.s. c 359 s 17, 1975 1st ex.s. c 288 s 21, & 1973 1st ex.s. c 105 s 1;

~~((RCW 28A.150.100 (Basic education certificated instructional staff - Definition - Ratio to students) and 1990 c 33 s 103 & 1987 1st ex.s. c 2 s 203;~~

~~((4))~~ RCW 28A.150.040 (School year--Beginning--End) and 1990 c 33 s 101, 1982 c 158 s 5, 1977 ex.s. c 286 s 1, 1975-'76 2nd ex.s. c 118 s 22, & 1969 ex.s. c 223 s 28A.01.020;

~~((5))~~ (4) RCW 28A.150.370 (Additional programs for which legislative appropriations must or may be made) and 1995 c 335 s

102, 1995 c 77 s 5, 1990 c 33 s 114, 1982 1st ex.s. c 24 s 1, & 1977 ex.s. c 359 s 7; and

~~((6))~~ (5) RCW 28A.155.180 (Safety net funds--Application--Technical assistance--Annual survey) and 2007 c 400 s 8.

**Sec. 12.** 2009 c 548 s 804 (uncodified) is amended to read as follows:

Sections 101 through 105, 107 through 110, and 701 through 710 of this act take effect September 1, 2011.

**NEW SECTION. Sec. 13.** If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

**NEW SECTION. Sec. 14.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION. Sec. 15.** Sections 6 through 13 of this act take effect September 1, 2011.

**NEW SECTION. Sec. 16.** Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately."

On page 1, line 2 of the title, after "education;" strike the remainder of the title and insert "amending RCW 28A.150.315, 43.41.398, 28A.150.260, 28A.150.390, 28A.150.410, and 28A.150.100; amending 2009 c 548 s 302 (uncodified); amending 2009 c 548 s 710 (uncodified); amending 2009 c 548 s 804 (uncodified); adding a new section to chapter 28A.300 RCW; creating new sections; providing an effective date; and declaring an emergency."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

#### SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House refused to concur in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 2776 and asked the Senate to recede therefrom.

#### MESSAGE FROM THE SENATE

March 8, 2010

Mr. Speaker:

The Senate refuses to concur in the House amendment to ENGROSSED SENATE BILL NO. 6221 and asks the House to recede therefrom, and the same is herewith transmitted.

Thomas Hoemann, Secretary

#### HOUSE AMENDMENT TO SENATE BILL

There being no objection, the House insisted on its amendment to ENGROSSED SENATE BILL NO. 6221 and asked the Senate to concur therein.

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

#### SECOND READING

**ENGROSSED SUBSTITUTE SENATE BILL NO. 6143, by Senate Committee on Ways & Means (originally sponsored by Senator Prentice)**

**Relating to revenue and taxation. Revised for 1st Substitute: Modifying excise tax laws to preserve funding for public schools, colleges, and universities, as well as other public systems essential for the safety, health, and security of all Washingtonians.**

The bill was read the second time.

Representative Hunter moved the adoption of amendment (1531).

Strike everything after the enacting clause and insert the following:

**NEW SECTION. Sec. 1.** In order to preserve funding for education, public safety, health care, environmental protection, and safety net services for children, elderly, disabled, and vulnerable people, it is the intent of the legislature to close obsolete tax preferences, clarify the legislature's intent regarding existing tax policy, and to ensure balanced tax policy while bolstering emerging industries.

**PART I**

**Minimum Nexus Standards**

**NEW SECTION. Sec. 101.** (1) The legislature finds that out-of-state businesses that do not have a physical presence in Washington earn significant income from Washington residents from providing services or collecting royalties on the use of intangible property in this state. The legislature further finds that these businesses receive significant benefits and opportunities provided by the state, such as: Laws providing protection of business interests or regulating consumer credit; access to courts and judicial process to enforce business rights, including debt collection and intellectual property rights; an orderly and regulated marketplace; and police and fire protection and a transportation system benefiting in-state agents and other representatives of out-of-state businesses. Therefore, the legislature intends to extend the state's business and occupation tax to these companies to ensure that they pay their fair share of the cost of services that this state renders and the infrastructure it provides.

(2)(a) The legislature also finds that the current cost apportionment method in RCW 82.04.460(1) for apportioning most service income has been difficult for both taxpayers and the department to apply due in large part (i) to the difficulty in assigning certain costs of doing business inside or outside of this state, and (ii) to its dissimilarity with the apportionment methods used in other states for their business activity taxes.

(b) The legislature further finds that there is a trend among states to adopt a single factor apportionment formula based on sales. The legislature recognizes that adoption of a sales factor only apportionment method has the advantages of simplifying apportionment and making Washington a more attractive place for businesses to expand their property and payroll. For these reasons, the legislature adopts single factor sales apportionment for purposes of apportioning royalty income and certain service income.

(c) Nothing in this act may be construed, however, to authorize apportionment of the gross income or value of products taxable under the following business and occupation tax classifications: Retailing, wholesaling, manufacturing, processing for hire, extracting, extracting for hire, printing, government contracting, public road construction, the classifications in RCW 82.04.280 (2), (4), (6), and (7), and any other activity not specifically included in the definition of apportionable activities in RCW 82.04.460.

**Sec. 102.** RCW 82.04.220 and 1961 c 15 s 82.04.220 are each amended to read as follows:

(1) There is levied and ~~((shall be))~~ collected from every person that has substantial nexus with this state a tax for the act or privilege of engaging in business activities. ~~((Such))~~ The tax ~~((shall be))~~ is measured by the application of rates against value of products, gross proceeds of sales, or gross income of the business, as the case may be.

(2) A person who has substantial nexus with this state in any tax year will be deemed to have substantial nexus with this state for the following four tax years.

**NEW SECTION. Sec. 103.** A new section is added to chapter 82.04 RCW to read as follows:

"Engaging within this state" and "engaging within the state," when used in connection with any apportionable activity as defined in RCW 82.04.460, means that a person generates gross income of the business from sources within this state, such as customers or intangible property located in this state, regardless of whether the person is physically present in this state.

**NEW SECTION. Sec. 104.** A new section is added to chapter 82.04 RCW to read as follows:

(1) A person engaging in business is deemed to have substantial nexus with this state if the person is:

(a) An individual and is a resident or domiciliary of this state;

(b) A business entity and is organized or commercially domiciled in this state; or

(c) A nonresident individual or a business entity that is organized or commercially domiciled outside this state, and in any tax year the person has:

(i) More than fifty thousand dollars of property in this state;

(ii) More than fifty thousand dollars of payroll in this state;

(iii) More than five hundred thousand dollars of receipts from this state; or

(iv) At least twenty-five percent of the person's total property, total payroll, or total receipts in this state.

(2)(a) Property counting toward the thresholds in subsection (1)(c)(i) and (iv) of this section is the average value of the taxpayer's property, including intangible property, owned or rented and used in this state during the tax year.

(b)(i) Property owned by the taxpayer, other than loans and credit card receivables owned by the taxpayer, is valued at its original cost basis. Loans and credit card receivables owned by the taxpayer are valued at their outstanding principal balance, without regard to any reserve for bad debts. However, if a loan or credit card receivable is charged off in whole or in part for federal income tax purposes, the portion of the loan or credit card receivable charged off is deducted from the outstanding principal balance.

(ii) Property rented by the taxpayer is valued at eight times the net annual rental rate. For purposes of this subsection, "net annual rental rate" means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(c) The average value of property must be determined by averaging the values at the beginning and ending of the tax year; but the department may require the averaging of monthly values during the tax year if reasonably required to properly reflect the average value of the taxpayer's property.

(d)(i) For purposes of this subsection (2), loans and credit card receivables are deemed owned and used in this state as follows:

(A) Loans secured by real property, personal property, or both real and personal property, are deemed owned and used in the state if the real property or personal property securing the loan is located within this state. If the property securing the loan is located both within this state and one or more other states, the loan is deemed owned and used in this state if more than fifty percent of the fair market value of the real or personal property is located within this state. If more than fifty percent of the fair market value of the real or personal property is not located within any one state, then the loan is deemed owned and used in this state if the borrower is located in this state. The determination of whether the real or personal property

securing a loan is located within this state must be made, as of the time the original agreement was made, and any and all subsequent substitutions of collateral must be disregarded.

(B) Loans not secured by real or personal property are deemed owned and used in this state if the borrower is located in this state.

(C) Credit card receivables are deemed owned and used in this state if the billing address of the cardholder is in this state.

(ii) The definitions in section 106 of this act apply to this subsection.

(e) Notwithstanding anything else to the contrary in this subsection, property counting toward the thresholds in subsection (1)(c)(i) and (iv) of this section does not include a person's ownership of, or rights in, computer software as defined in RCW 82.04.215, including computer software used in providing a digital automated service; master copies of software; and digital goods and digital codes residing on servers located in this state.

(3)(a) Payroll counting toward the thresholds in subsection (1)(c)(ii) and (iv) of this section is the total amount paid by the taxpayer for compensation in this state during the tax year plus nonemployee compensation paid to representative third parties in this state. Nonemployee compensation paid to representative third parties includes the gross amount paid to nonemployees who represent the taxpayer in interactions with the taxpayer's clients and includes sales commissions.

(b) Compensation is paid in this state if the compensation is properly reportable to this state for unemployment compensation tax purposes, regardless of whether the compensation was actually reported to this state.

(c) Nonemployee compensation is paid in this state if the service performed by the representative third party occurs entirely or primarily within this state.

(d) For purposes of this subsection, "compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees or nonemployees and defined as gross income under 26 U.S.C. Sec. 61 of the federal internal revenue code of 1986, as existing on April 1, 2010.

(4) Receipts counting toward the thresholds in subsection (1)(c)(iii) and (iv) of this section are those amounts included in the numerator of the receipts factor under sections 105 and 106 of this act.

(5)(a) Each December, the department must review the cumulative percentage change in the consumer price index. The department must adjust the thresholds in subsection (1)(c)(i) through (iii) of this section if the consumer price index has changed by five percent or more since the later of July 1, 2010, or the date that the thresholds were last adjusted under this subsection. For purposes of determining the cumulative percentage change in the consumer price index, the department must compare the consumer price index available as of December 1st of the current year with the consumer price index as of the later of July 1, 2010, or the date that the thresholds were last adjusted under this subsection. The thresholds must be adjusted to reflect that cumulative percentage change in the consumer price index. The adjusted thresholds must be rounded to the nearest one thousand dollars. Any adjustment will apply to tax periods that begin after the adjustment is made.

(b) As used in this subsection, "consumer price index" means the consumer price index for all urban consumers (CPI-U) available from the bureau of labor statistics of the United States department of labor.

(6) Subsections (1) through (5) of this section only apply with respect to the taxes imposed under this chapter on apportionable activities as defined in RCW 82.04.460. For purposes of the taxes imposed under this chapter on any activity not included in the definition of apportionable activities in RCW 82.04.460, a person is deemed to have substantial nexus with this state if the person has a physical presence in this state, which need only be demonstrably more than a slightest presence. For purposes of this subsection, a

person is physically present in this state if the person has property or employees in this state. A person is also physically present in this state if the person, either directly or through an agent or other representative, engages in activities in this state that are significantly associated with the person's ability to establish or maintain a market for its products in this state.

**NEW SECTION. Sec. 105.** A new section is added to chapter 82.04 RCW to read as follows:

(1) The apportionable income of a person within the scope of RCW 82.04.460(1) is apportioned to Washington by multiplying its apportionable income by the receipts factor. Persons who are subject to tax under more than one of the tax classifications enumerated in RCW 82.04.460(3)(a) (i) through (ix) must calculate a separate receipts factor for each tax classification that the person is taxable under.

(2) For purposes of subsection (1) of this section, the receipts factor is a fraction and is calculated as provided in subsections (3) and (4) of this section and section 106 of this act.

(3)(a) The numerator of the receipts factor is the total gross income of the business of the taxpayer attributable to this state during the tax year from engaging in an apportionable activity. The denominator of the receipts factor is the total gross income of the business of the taxpayer from engaging in an apportionable activity everywhere in the world during the tax year.

(b) Except as otherwise provided in this section, for purposes of computing the receipts factor, gross income of the business generated from each apportionable activity is attributable to the state:

(i) Where the customer received the benefit of the taxpayer's service or, in the case of gross income from royalties, where the customer used the taxpayer's intangible property.

(ii) If the customer received the benefit of the service or used the intangible property in more than one state, gross income of the business must be attributed to the state in which the benefit of the service was primarily received or in which the intangible property was primarily used.

(iii) If the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i) or (ii) of this subsection (3), gross income of the business must be attributed to the state from which the customer ordered the service or, in the case of royalties, the office of the customer from which the royalty agreement with the taxpayer was negotiated.

(iv) If the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i), (ii), or (iii) of this subsection (3), gross income of the business must be attributed to the state to which the billing statements or invoices are sent to the customer by the taxpayer.

(v) If the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i), (ii), (iii), or (iv) of this subsection (3), gross income of the business must be attributed to the state from which the customer sends payment to the taxpayer.

(vi) If the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i), (ii), (iii), (iv), or (v) of this subsection (3), gross income of the business must be attributed to the state where the customer is located as indicated by the customer's address: (A) Shown in the taxpayer's business records maintained in the regular course of business; or (B) obtained during consummation of the sale or the negotiation of the contract for services or for the use of the taxpayer's intangible property, including any address of a customer's payment instrument when readily available to the taxpayer and no other address is available.

(vii) If the taxpayer is unable to attribute gross income of the business under the provisions of (b)(i), (ii), (iii), (iv), (v), or (vi) of this subsection (3), gross income of the business must be attributed to the commercial domicile of the taxpayer.

(viii) For purposes of this subsection (3)(b), "customer" means a person or entity to whom the taxpayer makes a sale or renders



services or from whom the taxpayer otherwise receives gross income of the business. "Customer" includes anyone who pays royalties or charges in the nature of royalties for the use of the taxpayer's intangible property.

(c) Gross income of the business from engaging in an apportionable activity must be excluded from the denominator of the receipts factor if, in respect to such activity, at least some of the activity is performed in this state, and the gross income is attributable under (b) of this subsection (3) to a state in which the taxpayer is not taxable. For purposes of this subsection (3)(c), "not taxable" means that the taxpayer is not subject to a business activities tax by that state, except that a taxpayer is taxable in a state in which it would be deemed to have substantial nexus with that state under the standards in section 104(1) of this act regardless of whether that state imposes such a tax. "Business activities tax" means a tax measured by the amount of, or economic results of, business activity conducted in a state. The term includes taxes measured in whole or in part on net income or gross income or receipts. "Business activities tax" does not include a sales tax, use tax, or a similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or a tax imposed on the privilege of doing business.

(d) This subsection (3) does not apply to financial institutions with respect to apportionable income taxable under RCW 82.04.290. Financial institutions must calculate the receipts factor as provided in section 106 of this act and subsection (4) of this section with respect to apportionable income taxable under RCW 82.04.290. For purposes of this subsection, "financial institution" has the same meaning as in section 106 of this act.

(4) A taxpayer may calculate the receipts factor for the current tax year based on the most recent calendar year for which information is available for the full calendar year. If a taxpayer does not calculate the receipts factor for the current tax year based on previous calendar year information as authorized in this subsection, the business must use current year information to calculate the receipts factor for the current tax year. In either case, a taxpayer must correct the reporting for the current tax year when complete information is available to calculate the receipts factor for that year, but not later than October 31st of the following tax year. Interest will apply to any additional tax due on a corrected tax return. Interest must be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the original return was due, and will accrue until the additional taxes are paid. Penalties as provided in RCW 82.32.090 will apply to any such additional tax due only if the current tax year reporting is not corrected and the additional tax is not paid by October 31st of the following tax year. Interest as provided in RCW 82.32.060 will apply to any tax paid in excess of that properly due on a return as a result of a taxpayer using previous calendar year data or incomplete current-year data to calculate the receipts factor.

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

(a) "Apportionable activities" and "apportionable income" have the same meaning as in RCW 82.04.460.

(b) "State" has the same meaning as in section 106 of this act.

**NEW SECTION. Sec. 106.** A new section is added to chapter 82.04 RCW to read as follows:

(1) A financial institution must, for purposes of apportioning gross income of the business taxable under RCW 82.04.290 using the apportionment method provided in section 105(1) of this act, calculate the receipts factor as provided in this section and section 105(4) of this act. Financial institutions that are subject to tax under any other tax classification enumerated in RCW 82.04.460(3)(a) (i) through (v) and (vii) through (ix) must calculate a separate receipts factor, as provided in section 105 of this act, for each of the other tax classifications that the financial institution is taxable under.

(2)(a)(i) The numerator of the receipts factor includes gross income from interest, fees, and penalties on loans secured by real property, personal property, or both real and personal property, if the real or personal property is located within this state. If the property securing the loan is located both within this state and one or more other states, the income described in this subsection (2)(a)(i) is included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real or personal property is located within this state. If more than fifty percent of the fair market value of the real or personal property is not located within any one state, then the income described in this subsection (2)(a)(i) is included in the numerator of the receipts factor if the borrower is located in this state.

(ii) The denominator of the receipts factor includes gross income from interest, fees, and penalties on loans secured by real property, personal property, or both real and personal property, wherever the property is located.

(iii) The determination of whether the real or personal property securing a loan is located within this state must be made as of the time the original agreement was made and any and all subsequent substitutions of collateral must be disregarded.

(b) The numerator of the receipts factor includes gross income from interest, fees, and penalties on loans not secured by real or personal property if the borrower is located in this state. The denominator of the receipts factor includes gross income from interest, fees, and penalties on loans that are not secured by real or personal property, regardless of where the borrower is located.

(c) The receipts factor includes gross income from net gains, which may not be less than zero, on the sale of loans. Net gains on the sale of loans includes income recorded under the coupon stripping rules of 26 U.S.C. Sec. 1286 of the federal internal revenue code of 1986, as existing on April 1, 2010.

(i) The amount of net gains, which may not be less than zero, on the sale of loans secured by real property, personal property, or both real and personal property, included in the numerator of the receipts factor is determined by multiplying such net gains by a fraction. The numerator of the fraction is the amount included in the numerator of the receipts factor under (a) of this subsection (2). The denominator of the fraction is the amount included in the denominator of the receipts factor under (a) of this subsection (2).

(ii) The amount of net gains, which may not be less than zero, from the sale of loans not secured by real or personal property included in the numerator of the receipts factor is determined by multiplying such net gains by a fraction. The numerator of the fraction is the amount included in the numerator of the receipts factor under (b) of this subsection (2). The denominator of the fraction is the amount included in the denominator of the receipts factor under (b) of this subsection (2).

(iii) The denominator of the receipts factor includes gross income from net gains, which may not be less than zero, on all sales of loans.

(d) Loan servicing fees are included in the receipts factor as provided in (d)(i) and (ii) of this subsection (2).

(i)(A)(I) The numerator of the receipts factor includes gross income from loan servicing fees derived from loans secured by real property, personal property, or both real and personal property, multiplied by a fraction. The numerator of the fraction is the amount included in the numerator of the receipts factor under (a) of this subsection (2). The denominator of the fraction is the amount included in the denominator of the receipts factor under (a) of this subsection (2).

(II) The denominator of the receipts factor includes gross income from all loan servicing fees derived from loans secured by real property, personal property, or both real and personal property.

(B)(I) The numerator of the receipts factor includes gross income from loan servicing fees derived from loans not secured by real or personal property multiplied by a fraction. The numerator of the

fraction is the amount included in the numerator of the receipts factor under (b) of this subsection (2). The denominator of the fraction is the amount included in the denominator of the receipts factor under (b) of this subsection (2).

(II) The denominator of the receipts factor includes gross income from all loan servicing fees derived from loans not secured by real or personal property.

(ii) If the financial institution receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor includes such fees if the borrower is located in this state. The denominator of the receipts factor includes all such fees.

(e)(i) Interest, dividends, net gains (which may not be less than zero), and other income from investment assets and activities and from trading assets and activities, as provided in this subsection (2)(e), are included in the receipts factor. Investment assets and activities and trading assets and activities include but are not limited to: Investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts; notional principal contracts such as swaps; equities; and foreign currency transactions.

(ii) The numerator of the receipts factor includes gross income from interest, dividends, net gains (which may not be less than zero), and other receipts from investment assets and activities and from trading assets and activities described in (e)(i) of this subsection (2) that are attributable to this state. The denominator of the receipts factor includes all such gross income wherever earned.

(A) The amount of interest, dividends, net gains (which may not be less than zero), and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator of the receipts factor is determined by multiplying all such income from such assets and activities by a fraction. The numerator of the fraction is the average value of such assets that are properly assigned to a regular place of business of the financial institution within this state. The denominator of the fraction is the average value of all such assets.

(B)(I) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator of the receipts factor is determined by multiplying the amount described in (e)(ii)(B)(II) of this subsection (2) from such funds and such securities by a fraction. The numerator of the fraction is the average value of federal funds sold and securities purchased under agreements to resell that are properly assigned to a regular place of business of the financial institution within this state. The denominator of the fraction is the average value of all such funds and such securities.

(II) The amount used for purposes of making the calculation in (e)(ii)(B)(I) of this subsection (2) is the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(C)(I) The amount of interest, dividends, gains and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, but excluding amounts described in (e)(ii)(A) or (B) of this subsection (2), attributable to this state and included in the numerator of the receipts factor is determined by multiplying the amount described in (e)(ii)(C)(II) of this subsection (2) by a fraction. The numerator of the fraction is the average value of such trading assets that are properly assigned to a regular place of business of the financial institution within this state. The denominator of the fraction is the average value of all such assets.

(II) The amount used for purposes of making the calculation in (e)(ii)(C)(I) of this subsection (2) is the amount by which interest,

dividends, gains and other receipts from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.

(D) For purposes of this subsection (2)(e)(ii), average value must be determined using the rules for determining the average value of property set forth in section 104(2) of this act.

(iii) In lieu of using the method set forth in (e)(ii) of this subsection (2), the financial institution may elect, or the department may require, in order to fairly represent the business activity of the financial institution in this state, the use of the method set forth in this subsection (2)(e)(iii).

(A) The amount of interest, dividends, net gains (which may not be less than zero), and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator of the receipts factor is determined by multiplying all such income from such assets and activities by a fraction. The numerator of the fraction is the gross income from such assets and activities that are properly assigned to a regular place of business of the financial institution within this state. The denominator of the fraction is the gross income from all such assets and activities.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator of the receipts factor is determined by multiplying the amount described in (e)(ii)(B)(II) of this subsection (2) from such funds and such securities by a fraction. The numerator of the fraction is the gross income from such funds and such securities that are properly assigned to a regular place of business of the financial institution within this state. The denominator of the fraction is the gross income from all such funds and such securities.

(C) The amount of interest, dividends, gains and other receipts from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, but excluding amounts described in (e)(ii)(A) or (B) of this subsection (2), attributable to this state and included in the numerator of the receipts factor is determined by multiplying the amount described in (e)(ii)(C)(II) of this subsection (2) by a fraction. The numerator of the fraction is the gross income from such trading assets and activities that are properly assigned to a regular place of business of the financial institution within this state. The denominator of the fraction is the gross income from all such assets and activities.

(iv) If the financial institution elects or is required by the department to use the method set forth in (e)(iii) of this subsection (2), it must use this method for subsequent tax returns unless the financial institution receives prior permission from the department to use, or the department requires, a different method.

(v) The financial institution has the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. If the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one such regular place of business is in this state and one such regular place of business is outside this state, such asset or activity is considered to be located at the regular place of business of the financial institution where the investment or trading policies or guidelines with respect to the asset or activity are established. Such policies and guidelines are presumed, subject to rebuttal by preponderance of the evidence, to be established at the commercial domicile of the financial institution.

(f) The numerator of the receipts factor includes gross income from interest, fees, and penalties on credit card receivables, and gross income from fees charged to cardholders, such as annual fees, if the

billing address of the cardholder is in this state. The denominator of the receipts factor includes gross income from interest, fees, and penalties on all credit card receivables, and gross income from fees charged to all cardholders, such as annual fees.

(g)(i) The numerator of the receipts factor includes gross income from net gains, which may not be less than zero, from the sale of credit card receivables multiplied by a fraction. The numerator of the fraction is the amount included in the numerator of the receipts factor under (f) of this subsection (2). The denominator of the fraction is the amount included in the denominator of the receipts factor under (f) of this subsection (2).

(ii) The denominator of the receipts factor includes gross income from net gains, which may not be less than zero, from all sales of credit card receivables.

(h)(i) The numerator of the receipts factor includes gross income from all credit card issuer's reimbursement fees multiplied by a fraction. The numerator of the fraction is the amount included in the numerator of the receipts factor under (f) of this subsection (2). The denominator of the fraction is the amount included in the denominator of the receipts factor under (f) of this subsection (2).

(ii) The denominator of the receipts factor includes gross income from all credit card issuer's reimbursement fees.

(i) The numerator of the receipts factor includes gross income from merchant discounts if the commercial domicile of the merchant is in this state. The denominator of the receipts factor includes gross income from all merchant discounts. For purposes of this subsection (2)(i), gross income must be computed net of any cardholder charge backs but may not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its cardholders.

(j) Apportionable income that would be attributable under this subsection (2) to a state in which the financial institution is not taxable must be excluded from the denominator of the receipts factor if at least some of the activity that generated the income is performed in this state, and the gross income is attributable under this subsection (2) to a state in which the taxpayer is not taxable. For purposes of this subsection (2)(j), "not taxable" has the same meaning as in section 105 of this act.

(k)(i) The numerator of the receipts factor includes apportionable income taxable under RCW 82.04.290 and not otherwise included in the receipts factor under this subsection (2) if the activity producing the apportionable income is performed in this state. If the activity is performed both inside and outside this state, the numerator of the receipts factor includes apportionable income taxable under RCW 82.04.290 and not otherwise included in the receipts factor under this subsection (2) if a greater proportion of the activity producing the apportionable income is performed in this state based on cost of performance.

(ii) The denominator of the receipts factor includes apportionable income taxable under RCW 82.04.290 from activities performed everywhere, where the apportionable income taxable under RCW 82.04.290 is not otherwise included in the receipts factor under this subsection (2).

(3) Except as otherwise provided in subsection (4) of this section, the definitions in the multistate tax commission's recommended formula for the apportionment and allocation of net income of financial institutions, adopted November 17, 1994, as existing on the effective date of this section, apply to this section.

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

(a) "Apportionable income" has the same meaning as in RCW 82.04.460.

(b) "Credit card" means a card or device existing for the purpose of obtaining money, property, labor, or services on credit.

(c) "Financial institution" has the same meaning as in WAC 458-20-14601. However, the department may not make any substantive

changes to the definition of "financial institution" in WAC 458-20-14601 unless the changes implement a legislative amendment to this definition of financial institution.

(d) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

**Sec. 107.** RCW 82.04.2907 and 2009 c 535 s 407 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of receiving income from royalties (~~or charges in the nature of royalties for the granting of intangible rights, such as copyrights, licenses, patents, or franchise fees~~), the amount of tax with respect to ~~((such))~~ the business ~~((shall be))~~ is equal to the gross income from royalties (~~or charges in the nature of royalties from the business~~) multiplied by the rate of 0.484 percent.

(2) For the purposes of this section, "gross income from royalties" means compensation for the use of intangible property, ~~((such as))~~ including charges in the nature of royalties, regardless of where the intangible property will be used. For purposes of this subsection, "intangible property" includes copyrights, patents, licenses, franchises, trademarks, trade names, and similar items. ~~((H))~~ "Gross income from royalties" does not include compensation for any natural resource, the licensing of prewritten computer software to the end user, or the licensing ~~((or use))~~ of digital goods, digital codes, or digital automated services to the end user as defined in RCW 82.04.190(11).

**Sec. 108.** RCW 82.04.460 and 2004 c 174 s 6 are each amended to read as follows:

(1) ~~Except as otherwise provided in this section, any person ((rendering services)) earning apportionable income taxable under ((RCW 82.04.290 or 82.04.2908)) this chapter and ((maintaining places of business both within and without this state which contribute to the rendition of such services shall)) also taxable in another state, must, for the purpose of computing tax liability under ((RCW 82.04.290 or 82.04.2908)) this chapter, apportion to this state, in accordance with section 105 of this act, that portion of the person's ((gross)) apportionable income ((which is)) derived from ((services rendered)) business activities performed within this state. ((Where such apportionment cannot be accurately made by separate accounting methods, the taxpayer shall apportion to this state that proportion of the taxpayer's total income which the cost of doing business within the state bears to the total cost of doing business both within and without the state.))~~

(2) ~~((Notwithstanding the provision of subsection (1) of this section, persons doing business both within and without the state who receive gross income from service charges, as defined in RCW 63.14.010 (relating to amounts charged for granting the right or privilege to make deferred or installment payments) or who receive gross income from engaging in business as financial institutions within the scope of chapter 82.14A RCW (relating to city taxes on financial institutions) shall apportion or allocate gross income taxable under RCW 82.04.290 to this state pursuant to rules promulgated by the department consistent with uniform rules for apportionment or allocation developed by the states.~~

~~((3))~~ The department ~~((shall))~~ may by rule provide a method or methods of apportioning or allocating gross income derived from sales of telecommunications service and competitive telephone service~~((s))~~ taxed under this chapter, if the gross proceeds of sales subject to tax under this chapter do not fairly represent the extent of the taxpayer's income attributable to this state. ~~((The rules shall be, so far as feasible, consistent with the methods of apportionment contained in this section and shall require the consideration of those facts, circumstances, and apportionment factors as will result in an equitable and constitutionally permissible division of the~~

services.) The rule must provide for an equitable and constitutionally permissible division of the tax base.

(3) For purposes of this section, the following definitions apply unless the context clearly requires otherwise:

(a) "Apportionable income" means gross income of the business generated from engaging in apportionable activities, including income received from apportionable activities performed outside this state if the income would be taxable under this chapter if received from activities in this state, less the exemptions and deductions allowable under this chapter. For purposes of this subsection, "apportionable activities" means only those activities taxed under:

(i) RCW 82.04.255;

(ii) RCW 82.04.260 (3), (4), (5), (6), (7), (8), (9), and (12);

(iii) RCW 82.04.280(5);

(iv) RCW 82.04.285;

(v) RCW 82.04.286;

(vi) RCW 82.04.290;

(vii) RCW 82.04.2907;

(viii) RCW 82.04.2908; and

(ix) RCW 82.04.260(13), 82.04.263, and 82.04.280(1), but only to the extent of any activity that would be taxable under any of the provisions enumerated under (a)(i) through (viii) of this subsection (3) if the tax classifications in RCW 82.04.260(13), 82.04.263, and 82.04.280(1) did not exist.

(b)(i) "Taxable in another state" means that the taxpayer is subject to a business activities tax by another state on its income received from engaging in apportionable activities; or the taxpayer is not subject to a business activities tax by another state on its income received from engaging in apportionable activities, but any other state has jurisdiction to subject the taxpayer to a business activities tax on such income under the substantial nexus standards in section 104(1) of this act.

(ii) For purposes of this subsection (3)(b):

(A) "Business activities tax" has the same meaning as in section 105 of this act; and

(B) "State" has the same meaning as in section 106 of this act.

## **PART II**

### **Tax Avoidance Transactions**

NEW SECTION. Sec. 201. A new section is added to chapter 82.32 RCW to read as follows:

(1)(a) Unless otherwise specifically provided in statute, the department must respect the form of a transaction, except where the form of the transaction or a related series of transactions is adopted for the purpose of:

(i) Disguising income received, or otherwise avoiding tax on income, from a person that is not affiliated with the taxpayer;

(ii) Disguising the purchase or sale of property or services from or to a person that is not affiliated with the taxpayer; or

(iii) Avoiding the tax imposed in RCW 82.12.020 on the use of property in this state that is owned by an entity organized outside of Washington.

(b) For purposes of this subsection, "affiliated" means under common control. "Control" means the possession, directly or indirectly, of more than fifty percent of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise.

(2)(a) The department must, as resources allow, adopt rules to assist in determining when to disregard the form of a transaction or a related series of transactions adopted for the purposes described in subsection (1)(a)(i) through (iii) of this section. In adopting rules, the department may consider the following judicial doctrines, except to the extent such doctrines are inconsistent with express provisions contained in Washington state statutes:

(i) The sham transaction doctrine;

(ii) The economic substance doctrine;

(iii) The business purpose doctrine;

(iv) The substance over form doctrine;

(v) The step transaction doctrine; and

(vi) The assignment of income doctrine.

(b) The adoption of a rule as required under this subsection is not a condition precedent for the department to use the authority provided in this section. Any rules adopted under this section must include examples of transactions that the department will disregard for tax purposes.

(3) The provisions of this section are cumulative and nonexclusive and do not affect any other remedies provided to the department under statutory or common law.

NEW SECTION. Sec. 202. A new section is added to chapter 82.32 RCW to read as follows:

(1)(a) The department may not use section 201 of this act to disregard any transaction, plan, or arrangement initiated before April 1, 2010, if, in respect to such transaction, plan, or arrangement, the taxpayer had reported its tax liability in conformance with either specific written instructions provided by the department to the taxpayer, a determination published under the authority of RCW 82.32.410, or other document published by the department.

(b) This section does not apply if the transaction, plan, or arrangement engaged in by the taxpayer differs materially from the transaction, plan, or arrangement that was addressed in the specific written instructions, published determination, or other published document.

(2) For purposes of this section, "specific written instructions" means tax reporting instructions provided to a taxpayer and which specifically identifies the taxpayer to whom the instructions apply. Specific written instructions may be provided as part of an audit, tax assessment, determination, closing agreement, or in response to a binding ruling request.

Sec. 203. RCW 82.32.090 and 2006 c 256 s 6 are each amended to read as follows:

(1) If payment of any tax due on a return to be filed by a taxpayer is not received by the department of revenue by the due date, there ~~((shall be))~~ is assessed a penalty of five percent of the amount of the tax; and if the tax is not received on or before the last day of the month following the due date, there ~~((shall be))~~ is assessed a total penalty of fifteen percent of the amount of the tax under this subsection; and if the tax is not received on or before the last day of the second month following the due date, there ~~((shall be))~~ is assessed a total penalty of twenty-five percent of the amount of the tax under this subsection. No penalty so added shall be less than five dollars.

(2) If the department of revenue determines that any tax has been substantially underpaid, there ~~((shall be))~~ is assessed a penalty of five percent of the amount of the tax determined by the department to be due. If payment of any tax determined by the department to be due is not received by the department by the due date specified in the notice, or any extension thereof, there ~~((shall be))~~ is assessed a total penalty of fifteen percent of the amount of the tax under this subsection; and if payment of any tax determined by the department to be due is not received on or before the thirtieth day following the due date specified in the notice of tax due, or any extension thereof, there ~~((shall be))~~ is assessed a total penalty of twenty-five percent of the amount of the tax under this subsection. No penalty so added ~~((shall))~~ may be less than five dollars. As used in this section, "substantially underpaid" means that the taxpayer has paid less than eighty percent of the amount of tax determined by the department to be due for all of the types of taxes included in, and for the entire period of time covered by, the department's examination, and the amount of underpayment is at least one thousand dollars.

(3) If a warrant ~~((be))~~ is issued by the department ~~((of revenue))~~ for the collection of taxes, increases, and penalties, there ~~((shall be))~~ is added thereto a penalty of ten percent of the amount of the tax, but not less than ten dollars.

(4) If the department finds that a person has engaged in any business or performed any act upon which a tax is imposed under this title and that person has not obtained from the department a registration certificate as required by RCW 82.32.030, the department ~~((shall))~~ must impose a penalty of five percent of the amount of tax due from that person for the period that the person was not registered as required by RCW 82.32.030. The department ~~((shall))~~ may not impose the penalty under this subsection (4) if a person who has engaged in business taxable under this title without first having registered as required by RCW 82.32.030, prior to any notification by the department of the need to register, obtains a registration certificate from the department.

(5) If the department finds that all or any part of a deficiency resulted from the disregard of specific written instructions as to reporting or tax liabilities, the department ~~((shall))~~ must add a penalty of ten percent of the amount of the additional tax found due because of the failure to follow the instructions. A taxpayer disregards specific written instructions when the department ~~((of revenue))~~ has informed the taxpayer in writing of the taxpayer's tax obligations and the taxpayer fails to act in accordance with those instructions unless the department has not issued final instructions because the matter is under appeal pursuant to this chapter or departmental regulations. The department ~~((shall))~~ may not assess the penalty under this section upon any taxpayer who has made a good faith effort to comply with the specific written instructions provided by the department to that taxpayer. Specific written instructions may be given as a part of a tax assessment, audit, determination, or closing agreement, provided that such specific written instructions ~~((shall))~~ apply only to the taxpayer addressed or referenced on such documents. Any specific written instructions by the department ~~((of revenue shall))~~ must be clearly identified as such and ~~((shall))~~ must inform the taxpayer that failure to follow the instructions may subject the taxpayer to the penalties imposed by this subsection.

(6) If the department finds that all or any part of a deficiency resulted from engaging in a disregarded transaction, as described in section 201(1)(a) (i), (ii), or (iii) of this act, the department must assess a penalty of thirty-five percent of the additional tax found to be due as a result of engaging in a transaction disregarded by the department under section 201(1)(a) (i), (ii), or (iii) of this act. The penalty provided in this subsection may be assessed together with any other applicable penalties provided in this section on the same tax found to be due, except for the evasion penalty provided in subsection (7) of this section. The department may not assess the penalty under this subsection if, before the department discovers the taxpayer's use of a transaction described under section 201(1)(a) (i), (ii), or (iii) of this act, the taxpayer discloses its participation in the transaction to the department.

(7) If the department finds that all or any part of the deficiency resulted from an intent to evade the tax payable ((hereunder)), a further penalty of fifty percent of the additional tax found to be due ((shall)) must be added.

~~((7))~~ (8) The penalties imposed under subsections (1) through (4) of this section can each be imposed on the same tax found to be due. This subsection does not prohibit or restrict the application of other penalties authorized by law.

~~((8))~~ (9) The department ((of revenue)) may not impose both the evasion penalty and the penalty for disregarding specific written instructions or the penalty provided in subsection (6) of this section on the same tax found to be due.

~~((9))~~ (10) For the purposes of this section, "return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department ((of revenue)), and that has a statutorily defined due date.

**NEW SECTION. Sec. 204.** (1) The legislature finds that this state's tax policy with respect to the taxation of transactions between

affiliated entities and the income derived from such transactions (intercompany transactions) has motivated some taxpayers to engage in transactions designed solely or primarily to minimize the tax effects of intercompany transactions. The legislature further finds that some intercompany transactions result from taxpayers that are required to establish affiliated entities to comply with regulatory mandates and that transactions between such affiliates effectively increases the tax burden in this state on the affiliated group of entities.

(2) Therefore, as existing resources allow, the department of revenue is directed to conduct a review of the state's tax policy with respect to the taxation of intercompany transactions. The review must include the impacts of such transactions under the state's business and occupation tax and state and local sales and use taxes. The department may include other taxes in the review as it deems appropriate.

(3) In conducting the review, the department must examine how this state's tax policy compares to the tax policy of other states with respect to the taxation of intercompany transactions. The department's review must include an analysis of potential alternatives to the current policy of taxing intercompany transactions, including their estimated revenue impacts if practicable.

(4) In conducting this review, the department may seek input from members of the business community and others as it deems appropriate.

(5) The department must report its findings to the fiscal committees of the house of representatives and senate by December 1, 2010. However, if the department has not completed its review by December 1, 2010, the department must provide the fiscal committees of the legislature with a brief status report by December 1, 2010, and the final report by December 1, 2011.

**Sec. 205.** RCW 82.12.020 and 2009 c 535 s 305 are each amended to read as follows:

(1) There is ~~((hereby))~~ levied and ~~((there shall be))~~ collected from every person in this state a tax or excise for the privilege of using within this state as a consumer any:

(a) Article of tangible personal property ~~((purchased at retail, or))~~ acquired by ~~((lease, gift, repossession, or bailment, or extracted or produced or manufactured by the person so using the same, or otherwise furnished to a person engaged in any business taxable under RCW 82.04.280 (2) or (7)))~~ the user in any manner, including tangible personal property acquired at a casual or isolated sale, and including by-products used by the manufacturer thereof, except as otherwise provided in this chapter, irrespective of whether the article or similar articles are manufactured or are available for purchase within this state;

(b) Prewritten computer software, regardless of the method of delivery, but excluding prewritten computer software that is either provided free of charge or is provided for temporary use in viewing information, or both;

(c) Services defined as a retail sale in RCW 82.04.050 (2)(a) or (g), (3)(a), or (6)(b), excluding services defined as a retail sale in RCW 82.04.050(6)(b) that are provided free of charge;

(d) Extended warranty; or

(e)(i) Digital good, digital code, or digital automated service, including the use of any services provided by a seller exclusively in connection with digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

(ii) With respect to the use of digital goods, digital automated services, and digital codes acquired by purchase, the tax imposed in this subsection (1)(e) applies in respect to:

(A) Sales in which the seller has granted the purchaser the right of permanent use;

(B) Sales in which the seller has granted the purchaser a right of use that is less than permanent;

(C) Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and

(D) Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

(iii) With respect to digital goods, digital automated services, and digital codes acquired other than by purchase, the tax imposed in this subsection (1)(e) applies regardless of whether or not the consumer has a right of permanent use or is obligated to make continued payment as a condition of use.

(2) The provisions of this chapter do not apply in respect to the use of any article of tangible personal property, extended warranty, digital good, digital code, digital automated service, or service taxable under RCW 82.04.050 (2)(a) or (g), (3)(a), or (6)(b), if the sale to, or the use by, the present user or the present user's bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by the present user's bailor or donor.

(3)(a) Except as provided in this section, payment of the tax imposed by this chapter or chapter 82.08 RCW by one purchaser or user of tangible personal property, extended warranty, digital good, digital code, digital automated service, or other service does not have the effect of exempting any other purchaser or user of the same property, extended warranty, digital good, digital code, digital automated service, or other service from the taxes imposed by such chapters.

(b) The tax imposed by this chapter does not apply:

(i) If the sale to, or the use by, the present user or his or her bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by his or her bailor or donor;

(ii) In respect to the use of any article of tangible personal property acquired by bailment and the tax has once been paid based on reasonable rental as determined by RCW 82.12.060 measured by the value of the article at time of first use multiplied by the tax rate imposed by chapter 82.08 RCW or this chapter as of the time of first use;

(iii) In respect to the use of any article of tangible personal property acquired by bailment, if the property was acquired by a previous bailee from the same bailor for use in the same general activity and the original bailment was prior to June 9, 1961; or

(iv) To the use of digital goods or digital automated services, which were obtained through the use of a digital code, if the sale of the digital code to, or the use of the digital code by, the present user or the present user's bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by the present user's bailor or donor.

(4)(a) Except as provided in (b) of this subsection (4), the tax is levied and must be collected in an amount equal to the value of the article used, value of the digital good or digital code used, value of the extended warranty used, or value of the service used by the taxpayer, multiplied by the applicable rates in effect for the retail sales tax under RCW 82.08.020.

(b) In the case of a seller required to collect use tax from the purchaser, the tax must be collected in an amount equal to the purchase price multiplied by the applicable rate in effect for the retail sales tax under RCW 82.08.020.

(5) For purposes of the tax imposed in this section, "person" includes anyone within the definition of "buyer," "purchaser," and "consumer" in RCW 82.08.010.

**Sec. 206.** RCW 82.45.010 and 2008 c 116 s 3 and 2008 c 6 s 701 are each reenacted and amended to read as follows:

(1) As used in this chapter, the term "sale" (~~shall have~~) has its ordinary meaning and (~~shall~~) includes any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property, including standing timber, or any estate or interest therein for a valuable consideration, and any contract for such conveyance, grant, assignment, quitclaim, or transfer, and any lease with an option to purchase real property, including standing timber, or any estate or

interest therein or other contract under which possession of the property is given to the purchaser, or any other person at the purchaser's direction, and title to the property is retained by the vendor as security for the payment of the purchase price. The term also includes the grant, assignment, quitclaim, sale, or transfer of improvements constructed upon leased land.

(2)(a) The term "sale" also includes the transfer or acquisition within any twelve-month period of a controlling interest in any entity with an interest in real property located in this state for a valuable consideration.

(b) For the sole purpose of determining whether, pursuant to the exercise of an option, a controlling interest was transferred or acquired within a twelve-month period, the date that the option agreement was executed is the date on which the transfer or acquisition of the controlling interest is deemed to occur. For all other purposes under this chapter, the date upon which the option is exercised is the date of the transfer or acquisition of the controlling interest.

(c) For purposes of this subsection, all acquisitions of persons acting in concert (~~shall~~) must be aggregated for purposes of determining whether a transfer or acquisition of a controlling interest has taken place. The department (~~of revenue shall~~) must adopt standards by rule to determine when persons are acting in concert. In adopting a rule for this purpose, the department (~~shall~~) must consider the following:

~~((a))~~ (i) Persons (~~shall~~) must be treated as acting in concert when they have a relationship with each other such that one person influences or controls the actions of another through common ownership; and

~~((b))~~ (ii) When persons are not commonly owned or controlled, they (~~shall~~) must be treated as acting in concert only when the unity with which the purchasers have negotiated and will consummate the transfer of ownership interests supports a finding that they are acting as a single entity. If the acquisitions are completely independent, with each purchaser buying without regard to the identity of the other purchasers, then the acquisitions (~~shall be~~) are considered separate acquisitions.

(3) The term "sale" (~~shall~~) does not include:

(a) A transfer by gift, devise, or inheritance.

(b) A transfer of any leasehold interest other than of the type mentioned above.

(c) A cancellation or forfeiture of a vendee's interest in a contract for the sale of real property, whether or not such contract contains a forfeiture clause, or deed in lieu of foreclosure of a mortgage.

(d) The partition of property by tenants in common by agreement or as the result of a court decree.

(e) The assignment of property or interest in property from one spouse or one domestic partner to the other spouse or other domestic partner in accordance with the terms of a decree of dissolution of marriage or state registered domestic partnership or in fulfillment of a property settlement agreement.

(f) The assignment or other transfer of a vendor's interest in a contract for the sale of real property, even though accompanied by a conveyance of the vendor's interest in the real property involved.

(g) Transfers by appropriation or decree in condemnation proceedings brought by the United States, the state or any political subdivision thereof, or a municipal corporation.

(h) A mortgage or other transfer of an interest in real property merely to secure a debt, or the assignment thereof.

(i) Any transfer or conveyance made pursuant to a deed of trust or an order of sale by the court in any mortgage, deed of trust, or lien foreclosure proceeding or upon execution of a judgment, or deed in lieu of foreclosure to satisfy a mortgage or deed of trust.

(j) A conveyance to the federal housing administration or veterans administration by an authorized mortgagee made pursuant to

a contract of insurance or guaranty with the federal housing administration or veterans administration.

(k) A transfer in compliance with the terms of any lease or contract upon which the tax as imposed by this chapter has been paid or where the lease or contract was entered into prior to the date this tax was first imposed.

(l) The sale of any grave or lot in an established cemetery.

(m) A sale by the United States, this state or any political subdivision thereof, or a municipal corporation of this state.

(n) A sale to a regional transit authority or public corporation under RCW 81.112.320 under a sale/leaseback agreement under RCW 81.112.300.

(o) A transfer of real property, however effected, if it consists of a mere change in identity or form of ownership of an entity where there is no change in the beneficial ownership. These include transfers to a corporation or partnership which is wholly owned by the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner (~~(PROVIDED, That)~~). However, if thereafter such transferee corporation or partnership voluntarily transfers such real property, or such transferor, spouse or domestic partner, or children of the transferor or the transferor's spouse or domestic partner voluntarily transfer stock in the transferee corporation or interest in the transferee partnership capital, as the case may be, to other than ~~((+))~~ (i) the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner, ~~((2))~~ (ii) a trust having the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner as the only beneficiaries at the time of the transfer to the trust, or ~~((3))~~ (iii) a corporation or partnership wholly owned by the original transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner, within three years of the original transfer to which this exemption applies, and the tax on the subsequent transfer has not been paid within sixty days of becoming due, excise taxes ~~(shall)~~ become due and payable on the original transfer as otherwise provided by law.

(p)(i) A transfer that for federal income tax purposes does not involve the recognition of gain or loss for entity formation, liquidation or dissolution, and reorganization, including but not limited to nonrecognition of gain or loss because of application of ~~(section)~~ 26 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the internal revenue code of 1986, as amended.

(ii) However, the transfer described in (p)(i) of this subsection cannot be preceded or followed within a twelve-month period by another transfer or series of transfers, that, when combined with the otherwise exempt transfer or transfers described in (p)(i) of this subsection, results in the transfer of a controlling interest in the entity for valuable consideration, and in which one or more persons previously holding a controlling interest in the entity receive cash or property in exchange for any interest the person or persons acting in concert hold in the entity. This subsection (3)(p)(ii) does not apply to that part of the transfer involving property received that is the real property interest that the person or persons originally contributed to the entity or when one or more persons who did not contribute real property or belong to the entity at a time when real property was purchased receive cash or personal property in exchange for that person or persons' interest in the entity. The real estate excise tax under this subsection (3)(p)(ii) is imposed upon the person or persons who previously held a controlling interest in the entity.

(q) A qualified sale of a manufactured/mobile home community, as defined in RCW 59.20.030, that takes place on or after June 12, 2008, but before December 31, 2018.

**Sec. 207.** RCW 82.45.033 and 1993 sp.s. c 25 s 505 are each amended to read as follows:

(1) As used in this chapter, the term "controlling interest" has the following meaning:

~~((1))~~ (a) In the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of the corporation entitled to vote, or fifty percent of the capital, profits, or beneficial interest in the voting stock of the corporation; and

~~((2))~~ (b) In the case of a partnership, association, trust, or other entity, fifty percent or more of the capital, profits, or beneficial interest in such partnership, association, trust, or other entity.

(2) The department may, at the department's option, enforce the obligation of the seller under this chapter as provided in this subsection (2):

(a) In the transfer or acquisition of a controlling interest as defined in subsection (1)(a) of this section, either against the corporation in which a controlling interest is transferred or acquired, against the person or persons who acquired the controlling interest in the corporation or, when the corporation is not a publicly traded company, against the person or persons who transferred the controlling interest in the corporation; and

(b) In the transfer or acquisition of a controlling interest as defined in subsection (1)(b) of this section, either against the entity in which a controlling interest is transferred or acquired or against the person or persons who transferred or acquired the controlling interest in the entity.

**Sec. 208.** RCW 82.45.070 and 1969 ex.s. c 223 s 28A.45.070 are each amended to read as follows:

The tax ~~(herein)~~ provided for in this chapter and any interest or penalties thereon ~~(shall be)~~ is a specific lien upon each ~~(piece)~~ parcel of real property located in this state that is either sold or that is owned by an entity in which a controlling interest has been transferred or acquired. The lien attaches from the time of sale until the tax (shall have been) is paid, which lien may be enforced in the manner prescribed for the foreclosure of mortgages.

**Sec. 209.** RCW 82.45.080 and 1980 c 154 s 3 are each amended to read as follows:

(1) The tax levied under this chapter (shall be) is the obligation of the seller and the department (of revenue) may, at the department's option, enforce the obligation through an action of debt against the seller or the department may proceed in the manner prescribed for the foreclosure of mortgages (and resort to). The department's use of one course of enforcement (shall) is not (be) an election not to pursue the other.

(2) For purposes of this section and notwithstanding any other provisions of law, the seller is the parent corporation of a wholly owned subsidiary, when such subsidiary is the transferor to a third-party transferee and the subsidiary is dissolved before paying the tax imposed under this chapter.

**Sec. 210.** RCW 82.45.100 and 2007 c 111 s 112 are each amended to read as follows:

(1) Payment of the tax imposed under this chapter is due and payable immediately at the time of sale, and if not paid within one month thereafter ~~(shall)~~ will bear interest from the time of sale until the date of payment.

(a) Interest imposed before January 1, 1999, ~~(shall be)~~ is computed at the rate of one percent per month.

(b) Interest imposed after December 31, 1998, ~~(shall be)~~ is computed on a monthly basis at the rate as computed under RCW 82.32.050(2). The rate so computed ~~(shall)~~ must be adjusted on the first day of January of each year for use in computing interest for that calendar year. The department ~~(of revenue shall)~~ must provide written notification to the county treasurers of the variable rate on or before December 1st of the year preceding the calendar year in which the rate applies.

(2) In addition to the interest described in subsection (1) of this section, if the payment of any tax is not received by the county treasurer or the department of revenue, as the case may be, within one

month of the date due, there (~~(shall be)~~) is assessed a penalty of five percent of the amount of the tax; if the tax is not received within two months of the date due, there (~~(shall)~~) will be assessed a total penalty of ten percent of the amount of the tax; and if the tax is not received within three months of the date due, there (~~(shall)~~) will be assessed a total penalty of twenty percent of the amount of the tax. The payment of the penalty described in this subsection (~~(shall be)~~) is collectible from the seller only, and RCW 82.45.070 does not apply to the penalties described in this subsection.

(3) If the tax imposed under this chapter is not received by the due date, the transferee (~~(shall be)~~) is personally liable for the tax, along with any interest as provided in subsection (1) of this section, unless:

~~(a))~~ an instrument evidencing the sale is recorded in the official real property records of the county in which the property conveyed is located;

~~(b) Either the transferor or transferee notifies the department of revenue in writing of the occurrence of the sale within thirty days following the date of the sale).~~

(4) If upon examination of any affidavits or from other information obtained by the department or its agents it appears that all or a portion of the tax is unpaid, the department (~~(shall)~~) must assess against the taxpayer the additional amount found to be due plus interest and penalties as provided in subsections (1) and (2) of this section. The department (~~(shall)~~) must notify the taxpayer by mail, or electronically as provided in RCW 82.32.135, of the additional amount and the same (~~(shall)~~) becomes due and (~~(shall)~~) must be paid within thirty days from the date of the notice, or within such further time as the department may provide.

(5) No assessment or refund may be made by the department more than four years after the date of sale except upon a showing of:

(a) Fraud or misrepresentation of a material fact by the taxpayer;

(b) A failure by the taxpayer to record documentation of a sale or otherwise report the sale to the county treasurer; or

(c) A failure of the transferor or transferee to report the sale under RCW 82.45.090(2).

(6) Penalties collected on taxes due under this chapter under subsection (2) of this section and RCW 82.32.090 (2) through (7) (~~(shall)~~) must be deposited in the housing trust fund as described in chapter 43.185 RCW.

**Sec. 211.** RCW 82.45.220 and 2005 c 326 s 3 are each amended to read as follows:

(1) An organization that fails to report a transfer of the controlling interest in the organization under RCW 43.07.390 to the secretary of state and is later determined to be subject to real estate excise taxes due to the transfer, (~~(shall be)~~) is subject to the provisions of RCW 82.45.100 as well as the evasion penalty in RCW 82.32.090(~~((6))~~) (7).

(2) Subsection (1) of this section also applies to the failure to report to the secretary of state the granting of an option to acquire an interest in the organization if the exercise of the option would result in a sale as defined in RCW 82.45.010(2).

**Sec. 212.** RCW 43.07.390 and 2005 c 326 s 2 are each amended to read as follows:

(1)(a) The secretary of state (~~(shall)~~) must adopt rules requiring any entity that is required to file an annual report with the secretary of state, including entities under Titles 23, 23B, 24, and 25 RCW, to disclose: (i) Any transfer (~~(#)~~) of the controlling interest (~~(#)~~) in the entity (~~(and any interest in real property)~~); and (ii) the granting of any option to acquire an interest in the entity if the exercise of the option would result in a sale as defined in RCW 82.45.010(2).

(b) The disclosure requirement in this subsection only applies to entities owning an interest in real property located in this state.

(2) This information (~~(shall)~~) must be made available to the department of revenue upon request for the purposes of tracking the transfer of the controlling interest in entities owning real property and

to determine when the real estate excise tax is applicable in such cases.

(3) For the purposes of this section, "controlling interest" has the same meaning as provided in RCW 82.45.033.

### PART III

#### Modifying and Placing a Cap on the First Mortgage Deduction

**NEW SECTION. Sec. 301.** In 1980, the legislature adopted a business and occupation tax deduction to financial businesses for amounts derived from interest received on investments or loans primarily secured by first mortgages or trust deeds on nontransient residential properties which was codified in RCW 82.04.4292. However, the Washington state supreme court in *Homestreet, Inc. v. Dep't of Revenue*, 166 Wn.2d 444 (2009) held that a mortgage lender was entitled to a business and occupation tax deduction under RCW 82.04.4292 for the portion of interest it retained for servicing loans and mortgage-backed securities that it sold on a service-retained basis on the secondary market. The legislature finds that inclusion of interest retained for servicing loans and mortgage-backed securities was not within the legislative intent when the deduction provided in 82.04.4292 was adopted in 1980. Therefore, by this act, the legislature declares that the deduction provided by RCW 82.04.4292 does not apply to fees that are received in exchange for services, regardless of whether the source of the fees is or may have been interest when paid by a borrower.

**Sec. 302.** RCW 82.04.4292 and 1980 c 37 s 12 are each amended to read as follows:

(1) In computing tax there may be deducted from the measure of tax by those engaged in banking, loan, security or other financial businesses, amounts derived from interest received on investments or loans primarily secured by first mortgages or trust deeds on nontransient residential properties.

(2) Interest deductible under this section includes the portion of fees charged to borrowers, including points and loan origination fees, that is recognized over the life of the loan as an adjustment to yield in the taxpayer's books and records according to generally accepted accounting principles.

(3) Subsections (1) and (2) of this section notwithstanding, the following is a nonexclusive list of items that are not deductible under this section:

(a) Fees for specific services such as: Document preparation fees; finder fees; brokerage fees; title examination fees; fees for credit checks; notary fees; loan application fees; interest lock-in fees if the loan is not made; servicing fees, including servicing fees received by lenders when they sell loans or mortgage-backed or mortgage-related securities in the secondary market while retaining the right to service the loans or securities and receive a portion of the interest payments as the servicing fee; and similar fees or amounts;

(b) Fees received in consideration for an agreement to make funds available for a specific period of time at specified terms, commonly referred to as commitment fees;

(c) Any other fees, or portion of a fee, that is not recognized over the life of the loan as an adjustment to yield in the taxpayer's books and records according to generally accepted accounting principles; and

(d) Gains on the sale of valuable rights such as:

(i) Service release premiums, which are amounts received when servicing rights are sold; and

(ii) Gains on the sale of loans.

(4) The total amount a person may deduct under this section for any calendar year may not exceed one hundred million dollars.

### PART IV

#### Repealing the Nonresident Sales Tax Exemption

**NEW SECTION. Sec. 401.** RCW 82.08.0273 (Exemptions--Sales to nonresidents of tangible personal property, digital goods, and digital codes for use outside the state--Proof of nonresident



status-- Penalties) and 2009 c 535 s 512, 2007 c 135 s 2, 2003 c 53 s 399, 1993 c 444 s 1, 1988 c 96 s 1, 1982 1st ex.s. c 5 s 1, & 1980 c 37 s 39 are each repealed.

#### PART V

##### Direct Seller Business and Occupation Tax Exemption

**NEW SECTION. Sec. 501.** (1) A business and occupation tax exemption is provided in RCW 82.04.423 for certain out-of-state sellers that sell consumer products exclusively to or through a direct seller's representative. The intent of the legislature in enacting this exemption was to provide a narrow exemption for out-of-state businesses engaged in direct sales of consumer products, typically accomplished through in-home parties or door-to-door selling.

(2) In *Dot Foods, Inc. v. Dep't of Revenue*, Docket No. 81022-2 (September 10, 2009), the Washington supreme court held that the exemption in RCW 82.04.423 applied to a taxpayer: (a) That sold nonconsumer products through its representative in addition to consumer products; and (b) whose consumer products were ultimately sold at retail in permanent retail establishments.

(3) The legislature finds that most out-of-state businesses selling consumer products in this state will either be eligible for the exemption under RCW 82.04.423 or could easily restructure their business operations to qualify for the exemption. As a result, the legislature expects that the broadened interpretation of the direct sellers' exemption will lead to large and devastating revenue losses. This comes at a time when the state's existing budget is facing a two billion six hundred million dollar shortfall, which could grow, while at the same time the demand for state and state-funded services is also growing. Moreover, the legislature further finds that RCW 82.04.423 provides preferential tax treatment for out-of-state businesses over their in-state competitors and now creates a strong incentive for in-state businesses to move their operations outside Washington.

(4) Therefore, the legislature finds that it is necessary to reaffirm the legislature's intent in establishing the direct sellers' exemption and prevent the loss of revenues resulting from the expanded interpretation of the exemption by amending RCW 82.04.423 retroactively to conform the exemption to the original intent of the legislature and by prospectively ending the direct sellers' exemption as of the effective date of this section.

**Sec. 502.** RCW 82.04.423 and 1983 1st ex.s. c 66 s 5 are each amended to read as follows:

(1) Prior to April 1, 2010, this chapter (~~shall~~) does not apply to any person in respect to gross income derived from the business of making sales at wholesale or retail if such person:

- (a) Does not own or lease real property within this state; and
- (b) Does not regularly maintain a stock of tangible personal property in this state for sale in the ordinary course of business; and
- (c) Is not a corporation incorporated under the laws of this state; and
- (d) Makes sales in this state exclusively to or through a direct seller's representative.

(2) For purposes of this section, the term "direct seller's representative" means a person who buys only consumer products on a buy-sell basis or a deposit-commission basis for resale, by the buyer or any other person, in the home or otherwise than in a permanent retail establishment, or who sells at retail, or solicits the sale at retail of, only consumer products in the home or otherwise than in a permanent retail establishment; and

(a) Substantially all of the remuneration paid to such person, whether or not paid in cash, for the performance of services described in this subsection is directly related to sales or other output, including the performance of services, rather than the number of hours worked; and

(b) The services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person

will not be treated as an employee with respect to such purposes for federal tax purposes.

(3) Nothing in this section (~~shall~~) may be construed to imply that a person exempt from tax under this section was engaged in a business activity taxable under this chapter prior to (~~the enactment of this section~~) August 23, 1983.

#### PART VI

##### Business and Occupation Tax Preferences for Manufacturers of Products Derived from Certain Agricultural Products

**NEW SECTION. Sec. 601.** (1)(a) In 1967, the legislature amended RCW 82.04.260 in chapter 149, Laws of 1967 ex. sess. to authorize a preferential business and occupation tax rate for slaughtering, breaking, and/or processing perishable meat products and/or selling the same at wholesale. The legislature finds that RCW 82.04.260(4) was interpreted by the state supreme court on January 13, 2005, in *AgriLink Foods, Inc. v. Department of Revenue*, 153 Wn.2d 392 (2005). The supreme court held that the preferential business and occupation tax rate on the slaughtering, breaking, and/or processing of perishable meat products applied to the processing of perishable meat products into nonperishable finished products, such as canned food.

(b) The legislature intends to narrow the exemption provided for slaughtering, breaking, and/or processing perishable meat products and/or selling such products at wholesale by requiring that the end product be a perishable meat product; a nonperishable meat product that is comprised primarily of animal carcass by weight or volume, other than a canned meat product; or a meat by-product.

(2)(a) A business and occupation tax exemption is provided for (i) manufacturing by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables, and (ii) selling such products at wholesale by the manufacturer to purchasers who transport the goods out of state in the ordinary course of business. This exemption expires July 1, 2012, and is replaced by a preferential business and occupation tax rate.

(b) The legislature finds that the rationale of the *AgriLink* decision, if applied to these tax preferences, could result in preferential tax treatment for any processed food product that contained any fresh fruit or vegetable as an ingredient, however small the amount.

(c) The legislature intends to narrow the tax preference provided to fruit and vegetable manufacturers by requiring that the end product be comprised either (i) exclusively of fruits and/or vegetables, or (ii) of any combination of fruits, vegetables, and certain other substances that, cumulatively, may not exceed the amount of fruits and vegetables contained in the product measured by weight or volume.

**NEW SECTION. Sec. 602.** A new section is added to chapter 82.04 RCW to read as follows:

(1) Upon every person engaging within this state in the business of manufacturing:

(a) Perishable meat products, by slaughtering, breaking, or processing, if the finished product is a perishable meat product; as to such persons the tax imposed is equal to the value of the perishable meat products manufactured, or, in the case of a processor for hire, the gross income of the business, multiplied by the rate of 0.138 percent;

(b) Meat products, by dehydration, curing, smoking, or any combination of these activities, if the finished meat products are not canned; as to such persons the tax imposed is equal to the value of the meat products manufactured, or, in the case of a processor for hire, the gross income of the business, multiplied by the rate of 0.138 percent;

(c) Hides, tallow, meat meal, and other similar meat by-products, if such products are derived in part from animals and manufactured in a rendering plant licensed under chapter 16.68 RCW; as to such persons the tax imposed is equal to the value of the products

manufactured, or, in the case of a processor for hire, the gross income of the business, multiplied by the rate of 0.138 percent.

(2) Upon every person engaging within this state in the business of selling at wholesale:

(a) Perishable meat products; as to such persons the tax imposed is equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent;

(b) Meat products that have been manufactured by the seller by dehydration, curing, smoking, or any combination of such activities, if the finished meat products are not canned; as to such persons the tax imposed is equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent;

(c) Hides, tallow, meat meal, and other similar meat by-products, if such products are derived in part from animals and manufactured by the seller in a rendering plant; as to such persons the tax imposed is equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent.

(3) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Animal" means all members of the animal kingdom except humans, fish, and insects.

(b) "Carcass" means all or any parts, including viscera, of a slaughtered animal.

(c) "Fish" means any water-breathing animal, including shellfish.

(d) "Hide" means any unprocessed animal pelt or skin.

(e)(i) "Meat products" means:

(A) Products comprised exclusively of animal carcass; and

(B) Products, such as jerky, sausage, and other cured meat products, that are comprised primarily of animal carcass by weight or volume and may also contain water; nitrates; nitrites; acids; binders and extenders; natural or synthetic casings; colorings; flavorings such as soy sauce, liquid smoke, seasonings, citric acid, sugar, molasses, corn syrup, and vinegar; and similar substances.

(ii) Except as provided in (e)(i) of this subsection (3), "meat products" does not include products containing any cereal grains or cereal-grain products, dairy products, legumes and legume products, fruit or vegetable products as defined in RCW 82.04.260, and similar ingredients, unless the ingredient is used as a flavoring. For purposes of this subsection, "flavoring" means a substance that contains the flavoring constituents derived from a spice, fruit or fruit juice, vegetable or vegetable juice, edible yeast, herb, bark, bud, root, leaf, or any other edible substance of plant origin, whose primary function in food is flavoring or seasoning rather than nutritional, and which may legally appear as "natural flavor," "flavor," or "flavorings" in the ingredient statement on the label of the meat product.

(iii) "Meat products" includes only products that are intended for human consumption as food or animal consumption as feed.

(f) "Perishable" means having a high risk of spoilage within thirty days of manufacture without any refrigeration or freezing.

(g) "Rendering plant" means any place of business or location where dead animals or any part or portion thereof, or packing house refuse, are processed for the purpose of obtaining the hide, skin, grease residue, or any other by-product whatsoever.

**Sec. 603.** RCW 82.04.4266 and 2006 c 354 s 3 are each amended to read as follows:

(1) This chapter (~~shall~~) does not apply to the value of products or the gross proceeds of sales derived from:

(a) Manufacturing fruit((s)) or vegetable((s)) products by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables; or

(b) Selling at wholesale fruit((s)) or vegetable((s)) products manufactured by the seller by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables and sold to purchasers who transport in the ordinary course of business the goods out of this state. A person taking an exemption under this subsection (1)(b) must keep and preserve records for the period required by

RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state.

(2)(a) "Fruit or vegetable products" means:

(i) Products comprised exclusively of fruits, vegetables, or both; and

(ii) Products comprised of fruits, vegetables, or both, and which may also contain water, sugar, salt, seasonings, preservatives, binders, stabilizers, flavorings, yeast, and similar substances. However, the amount of all ingredients contained in the product, other than fruits, vegetables, and water, may not exceed the amount of fruits and vegetables contained in the product measured by weight or volume.

(b) "Fruit or vegetable products" includes only products that are intended for human consumption as food or animal consumption as feed.

(3) This section expires July 1, 2012.

**Sec. 604.** RCW 82.04.260 and 2009 c 479 s 64, 2009 c 461 s 1, and 2009 c 162 s 34 are each reenacted and amended to read as follows:

(1) Upon every person engaging within this state in the business of manufacturing:

(a) Wheat into flour, barley into pearl barley, soybeans into soybean oil, canola into canola oil, canola meal, or canola by-products, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business (~~shall be~~) is equal to the value of the flour, pearl barley, oil, canola meal, or canola by-product manufactured, multiplied by the rate of 0.138 percent;

(b) Beginning July 1, 2012, seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; or selling manufactured seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing, to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business (~~shall be~~) is equal to the value of the products manufactured or the gross proceeds derived from such sales, multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(c) Beginning July 1, 2012, dairy products that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135, including by-products from the manufacturing of the dairy products such as whey and casein; or selling the same to purchasers who transport in the ordinary course of business the goods out of state; as to such persons the tax imposed (~~shall be~~) is equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(d)(i) Beginning July 1, 2012, fruit((s)) or vegetable((s)) products by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables, or selling at wholesale fruit((s)) or vegetable((s)) products manufactured by the seller by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables and sold to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business (~~shall be~~) is equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(ii) For purposes of this subsection, "fruit or vegetable products" means:

(A) Products comprised exclusively of fruits, vegetables, or both; or

(B) Products comprised of fruits, vegetables, or both, and which may also contain water, sugar, salt, seasonings, preservatives, binders, stabilizers, flavorings, yeast, and similar substances. However, the amount of all ingredients contained in the product, other than fruits, vegetables, and water, may not exceed the amount of fruits and vegetables contained in the product measured by weight or volume;

(iii) "Fruit and vegetable products" includes only products that are intended for human consumption as food or animal consumption as feed;

(e) Until July 1, 2009, alcohol fuel, biodiesel fuel, or biodiesel feedstock, as those terms are defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business ~~((shall be))~~ is equal to the value of alcohol fuel, biodiesel fuel, or biodiesel feedstock manufactured, multiplied by the rate of 0.138 percent; and

(f) Alcohol fuel or wood biomass fuel, as those terms are defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business ~~((shall be))~~ is equal to the value of alcohol fuel or wood biomass fuel manufactured, multiplied by the rate of 0.138 percent.

(2) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business ~~((shall be))~~ is equal to the value of the peas split or processed, multiplied by the rate of 0.138 percent.

(3) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount of tax with respect to such activities ~~((shall be))~~ is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

~~(4) ((Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale only and not at retail; as to such persons the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent.~~

~~(5))~~ Upon every person engaging within this state in the business of acting as a travel agent or tour operator; as to such persons the amount of the tax with respect to such activities ~~((shall be))~~ is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

~~((6))~~ (5) Upon every person engaging within this state in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent; as to such persons the amount of the tax with respect to only international activities ~~((shall be))~~ is equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

~~((7))~~ (6) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business ~~((shall be))~~ is equal to the gross proceeds derived from such activities multiplied by the rate of 0.275 percent. Persons subject to taxation under this subsection ~~((shall be))~~ are exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels or barges, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a

convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

~~((8))~~ (7)(a) Upon every person engaging within this state in the business of disposing of low-level waste, as defined in RCW 43.145.010; as to such persons the amount of the tax with respect to such business ~~((shall be))~~ is equal to the gross income of the business, excluding any fees imposed under chapter 43.200 RCW, multiplied by the rate of 3.3 percent.

(b) If the gross income of the taxpayer is attributable to activities both within and without this state, the gross income attributable to this state ~~((shall))~~ must be determined in accordance with the methods of apportionment required under RCW 82.04.460.

~~((9))~~ (8) Upon every person engaging within this state as an insurance producer or title insurance agent licensed under chapter 48.17 RCW or a surplus line broker licensed under chapter 48.15 RCW; as to such persons, the amount of the tax with respect to such licensed activities ~~((shall be))~~ is equal to the gross income of such business multiplied by the rate of 0.484 percent.

~~((10))~~ (9) Upon every person engaging within this state in business as a hospital, as defined in chapter 70.41 RCW, that is operated as a nonprofit corporation or by the state or any of its political subdivisions, as to such persons, the amount of tax with respect to such activities ~~((shall be))~~ is equal to the gross income of the business multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5 percent thereafter.

~~((11))~~ (10)(a) Beginning October 1, 2005, upon every person engaging within this state in the business of manufacturing commercial airplanes, or components of such airplanes, or making sales, at retail or wholesale, of commercial airplanes or components of such airplanes, manufactured by the seller, as to such persons the amount of tax with respect to such business ~~((shall))~~, in the case of manufacturers, ~~((be))~~ is equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, ~~((be))~~ is equal to the gross income of the business, multiplied by the rate of:

(i) 0.4235 percent from October 1, 2005, through ~~((the later of))~~ June 30, 2007; and

(ii) 0.2904 percent beginning July 1, 2007.

(b) Beginning July 1, 2008, upon every person who is not eligible to report under the provisions of (a) of this subsection ~~((11))~~ (10) and is engaging within this state in the business of manufacturing tooling specifically designed for use in manufacturing commercial airplanes or components of such airplanes, or making sales, at retail or wholesale, of such tooling manufactured by the seller, as to such persons the amount of tax with respect to such business ~~((shall))~~, in the case of manufacturers, ~~((be))~~ is equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, ~~((be))~~ is equal to the gross income of the business, multiplied by the rate of 0.2904 percent.

(c) For the purposes of this subsection ~~((11))~~ (10), "commercial airplane" and "component" have the same meanings as provided in RCW 82.32.550.

(d) In addition to all other requirements under this title, a person eligible for the tax rate under this subsection ~~((11))~~ (10) must report as required under RCW 82.32.545.

(e) This subsection ~~((11))~~ (10) does not apply on and after July 1, 2024.

~~((42))~~ (11)(a) Until July 1, 2024, upon every person engaging within this state in the business of extracting timber or extracting for hire timber; as to such persons the amount of tax with respect to the business ~~((shall))~~, in the case of extractors, ~~((be))~~ is equal to the value of products, including by-products, extracted, or in the case of extractors for hire, ~~((be))~~ is equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(b) Until July 1, 2024, upon every person engaging within this state in the business of manufacturing or processing for hire: (i) Timber into timber products or wood products; or (ii) timber products into other timber products or wood products; as to such persons the amount of the tax with respect to the business ~~((shall))~~, in the case of manufacturers, ~~((be))~~ is equal to the value of products, including by-products, manufactured, or in the case of processors for hire, ~~((be))~~ is equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(c) Until July 1, 2024, upon every person engaging within this state in the business of selling at wholesale: (i) Timber extracted by that person; (ii) timber products manufactured by that person from timber or other timber products; or (iii) wood products manufactured by that person from timber or timber products; as to such persons the amount of the tax with respect to the business ~~((shall be))~~ is equal to the gross proceeds of sales of the timber, timber products, or wood products multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(d) Until July 1, 2024, upon every person engaging within this state in the business of selling standing timber; as to such persons the amount of the tax with respect to the business ~~((shall be))~~ is equal to the gross income of the business multiplied by the rate of 0.2904 percent. For purposes of this subsection ~~((42))~~ (11)(d), "selling standing timber" means the sale of timber apart from the land, where the buyer is required to sever the timber within thirty months from the date of the original contract, regardless of the method of payment for the timber and whether title to the timber transfers before, upon, or after severance.

(e) For purposes of this subsection, the following definitions apply:

(i) "Biocomposite surface products" means surface material products containing, by weight or volume, more than fifty percent recycled paper and that also use nonpetroleum-based phenolic resin as a bonding agent.

(ii) "Paper and paper products" means products made of interwoven cellulosic fibers held together largely by hydrogen bonding. "Paper and paper products" includes newsprint; office, printing, fine, and pressure-sensitive papers; paper napkins, towels, and toilet tissue; kraft bag, construction, and other kraft industrial papers; paperboard, liquid packaging containers, containerboard, corrugated, and solid-fiber containers including linerboard and corrugated medium; and related types of cellulosic products containing primarily, by weight or volume, cellulosic materials. "Paper and paper products" does not include books, newspapers, magazines, periodicals, and other printed publications, advertising materials, calendars, and similar types of printed materials.

(iii) "Recycled paper" means paper and paper products having fifty percent or more of their fiber content that comes from postconsumer waste. For purposes of this subsection ~~((42))~~ (11)(e)(iii), "postconsumer waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item.

(iv) "Timber" means forest trees, standing or down, on privately or publicly owned land. "Timber" does not include Christmas trees

that are cultivated by agricultural methods or short-rotation hardwoods as defined in RCW 84.33.035.

(v) "Timber products" means:

(A) Logs, wood chips, sawdust, wood waste, and similar products obtained wholly from the processing of timber, short-rotation hardwoods as defined in RCW 84.33.035, or both;

(B) Pulp, including market pulp and pulp derived from recovered paper or paper products; and

(C) Recycled paper, but only when used in the manufacture of biocomposite surface products.

(vi) "Wood products" means paper and paper products; dimensional lumber; engineered wood products such as particleboard, oriented strand board, medium density fiberboard, and plywood; wood doors; wood windows; and biocomposite surface products.

~~((13))~~ (12) Upon every person engaging within this state in inspecting, testing, labeling, and storing canned salmon owned by another person, as to such persons, the amount of tax with respect to such activities ~~((shall be))~~ is equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

~~((44))~~ (13) Upon every person engaging within this state in the business of printing a newspaper, publishing a newspaper, or both, the amount of tax on such business is equal to the gross income of the business multiplied by the rate of 0.2904 percent.

**Sec. 605.** RCW 82.04.250 and 2008 c 81 s 5 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of making sales at retail, except persons taxable as retailers under other provisions of this chapter, as to such persons, the amount of tax with respect to such business ~~((shall be))~~ is equal to the gross proceeds of sales of the business, multiplied by the rate of 0.471 percent.

(2) Upon every person engaging within this state in the business of making sales at retail that are exempt from the tax imposed under chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or 82.08.0263, except persons taxable under RCW 82.04.260~~((44))~~ (10) or subsection (3) of this section, as to such persons, the amount of tax with respect to such business ~~((shall be))~~ is equal to the gross proceeds of sales of the business, multiplied by the rate of 0.484 percent.

(3) Upon every person classified by the federal aviation administration as a federal aviation regulation part 145 certificated repair station and that is engaging within this state in the business of making sales at retail that are exempt from the tax imposed under chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or 82.08.0263, as to such persons, the amount of tax with respect to such business ~~((shall be))~~ is equal to the gross proceeds of sales of the business, multiplied by the rate of .2904 percent.

**Sec. 606.** RCW 82.04.250 and 2007 c 54 s 5 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of making sales at retail, except persons taxable as retailers under other provisions of this chapter, as to such persons, the amount of tax with respect to such business ~~((shall be))~~ is equal to the gross proceeds of sales of the business, multiplied by the rate of 0.471 percent.

(2) Upon every person engaging within this state in the business of making sales at retail that are exempt from the tax imposed under chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or 82.08.0263, except persons taxable under RCW 82.04.260~~((44))~~ (10), as to such persons, the amount of tax with respect to such business ~~((shall be))~~ is equal to the gross proceeds of sales of the business, multiplied by the rate of 0.484 percent.

**Sec. 607.** RCW 82.04.261 and 2007 c 54 s 7 and 2007 c 48 s 4 are each reenacted and amended to read as follows:

(1) In addition to the taxes imposed under RCW 82.04.260~~((42))~~ (11), a surcharge is imposed on those persons who

are subject to any of the taxes imposed under RCW 82.04.260~~((+2))~~ (11). Except as otherwise provided in this section, the surcharge is equal to 0.052 percent. The surcharge is added to the rates provided in RCW 82.04.260~~((+2))~~ (11) (a), (b), (c), and (d). The surcharge and this section expire July 1, 2024.

(2) All receipts from the surcharge imposed under this section ~~((shall))~~ must be deposited into the forest and fish support account created in RCW 76.09.405.

(3)(a) The surcharge imposed under this section ~~((shall-be))~~ is suspended if:

(i) Receipts from the surcharge total at least eight million dollars during any fiscal biennium; or

(ii) The office of financial management certifies to the department that the federal government has appropriated at least two million dollars for participation in forest and fish report-related activities by federally recognized Indian tribes located within the geographical boundaries of the state of Washington for any federal fiscal year.

(b)(i) The suspension of the surcharge under (a)(i) of this subsection (3) ~~((shall))~~ takes effect on the first day of the calendar month that is at least thirty days after the end of the month during which the department determines that receipts from the surcharge total at least eight million dollars during the fiscal biennium. The surcharge ~~((shall-be))~~ is imposed again at the beginning of the following fiscal biennium.

(ii) The suspension of the surcharge under (a)(ii) of this subsection (3) ~~((shall))~~ takes effect on the later of the first day of October of any federal fiscal year for which the federal government appropriates at least two million dollars for participation in forest and fish report-related activities by federally recognized Indian tribes located within the geographical boundaries of the state of Washington, or the first day of a calendar month that is at least thirty days following the date that the office of financial management makes a certification to the department under subsection (5) of this section. The surcharge ~~((shall-be))~~ is imposed again on the first day of the following July.

(4)(a) If, by October 1st of any federal fiscal year, the office of financial management certifies to the department that the federal government has appropriated funds for participation in forest and fish report-related activities by federally recognized Indian tribes located within the geographical boundaries of the state of Washington but the amount of the appropriation is less than two million dollars, the department ~~((shall))~~ must adjust the surcharge in accordance with this subsection.

(b) The department ~~((shall))~~ must adjust the surcharge by an amount that the department estimates will cause the amount of funds deposited into the forest and fish support account for the state fiscal year that begins July 1st and that includes the beginning of the federal fiscal year for which the federal appropriation is made, to be reduced by twice the amount of the federal appropriation for participation in forest and fish report-related activities by federally recognized Indian tribes located within the geographical boundaries of the state of Washington.

(c) Any adjustment in the surcharge ~~((shall))~~ takes effect at the beginning of a calendar month that is at least thirty days after the date that the office of financial management makes the certification under subsection (5) of this section.

(d) The surcharge ~~((shall-be))~~ is imposed again at the rate provided in subsection (1) of this section on the first day of the following state fiscal year unless the surcharge is suspended under subsection (3) of this section or adjusted for that fiscal year under this subsection.

(e) Adjustments of the amount of the surcharge by the department are final and ~~((shall))~~ may not be used to challenge the validity of the surcharge imposed under this section.

(f) The department ~~((shall))~~ must provide timely notice to affected taxpayers of the suspension of the surcharge or an adjustment of the surcharge.

(5) The office of financial management ~~((shall))~~ must make the certification to the department as to the status of federal appropriations for tribal participation in forest and fish report-related activities.

**Sec. 608.** RCW 82.04.298 and 2008 c 49 s 1 are each amended to read as follows:

(1) The amount of tax with respect to a qualified grocery distribution cooperative's sales of groceries or related goods for resale, excluding items subject to tax under ~~((RCW 82.04.260(4)))~~ section 602 of this act, to customer-owners of the grocery distribution cooperative is equal to the gross proceeds of sales of the grocery distribution cooperative multiplied by the rate of one and one-half percent.

(2) A qualified grocery distribution cooperative is allowed a deduction from the gross proceeds of sales of groceries or related goods for resale, excluding items subject to tax under ~~((RCW 82.04.260(4)))~~ section 602 of this act, to customer-owners of the grocery distribution cooperative that is equal to the portion of the gross proceeds of sales for resale that represents the actual cost of the merchandise sold by the grocery distribution cooperative to customer-owners.

(3) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Grocery distribution cooperative" means an entity that sells groceries and related items to customer-owners of the grocery distribution cooperative and has customer-owners, in the aggregate, who own a majority of the outstanding ownership interests of the grocery distribution cooperative or of the entity controlling the grocery distribution cooperative. "Grocery distribution cooperative" includes an entity that controls a grocery distribution cooperative.

(b) "Qualified grocery distribution cooperative" means:

(i) A grocery distribution cooperative that has been determined by a court of record of the state of Washington to be not engaged in wholesaling or making sales at wholesale, within the meaning of RCW 82.04.270 or any similar provision of a municipal ordinance that imposes a tax on gross receipts, gross proceeds of sales, or gross income, with respect to purchases made by customer-owners, and subsequently changes its form of doing business to make sales at wholesale of groceries or related items to its customer-owners; or

(ii) A grocery distribution cooperative that has acquired substantially all of the assets of a grocery distribution cooperative described in (b)(i) of this subsection.

(c) "Customer-owner" means a person who has an ownership interest in a grocery distribution cooperative and purchases groceries and related items at wholesale from that grocery distribution cooperative.

(d) "Controlling" means holding fifty percent or more of the voting interests of an entity and having at least equal power to direct or cause the direction of the management and policies of the entity, whether through the ownership of voting securities, by contract, or otherwise.

**Sec. 609.** RCW 82.04.334 and 2007 c 48 s 3 are each amended to read as follows:

This chapter does not apply to any sale of standing timber excluded from the definition of "sale" in RCW 82.45.010(3). The definitions in RCW 82.04.260~~((+2))~~ (11) apply to this section.

**Sec. 610.** RCW 82.04.440 and 2006 c 300 s 8 and 2006 c 84 s 6 are each reenacted and amended to read as follows:

(1) Every person engaged in activities that are subject to tax under two or more provisions of RCW 82.04.230 through 82.04.298, inclusive, ~~((shall-be))~~ is taxable under each provision applicable to those activities.

(2) Persons taxable under RCW 82.04.2909(2), 82.04.250, 82.04.270, 82.04.294(2), or 82.04.260 (1)(b), (c), ~~((4+))~~ or (d), (10), or (11), or ~~((12))~~ section 602(2) of this act with respect to selling products in this state, including those persons who are also taxable under RCW 82.04.261, ~~((shall be))~~ are allowed a credit against those taxes for any (a) manufacturing taxes paid with respect to the manufacturing of products so sold in this state, and/or (b) extracting taxes paid with respect to the extracting of products so sold in this state or ingredients of products so sold in this state. Extracting taxes taken as credit under subsection (3) of this section may also be taken under this subsection, if otherwise allowable under this subsection. The amount of the credit ~~((shall))~~ may not exceed the tax liability arising under this chapter with respect to the sale of those products.

(3) Persons taxable as manufacturers under RCW 82.04.240 or 82.04.260 (1)(b) or ~~((12))~~ (11), including those persons who are also taxable under RCW 82.04.261, ~~((shall be))~~ are allowed a credit against those taxes for any extracting taxes paid with respect to extracting the ingredients of the products so manufactured in this state. The amount of the credit ~~((shall))~~ may not exceed the tax liability arising under this chapter with respect to the manufacturing of those products.

(4) Persons taxable under RCW 82.04.230, 82.04.240, 82.04.2909(1), 82.04.294(1), 82.04.2404, or 82.04.260 (1), (2), ~~((4+))~~ (10), or (11), or ~~((12))~~ section 602(1) of this act, including those persons who are also taxable under RCW 82.04.261, with respect to extracting or manufacturing products in this state ~~((shall be))~~ are allowed a credit against those taxes for any (i) gross receipts taxes paid to another state with respect to the sales of the products so extracted or manufactured in this state, (ii) manufacturing taxes paid with respect to the manufacturing of products using ingredients so extracted in this state, or (iii) manufacturing taxes paid with respect to manufacturing activities completed in another state for products so manufactured in this state. The amount of the credit ~~((shall))~~ may not exceed the tax liability arising under this chapter with respect to the extraction or manufacturing of those products.

(5) For the purpose of this section:

(a) "Gross receipts tax" means a tax:

(i) Which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which the deductions allowed would not constitute the tax an income tax or value added tax; and

(ii) Which is also not, pursuant to law or custom, separately stated from the sales price.

(b) "State" means (i) the state of Washington, (ii) a state of the United States other than Washington, or any political subdivision of such other state, (iii) the District of Columbia, and (iv) any foreign country or political subdivision thereof.

(c) "Manufacturing tax" means a gross receipts tax imposed on the act or privilege of engaging in business as a manufacturer, and includes (i) the taxes imposed in RCW 82.04.240, 82.04.2404, 82.04.2909(1), 82.04.260 (1), (2), ~~((4+))~~ (10), and (11), ~~((and (12)))~~ section 602(1) of this act, and 82.04.294(1); (ii) the tax imposed under RCW 82.04.261 on persons who are engaged in business as a manufacturer; and (iii) similar gross receipts taxes paid to other states.

(d) "Extracting tax" means a gross receipts tax imposed on the act or privilege of engaging in business as an extractor, and includes (i) the tax imposed on extractors in RCW 82.04.230 and 82.04.260~~((12))~~ (11); (ii) the tax imposed under RCW 82.04.261 on persons who are engaged in business as an extractor; and (iii) similar gross receipts taxes paid to other states.

(e) "Business", "manufacturer", "extractor", and other terms used in this section have the meanings given in RCW 82.04.020 through 82.04.212, notwithstanding the use of those terms in the context of describing taxes imposed by other states.

**Sec. 611.** RCW 82.04.4463 and 2008 c 81 s 8 are each amended to read as follows:

(1) In computing the tax imposed under this chapter, a credit is allowed for property taxes and leasehold excise taxes paid during the calendar year.

(2) The credit is equal to:

(a)(i)(A) Property taxes paid on buildings, and land upon which the buildings are located, constructed after December 1, 2003, and used exclusively in manufacturing commercial airplanes or components of such airplanes; and

(B) Leasehold excise taxes paid with respect to buildings constructed after January 1, 2006, the land upon which the buildings are located, or both, if the buildings are used exclusively in manufacturing commercial airplanes or components of such airplanes; and

(C) Property taxes or leasehold excise taxes paid on, or with respect to, buildings constructed after June 30, 2008, the land upon which the buildings are located, or both, and used exclusively for aerospace product development or in providing aerospace services, by persons not within the scope of (a)(i)(A) and (B) of this subsection (2) and are: (I) Engaged in manufacturing tooling specifically designed for use in manufacturing commercial airplanes or their components; or (II) taxable under RCW 82.04.290(3) or 82.04.250(3); or

(ii) Property taxes attributable to an increase in assessed value due to the renovation or expansion, after: (A) December 1, 2003, of a building used exclusively in manufacturing commercial airplanes or components of such airplanes; and (B) June 30, 2008, of buildings used exclusively for aerospace product development or in providing aerospace services, by persons not within the scope of (a)(ii)(A) of this subsection (2) and are: (I) Engaged in manufacturing tooling specifically designed for use in manufacturing commercial airplanes or their components; or (II) taxable under RCW 82.04.290(3) or 82.04.250(3); and

(b) An amount equal to:

(i)(A) Property taxes paid, by persons taxable under RCW 82.04.260~~((4+))~~ (10)(a), on machinery and equipment exempt under RCW 82.08.02565 or 82.12.02565 and acquired after December 1, 2003;

(B) Property taxes paid, by persons taxable under RCW 82.04.260~~((4+))~~ (10)(b), on machinery and equipment exempt under RCW 82.08.02565 or 82.12.02565 and acquired after June 30, 2008; or

(C) Property taxes paid, by persons taxable under RCW ~~((82.04.0250(3) [82.04.250(3)])~~ 82.04.250(3) or 82.04.290(3), on computer hardware, computer peripherals, and software exempt under RCW 82.08.975 or 82.12.975 and acquired after June 30, 2008.

(ii) For purposes of determining the amount eligible for credit under (i)(A) and (B) of this subsection (2)(b), the amount of property taxes paid is multiplied by a fraction.

~~((4+))~~ (A) The numerator of the fraction is the total taxable amount subject to the tax imposed under RCW 82.04.260~~((4+))~~ (10) (a) or (b) on the applicable business activities of manufacturing commercial airplanes, components of such airplanes, or tooling specifically designed for use in the manufacturing of commercial airplanes or components of such airplanes.

~~((4+))~~ (B) The denominator of the fraction is the total taxable amount subject to the tax imposed under all manufacturing classifications in chapter 82.04 RCW.

~~((4+))~~ (C) For purposes of both the numerator and denominator of the fraction, the total taxable amount refers to the total taxable amount required to be reported on the person's returns for the calendar year before the calendar year in which the credit under this section is earned. The department may provide for an alternative method for calculating the numerator in cases where the tax rate provided in RCW 82.04.260~~((4+))~~ (10) for manufacturing was not in effect during the full calendar year before the calendar year in which the credit under this section is earned.

~~((IV))~~ (D) No credit is available under (b)(i)(A) or (B) of this subsection (2) if either the numerator or the denominator of the fraction is zero. If the fraction is greater than or equal to nine-tenths, then the fraction is rounded to one.

~~((V))~~ (E) As used in ~~((III))~~ (b)(ii)(C) of this subsection (2) ~~((B)(i)(C))~~, "returns" means the tax returns for which the tax imposed under this chapter is reported to the department.

(3) The definitions in this subsection apply throughout this section, unless the context clearly indicates otherwise.

(a) "Aerospace product development" has the same meaning as provided in RCW 82.04.4461.

(b) "Aerospace services" has the same meaning given in RCW 82.08.975.

(c) "Commercial airplane" and "component" have the same meanings as provided in RCW 82.32.550.

(4) A credit earned during one calendar year may be carried over to be credited against taxes incurred in a subsequent calendar year, but may not be carried over a second year. No refunds may be granted for credits under this section.

(5) In addition to all other requirements under this title, a person taking the credit under this section must report as required under RCW 82.32.545.

(6) This section expires July 1, 2024.

**Sec. 612.** RCW 82.08.806 and 2009 c 461 s 5 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to sales, to a printer or publisher, of computer equipment, including repair parts and replacement parts for such equipment, when the computer equipment is used primarily in the printing or publishing of any printed material, or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the computer equipment. This exemption applies only to computer equipment not otherwise exempt under RCW 82.08.02565.

(2) A person taking the exemption under this section must keep records necessary for the department to verify eligibility under this section. This exemption is available only when the purchaser provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller ~~((shall))~~ must retain a copy of the certificate for the seller's files.

(3) The definitions in this subsection (3) apply throughout this section, unless the context clearly requires otherwise.

(a) "Computer" has the same meaning as in RCW 82.04.215.

(b) "Computer equipment" means a computer and the associated physical components that constitute a computer system, including monitors, keyboards, printers, modems, scanners, pointing devices, and other computer peripheral equipment, cables, servers, and routers. "Computer equipment" also includes digital cameras and computer software.

(c) "Computer software" has the same meaning as in RCW 82.04.215.

(d) "Primarily" means greater than fifty percent as measured by time.

(e) "Printer or publisher" means a person, as defined in RCW 82.04.030, who is subject to tax under RCW 82.04.260~~((14))~~ (13) or 82.04.280(1).

(4) "Computer equipment" does not include computer equipment that is used primarily for administrative purposes including but not limited to payroll processing, accounting, customer service, telemarketing, and collection. If computer equipment is used simultaneously for administrative and nonadministrative purposes, the administrative use ~~((shall))~~ must be disregarded during the period of simultaneous use for purposes of determining whether the computer equipment is used primarily for administrative purposes.

**Sec. 613.** RCW 82.32.545 and 2008 c 81 s 10 are each amended to read as follows:

(1) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how a tax incentive is used.

(2)(a) A person who reports taxes under RCW 82.04.260~~((14))~~ (10), 82.04.250(3), or 82.04.290(3), or who claims an exemption or credit under RCW 82.04.4461, 82.08.980, 82.12.980, 82.29A.137, 84.36.655, and 82.04.4463 ~~((shall))~~ must make an annual report to the department detailing employment, wages, and employer-provided health and retirement benefits for employment positions in Washington. However, persons engaged in manufacturing commercial airplanes or components of such airplanes may report employment, wage, and benefit information per job at the manufacturing site. The report ~~((shall))~~ may not include names of employees. The report ~~((shall))~~ must also detail employment by the total number of full-time, part-time, and temporary positions. The first report filed under this subsection ~~((shall))~~ must include employment, wage, and benefit information for the twelve-month period immediately before first use of a preferential tax rate under RCW 82.04.260~~((14))~~ (10), 82.04.250(3), or 82.04.290(3), or tax exemption or credit under RCW 82.04.4461, 82.08.980, 82.12.980, 82.29A.137, 84.36.655, and 82.04.4463, unless a survey covering this twelve-month period was filed as required by a statute repealed by chapter 81, Laws of 2008. The report is due by March 31st following any year in which a preferential tax rate under RCW 82.04.260~~((14))~~ (10), 82.04.250(3), or 82.04.290(3), is used, or tax exemption or credit under RCW 82.04.4461, 82.08.980, 82.12.980, 82.29A.137, 84.36.655, and 82.04.4463 is taken. This information is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(b) If a person fails to submit an annual report under (a) of this subsection by the due date of the report, the department ~~((shall))~~ must declare the amount of taxes exempted or credited, or reduced in the case of the preferential business and occupation tax rate, for that year to be immediately due and payable. Excise taxes payable under this subsection are subject to interest but not penalties, as provided under this chapter. This information is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(3) By November 1, 2010, and by November 1, 2023, the fiscal committees of the house of representatives and the senate, in consultation with the department, ~~((shall))~~ must report to the legislature on the effectiveness of chapter 1, Laws of 2003 2nd sp. sess., chapter 177, Laws of 2006, and chapter 81, Laws of 2008 in regard to keeping Washington competitive. The report ~~((shall))~~ must measure the effect of these laws on job retention, net jobs created for Washington residents, company growth, diversification of the state's economy, cluster dynamics, and other factors as the committees select. The reports ~~((shall))~~ must include a discussion of principles to apply in evaluating whether the legislature should reenact any or all of the tax preferences in chapter 1, Laws of 2003 2nd sp. sess., chapter 177, Laws of 2006, and chapter 81, Laws of 2008.

**Sec. 614.** RCW 82.32.550 and 2008 c 81 s 12 are each amended to read as follows:

~~(1)((a) Chapter 1, Laws of 2003 2nd sp. sess. takes effect on the first day of the month in which the governor and a manufacturer of commercial airplanes sign a memorandum of agreement regarding an affirmative final decision to site a significant commercial airplane final assembly facility in Washington state. The department shall provide notice of the effective date of chapter 1, Laws of 2003 2nd sp. sess. to affected taxpayers, the legislature, and others as deemed appropriate by the department.~~

~~(b) Chapter 1, Laws of 2003 2nd sp. sess. is contingent upon the siting of a significant commercial airplane final assembly facility in the state of Washington. If a memorandum of agreement under~~

~~subsection (1) of this section is not signed by June 30, 2005, chapter 1, Laws of 2003 2nd sp. sess. is null and void.~~

~~—(e)(i) The rate in RCW 82.04.260(11)(a)(ii) takes effect July 1, 2007.~~

~~—(ii) If on December 31, 2007, final assembly of a superefficient airplane has not begun in Washington state, the department shall provide notice of such to affected taxpayers, the legislature, and others as deemed appropriate by the department.~~

~~—(2) The definitions in this subsection apply throughout this section.~~

~~—(a)) "Commercial airplane" has its ordinary meaning, which is an airplane certified by the federal aviation administration for transporting persons or property, and any military derivative of such an airplane.~~

~~((b)) (2) "Component" means a part or system certified by the federal aviation administration for installation or assembly into a commercial airplane.~~

~~((c) "Final assembly of a superefficient airplane" means the activity of assembling an airplane from components parts necessary for its mechanical operation such that the finished commercial airplane is ready to deliver to the ultimate consumer.~~

~~—(d) "Significant commercial airplane final assembly facility" means a location with the capacity to produce at least thirty six superefficient airplanes a year.~~

~~—(e) "Siting" means a final decision by a manufacturer to locate a significant commercial airplane final assembly facility in Washington state.~~

~~—(f)) (3) "Superefficient airplane" means a twin aisle airplane that carries between two hundred and three hundred fifty passengers, with a range of more than seven thousand two hundred nautical miles, a cruising speed of approximately mach .85, and that uses fifteen to twenty percent less fuel than other similar airplanes on the market.~~

**Sec. 615.** RCW 82.32.630 and 2007 c 48 s 6 are each amended to read as follows:

(1) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources, the legislature needs information on how a tax incentive is used.

(2)(a) A person who reports taxes under RCW 82.04.260((12)) ~~shall~~ (11) must file a complete annual survey with the department. The survey is due by March 31st following any year in which a person reports taxes under RCW 82.04.260((12)) (11). The department may extend the due date for timely filing of annual surveys under this section as provided in RCW 82.32.590. The survey ~~((shall))~~ must include the amount of tax reduced under the preferential rate in RCW 82.04.260((12)) (11). The survey ~~((shall))~~ must also include the following information for employment positions in Washington:

(i) The number of total employment positions;

(ii) Full-time, part-time, and temporary employment positions as a percent of total employment;

(iii) The number of employment positions according to the following wage bands: Less than thirty thousand dollars; thirty thousand dollars or greater, but less than sixty thousand dollars; and sixty thousand dollars or greater. A wage band containing fewer than three individuals may be combined with another wage band; and

(iv) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands.

(b) The first survey filed under this subsection ~~((shall))~~ must include employment, wage, and benefit information for the twelve-month period immediately before first use of a preferential tax rate under RCW 82.04.260((12)) (11).

(c) As part of the annual survey, the department may request additional information, including the amount of investment in equipment used in the activities taxable under the preferential rate in

RCW 82.04.260((12)) (11), necessary to measure the results of, or determine eligibility for, the preferential tax rate in RCW 82.04.260((12)) (11).

(d) All information collected under this section, except the amount of the tax reduced under the preferential rate in RCW 82.04.260((12)) (11), is deemed taxpayer information under RCW 82.32.330. Information on the amount of tax reduced is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request, except as provided in (e) of this subsection. If the amount of the tax reduced as reported on the survey is different than the amount actually reduced based on the taxpayer's excise tax returns or otherwise allowed by the department, the amount actually reduced may be disclosed.

(e) Persons for whom the actual amount of the tax reduction is less than ten thousand dollars during the period covered by the survey may request the department to treat the amount of the tax reduction as confidential under RCW 82.32.330.

(f) Small harvesters as defined in RCW 84.33.035 are not required to file the annual survey under this section.

(3) If a person fails to submit a complete annual survey under subsection (2) of this section by the due date or any extension under RCW 82.32.590, the department ~~((shall))~~ must declare the amount of taxes reduced under the preferential rate in RCW 82.04.260((12)) (11) for the period covered by the survey to be immediately due and payable. The department ~~((shall))~~ must assess interest, but not penalties, on the taxes. Interest ~~((shall))~~ must be assessed at the rate provided for delinquent excise taxes under this chapter, retroactively to the date the reduced taxes were due, and ~~((shall))~~ will accrue until the amount of the reduced taxes is repaid.

(4) The department ~~((shall))~~ must use the information from the annual survey required under subsection (2) of this section to prepare summary descriptive statistics by category. The department ~~((shall))~~ must report these statistics to the legislature each year by September 1st. The requirement to prepare and report summary descriptive statistics ~~((shall))~~ ceases after September 1, 2025.

(5) By November 1, 2011, and November 1, 2023, the fiscal committees of the house of representatives and the senate, in consultation with the department, ~~((shall))~~ must report to the legislature on the effectiveness of the preferential tax rate provided in RCW 82.04.260((12)) (11). The report shall measure the effect of the preferential tax rate provided in RCW 82.04.260((12)) (11) on job retention, net jobs created for Washington residents, company growth, and other factors as the committees select. The report ~~((shall))~~ must include a discussion of principles to apply in evaluating whether the legislature should continue the preferential tax rate provided in RCW 82.04.260((12)) (11).

**Sec. 616.** RCW 82.32.632 and 2009 c 461 s 6 are each amended to read as follows:

(1)(a) Every person claiming the preferential rate provided in RCW 82.04.260((14)) (13) must file a complete annual report with the department. The report is due by March 31st of the year following any calendar year in which a person is eligible to claim the preferential rate provided in RCW 82.04.260((14)) (13). The department may extend the due date for timely filing of annual reports under this section as provided in RCW 82.32.590.

(b) The report must include information detailing employment, wages, and employer-provided health and retirement benefits for employment positions in Washington for the year that the preferential rate was claimed. The report must not include names of employees. The report must also detail employment by the total number of full-time, part-time, and temporary positions for the year that the tax preference was claimed.

(c) If a person filing a report under this section did not file a report with the department in the previous calendar year, the report filed under this section must also include employment, wage, and benefit information for the calendar year immediately preceding the



calendar year for which the preferential rate provided in RCW 82.04.260(~~((44))~~) (13) was claimed.

(2) As part of the annual report, the department may request additional information necessary to measure the results of, or determine eligibility for, the preferential rate provided in RCW 82.04.260(~~((44))~~) (13).

(3) Other than information requested under subsection (2) of this section, the information contained in an annual report filed under this section is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(4) Except as otherwise provided by law, if a person claims the preferential rate provided in RCW 82.04.260(~~((44))~~) (13) but fails to submit a report by the due date or any extension under RCW 82.32.590, the department must declare the amount of the tax preference claimed for the previous calendar year to be immediately due and payable. The department must assess interest, but not penalties, on the amounts due under this subsection. The interest must be assessed at the rate provided for delinquent taxes under this chapter, retroactively to the date the tax preference was claimed, and accrues until the taxes for which the tax preference was claimed are repaid. Amounts due under this subsection are not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(5) By November 1, 2014, and November 1, 2016, the fiscal committees of the house of representatives and the senate, in consultation with the department, must report to the legislature on the effectiveness of the preferential rate provided in RCW 82.04.260(~~((44))~~) (13). The report must measure the effect of the preferential rate provided in RCW 82.04.260(~~((44))~~) (13) on job retention, net jobs created for Washington residents, industry growth, and other factors as the committees select. The report must include a discussion of principles to apply in evaluating whether the legislature should continue the preferential rate provided in RCW 82.04.260(~~((44))~~) (13).

**Sec. 617.** RCW 82.45.195 and 2007 c 48 s 7 are each amended to read as follows:

A sale of standing timber is exempt from tax under this chapter if the gross income from such sale is taxable under RCW 82.04.260(~~((42))~~) (11)(d).

**Sec. 618.** RCW 35.102.150 and 2009 c 461 s 4 are each amended to read as follows:

Notwithstanding RCW 35.102.130, a city that imposes a business and occupation tax must allocate a person's gross income from the activities of printing, and of publishing newspapers, periodicals, or magazines, to the principal place in this state from which the taxpayer's business is directed or managed. As used in this section, the activities of printing, and of publishing newspapers, periodicals, or magazines are those activities to which the tax rates in RCW 82.04.260(~~((44))~~) (13) and 82.04.280(1) apply.

**Sec. 619.** RCW 48.14.080 and 2009 c 535 s 1102 are each amended to read as follows:

(1) As to insurers, other than title insurers and taxpayers under RCW 48.14.0201, the taxes imposed by this title (~~(shall be)~~) are in lieu of all other taxes, except as otherwise provided in this section.

(2) Subsection (1) of this section does not apply with respect to:

(a) Taxes on real and tangible personal property;

(b) Excise taxes on the sale, purchase, use, or possession of (i) real property; (ii) tangible personal property; (iii) extended warranties; (iv) services, including digital automated services as defined in RCW 82.04.192; and (v) digital goods and digital codes as those terms are defined in RCW 82.04.192; and

(c) The tax imposed in RCW 82.04.260(~~((44))~~) (9), regarding public and nonprofit hospitals.

(3) For the purposes of this section, the term "taxes" includes taxes imposed by the state or any county, city, town, municipal

corporation, quasi-municipal corporation, or other political subdivision.

## PART VII

### Suspending the Sales and Use Tax Exemption for Livestock Nutrient Equipment and Facilities

**Sec. 701.** RCW 82.08.890 and 2009 c 469 s 601 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to sales to eligible persons of:

(a) Qualifying livestock nutrient management equipment;

(b) Labor and services rendered in respect to installing, repairing, cleaning, altering, or improving qualifying livestock nutrient management equipment; and

(c)(i) Labor and services rendered in respect to repairing, cleaning, altering, or improving of qualifying livestock nutrient management facilities, or to tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities in the course of repairing, cleaning, altering, or improving of such facilities.

(ii) The exemption provided in this subsection (1)(c) does not apply to the sale of or charge made for: (A) Labor and services rendered in respect to the constructing of new, or replacing previously existing, qualifying livestock nutrient management facilities; or (B) tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities during the course of constructing new, or replacing previously existing, qualifying livestock nutrient management facilities.

(2) The exemption provided in subsection (1) of this section applies to sales made after the livestock nutrient management plan is: (a) Certified under chapter 90.64 RCW; (b) approved as part of the permit issued under chapter 90.48 RCW; or (c) approved as required under subsection (4)(c)(iii) of this section.

(3)(a) The department of revenue must provide an exemption certificate to an eligible person upon application by that person. The department of agriculture must provide a list of eligible persons, as defined in subsection (4)(c)(i) and (ii) of this section, to the department of revenue. Conservation districts must maintain lists of eligible persons as defined in subsection (4)(c)(iii) of this section to allow the department of revenue to verify eligibility. The application must be in a form and manner prescribed by the department and must contain information regarding the location of the dairy or animal feeding operation and other information the department may require.

(b) A person claiming an exemption under this section must keep records necessary for the department to verify eligibility under this section. The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(4) The definitions in this subsection apply to this section and RCW 82.12.890 unless the context clearly requires otherwise:

(a) "Animal feeding operation" means a lot or facility, other than an aquatic animal production facility, where the following conditions are met:

(i) Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve-month period; and

(ii) Crops, vegetation, forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(b) "Conservation district" means a subdivision of state government organized under chapter 89.08 RCW.

(c) "Eligible person" means a person: (i) Licensed to produce milk under chapter 15.36 RCW who has a certified dairy nutrient management plan, as required by chapter 90.64 RCW; (ii) who owns an animal feeding operation and has a permit issued under chapter 90.48 RCW; or (iii) who owns an animal feeding operation and has a

nutrient management plan approved by a conservation district as meeting natural resource conservation service field office technical guide standards and who possesses an exemption certificate under RCW 82.08.855.

(d) "Handling and treatment of livestock manure" means the activities of collecting, storing, moving, or transporting livestock manure, separating livestock manure solids from liquids, or applying livestock manure to the agricultural lands of an eligible person other than through the use of pivot or linear type traveling irrigation systems.

(e) "Permit" means either a state waste discharge permit or a national pollutant discharge elimination system permit, or both.

(f) "Qualifying livestock nutrient management equipment" means the following tangible personal property for exclusive use in the handling and treatment of livestock manure, including repair and replacement parts for such equipment: (i) Aerators; (ii) agitators; (iii) augers; (iv) conveyers; (v) gutter cleaners; (vi) hard-hose reel traveler irrigation systems; (vii) lagoon and pond liners and floating covers; (viii) loaders; (ix) manure composting devices; (x) manure spreaders; (xi) manure tank wagons; (xii) manure vacuum tanks; (xiii) poultry house cleaners; (xiv) poultry house flame sterilizers; (xv) poultry house washers; (xvi) poultry litter saver machines; (xvii) pipes; (xviii) pumps; (xix) scrapers; (xx) separators; (xxi) slurry injectors and hoses; and (xxii) wheelbarrows, shovels, and pitchforks.

(g) "Qualifying livestock nutrient management facilities" means the following structures and facilities for exclusive use in the handling and treatment of livestock manure: (i) Flush systems; (ii) lagoons; (iii) liquid livestock manure storage structures, such as concrete tanks or glass-lined steel tanks; and (iv) structures used solely for the dry storage of manure, including roofed stacking facilities.

(5) The exemption under this section does not apply to sales made from April 1, 2010, through June 30, 2013.

(6) This section expires July 1, 2020.

**Sec. 702.** RCW 82.12.890 and 2009 c 469 s 602 are each amended to read as follows:

(1) The provisions of this chapter do not apply with respect to the use by an eligible person of:

(a) Qualifying livestock nutrient management equipment;

(b) Labor and services rendered in respect to installing, repairing, cleaning, altering, or improving qualifying livestock nutrient management equipment; and

(c)(i) Tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities in the course of repairing, cleaning, altering, or improving of such facilities.

(ii) The exemption provided in this subsection (1)(c) does not apply to the use of tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities during the course of constructing new, or replacing previously existing, qualifying livestock nutrient management facilities.

(2)(a) To be eligible, the equipment and facilities must be used exclusively for activities necessary to maintain a livestock nutrient management plan.

(b) The exemption applies to the use of tangible personal property and labor and services made after the livestock nutrient management plan is: (i) Certified under chapter 90.64 RCW; (ii) approved as part of the permit issued under chapter 90.48 RCW; or (iii) approved as required under RCW 82.08.890(4)(c)(iii).

(3) The exemption certificate and recordkeeping requirements of RCW 82.08.890 apply to this section. The definitions in RCW 82.08.890 apply to this section.

(4) The exemption under this section does not apply to the use of tangible personal property and services if first use of the property or services occurs in this state from April 1, 2010, through June 30, 2013.

(5) This section expires July 1, 2020.

## PART VIII

### Ending the Preferential Business and Occupation Tax Treatment Received by Directors of Corporations

**NEW SECTION. Sec. 801.** (1) In adopting the state's business and occupation tax, the legislature intended to tax virtually all business activities carried on within the state. See *Simpson Inv. Co. v. Dept of Revenue*, 141 Wn.2d 139, 149 (2000). The legislature recognizes that the business and occupation tax applies to all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly, unless a specific exemption applies.

(2) One of the major business and occupation tax exemptions is provided in RCW 82.04.360 for income earned as an employee or servant as distinguished from income earned as an independent contractor. The legislature's intent in providing this exemption was to exempt employee wages from the business and occupation tax but not to exempt income earned as an independent contractor.

(3) The legislature finds that corporate directors are not employees or servants of the corporation whose board they serve on and therefore are not entitled to a business and occupation tax exemption under RCW 82.04.360. The legislature further finds that there are no business and occupation tax exemptions for compensation received for serving as a member of a corporation's board of directors.

(4) The legislature also finds that there is a widespread misunderstanding among corporate directors that the business and occupation tax does not apply to the compensation they receive for serving as a director of a corporation. It is the legislature's expectation that the department of revenue will take appropriate measures to ensure that corporate directors understand and comply with their business and occupation tax obligations with respect to their director compensation. However, because of the widespread misunderstanding by corporate directors of their liability for business and occupation tax on director compensation, the legislature finds that it is appropriate in this unique situation to provide limited relief against the retroactive assessment of business and occupation taxes on corporate director compensation.

(5) The legislature also reaffirms its intent that all income of all independent contractors is subject to business and occupation tax unless specifically exempt under the Constitution or laws of this state or the United States.

**Sec. 802.** RCW 82.04.360 and 1991 c 324 s 19 and 1991 c 275 s 2 are each reenacted and amended to read as follows:

(1) This chapter ~~((shall))~~ does not apply to any person in respect to his or her employment in the capacity of an employee or servant as distinguished from that of an independent contractor. For the purposes of this section, the definition of employee ~~((shall))~~ includes those persons that are defined in section 3121(d)(3)(B) of the federal internal revenue code of 1986, as amended through January 1, 1991.

(2) ~~((A booth renter, as defined by RCW 18.16.020, is an independent contractor for purposes of this chapter.))~~ Until April 1, 2010, this chapter does not apply to amounts received by an individual from a corporation as compensation for serving as a member of that corporation's board of directors. Beginning April 1, 2010, such amounts are taxable under RCW 82.04.290(2).

**NEW SECTION. Sec. 803.** The sole reason for deleting the language in RCW 82.04.360(2) is because RCW 18.16.020 no longer defines the term "booth renter." This should not be construed as a substantive change in the law.

## PART IX

### Airplane Excise Tax

**Sec. 901.** RCW 82.48.010 and 1995 c 318 s 4 are each amended to read as follows:

For the purposes of this chapter, unless otherwise required by the context:

(1) "Department" means the department of licensing.

(2) "Aircraft" means any weight-carrying device or structure for navigation of the air which is designed to be supported by the air;

~~((2) "Secretary" means the secretary of transportation;))~~

(3) "Person" includes a firm, partnership, limited liability company, or corporation;

~~(4) "Small multi engine fixed wing" means any piston driven multi engine fixed wing aircraft with a maximum gross weight as listed by the manufacturer of less than seventy five hundred pounds; and~~

~~(5) "Large multi engine fixed wing" means any piston driven multi engine fixed wing aircraft with a maximum gross weight as listed by the manufacturer of seventy five hundred pounds or more).~~

**Sec. 902.** RCW 82.48.020 and 2000 c 229 s 4 are each amended to read as follows:

(1) An annual excise tax is hereby imposed for the privilege of using any aircraft in the state. A current certificate of air worthiness with a current inspection date from the appropriate federal agency and/or the purchase of aviation fuel ~~((shall))~~ constitutes the necessary evidence of aircraft use or intended use. ~~((The tax shall))~~ The amount of the tax is five-tenths of one percent of the taxable value of the aircraft, as determined under section 903 of this act.

~~(2) The tax imposed under this section must be collected annually or under a staggered collection schedule as required by the ((secretary)) department by rule. ((No additional tax shall be imposed under this chapter upon any aircraft upon the transfer of ownership thereof, if the tax imposed by this chapter with respect to such aircraft has already been paid for the year in which transfer of ownership occurs. A violation of this subsection is a misdemeanor punishable as provided under chapter 9A.20 RCW.~~

~~(2))~~ (3) Persons who are required to register aircraft under chapter 47.68 RCW and who register aircraft in another state or foreign country and avoid the ~~((Washington))~~ aircraft excise tax imposed under this section are liable for ~~((such))~~ the unpaid excise tax. A violation of this subsection is a gross misdemeanor.

(4) The department of revenue may, under chapter 82.32 RCW, assess and collect the unpaid excise tax imposed under ~~((chapter 82.32 RCW))~~ this section, including the penalties and interest provided in chapter 82.32 RCW.

~~((3))~~ (5) Except as provided under subsection ~~((s (1) and (2)))~~ (3) of this section, a violation of this chapter is a misdemeanor punishable as provided in chapter 9A.20 RCW.

**NEW SECTION. Sec. 903.** A new section is added to chapter 82.48 RCW to read as follows:

(1)(a) Except as otherwise provided in this section, taxable value is based on the most recent purchase price of the aircraft, depreciated according to the year of the most recent purchase of the aircraft. For purposes of this subsection, "purchase price" means the consideration, whether money, credit, rights, or other property expressed in terms of money paid or given or contracted to be paid or given by the purchaser to the seller for the aircraft.

(b) For aircraft for which the most recent purchase price was not indicative of the fair market value of the aircraft at the time of purchase, the department may appraise the aircraft. If the department appraises the aircraft, the taxable value is based on the department's appraisal of fair market value of the aircraft at the time of the most recent purchase, depreciated according to the year of the most recent purchase of the aircraft.

(c) For aircraft acquired other than by purchase, including aircraft manufactured, constructed, or assembled by the owner, the department must appraise the aircraft before registration. In such cases, the taxable value is the fair market value at the time of the department's appraisal. For subsequent years, taxable value is based on the department's appraisal of fair market value of the aircraft, depreciated according to the year that the owner acquired the aircraft

or, in the case of aircraft manufactured, constructed, or assembled by the owner, the year that the aircraft became operational.

(2)(a) An appraisal conducted by the department:

(i) Need not include a physical inspection of the aircraft; and

(ii) May be based on any guidebook, report, or compendium of recognized standing in the aviation industry and information provided to the department by the owner of the aircraft.

(b) Any aircraft owner disputing the department's appraised value under this section may petition for a conference with the department as provided under RCW 82.32.160 or for reduction of the tax due as provided under RCW 82.32.170.

(3)(a) The department must prepare a depreciation schedule for use in the determination of the taxable value for the purposes of this chapter. The schedule must be based upon information available to the department pertaining to the current fair market value of aircraft.

(b) The department must recommend a depreciation schedule to the fiscal committees of the senate and house of representatives by December 31, 2010, for enactment in law during the 2011 legislative session for use in the determination of taxable value for taxes due under this chapter during calendar year 2012 and subsequent calendar years.

(4) The department may adopt any rules necessary to implement this section, including any rules necessary to provide a reasonable method or methods to determine the fair market value of an aircraft.

(5) For purposes of this section, "department" means the department of revenue.

**Sec. 904.** RCW 82.48.030 and 1983 2nd ex.s. c 3 s 22 are each amended to read as follows:

(1) ~~((The amount of the tax imposed by this chapter for each calendar year shall be as follows:~~

Type of aircraft	Registration fee
Single engine fixed wing	\$ 50
Small multi engine fixed wing	65
Large multi engine fixed wing	80
Turboprop multi engine fixed wing	100
Turbojet multi engine fixed wing	125
Helicopter	75
Sailplane	20
Lighter than air	20
Home built	20

~~(2))~~ The amount of tax imposed under ~~((subsection (1) of this section))~~ RCW 82.48.020 for each calendar year ~~((shall))~~ must be divided into twelve parts corresponding to the months of the calendar year, and the excise tax upon an aircraft registered for the first time in this state after the last day of any month ~~((shall))~~ is only ~~((be))~~ levied for the remaining months of the calendar year including the month in which the aircraft is being registered ~~((PROVIDED, That)),~~ However, the minimum amount payable ((shall be)) is three dollars.

(2) For the purposes of this chapter, an aircraft ((shall be)) is deemed registered for the first time in this state when such aircraft was not ((previously)) required to be registered by this state for the year immediately preceding the year in which application for registration is made and was not so registered.

**Sec. 905.** RCW 82.48.070 and 1987 c 220 s 7 are each amended to read as follows:

The ~~((secretary shall))~~ department must give a receipt to each person paying ~~((the))~~ excise tax under this chapter.

**Sec. 906.** RCW 82.48.080 and 1995 c 170 s 2 are each amended to read as follows:

The ~~((secretary shall))~~ department must regularly pay to the state treasurer the excise taxes collected under this chapter ~~((which shall be credited by the state treasurer as follows: Ninety percent to the general fund and ten percent to the aeronautics account in the transportation fund for administrative expenses))~~ for deposit into the general fund.

**Sec. 907.** RCW 82.48.110 and 1967 ex.s. c 9 s 6 are each amended to read as follows:

~~((The first tax to be collected under this chapter shall be for the calendar year 1968.))~~ (1) No aircraft with respect to which the excise tax imposed by this chapter is payable ~~((shall))~~ may be listed and assessed for ad valorem taxation so long as this chapter remains in effect ~~((and any such assessment heretofore made except under authority of section 13, chapter 49, Laws of 1949 and section 82.48.110, chapter 15, Laws of 1961 is hereby directed to be canceled. PROVIDED, That))~~.

~~((2))~~ (2) Any aircraft, whether or not subject to the provisions of this chapter, with respect to which the excise tax imposed by this chapter will not be paid or has not been paid for any year ~~((shall))~~ must be listed and assessed for ad valorem taxation in that year, and the ad valorem tax liability resulting from such listing and assessment ~~((shall))~~ must be collected in the same manner as though this chapter had not been passed ~~((PROVIDED FURTHER, That this chapter shall not be construed to affect any ad valorem tax based upon assessed valuations made in 1948 and/or any preceding year for taxes payable in 1949 or any preceding year, which ad valorem tax liability tax for any such years shall remain payable and collectible in the same manner as though this chapter had not been passed))~~.

**Sec. 908.** RCW 47.68.230 and 2005 c 341 s 1 are each amended to read as follows:

(1) It ~~((shall be))~~ is unlawful for any person to operate or cause or authorize to be operated any civil aircraft within this state unless such aircraft has an appropriate effective certificate, permit, or license issued by the United States, if such certificate, permit, or license is required by the United States, and a current registration certificate issued by the ~~((secretary of transportation))~~ department of licensing, if registration of the aircraft with the department of ~~((transportation))~~ licensing is required by this chapter. It ~~((shall be))~~ is unlawful for any person to engage in aeronautics as an airman or airwoman in the state unless the person has an appropriate effective airman or airwoman certificate, permit, rating, or license issued by the United States authorizing him or her to engage in the particular class of aeronautics in which he or she is engaged, if such certificate, permit, rating, or license is required by the United States.

(2) Where a certificate, permit, rating, or license is required for an airman or airwoman by the United States, it ~~((shall))~~ must be kept in his or her personal possession when he or she is operating within the state. Where a certificate, permit, or license is required by the United States or by this chapter for an aircraft, it ~~((shall))~~ must be carried in the aircraft at all times while the aircraft is operating in the state and ~~((shall))~~ must be conspicuously posted in the aircraft where it may be readily seen by passengers or inspectors. Such certificates ~~((shall))~~ must be presented for inspection upon the demand of any peace officer, or any other officer of the state or of a municipality or member, official, or employee of the department of transportation authorized pursuant to this chapter to enforce the aeronautics laws, or any official, manager, or person in charge of any airport, or upon the reasonable request of any person.

**Sec. 909.** RCW 82.48.090 and 1992 c 154 s 2 are each amended to read as follows:

In case a claim is made by any person that the person has paid an erroneously excessive amount of excise tax under this chapter,

the person may apply to the department of ~~((transportation))~~ licensing for a refund of the claimed excessive amount together with interest at the rate specified in RCW 82.32.060. The department of ~~((transportation shall))~~ licensing must review such application, and if it determines that an excess amount of tax has actually been paid by the taxpayer, such excess amount and interest at the rate specified in RCW 82.32.060 ~~((shall))~~ must be refunded to the taxpayer by means of a voucher approved by the department of ~~((transportation))~~ licensing and by the issuance of a state warrant drawn upon and payable from such funds as the legislature may provide for that purpose. No refund ~~((shall))~~ may be allowed, however, unless application for the refund is filed with the department of ~~((transportation))~~ licensing within ninety days after the claimed excessive excise tax was paid and the amount of the overpayment exceeds five dollars.

#### PART X

#### Use Tax on Motor Vehicles and Trailers Used in Interstate Commerce

**Sec. 1001.** RCW 82.12.0254 and 2009 c 503 s 2 are each amended to read as follows:

(1) The provisions of this chapter do not apply in respect to the use of:

(a) Any airplane used primarily in (i) conducting interstate or foreign commerce or (ii) providing intrastate air transportation by a commuter air carrier as defined in RCW 82.08.0262;

(b) Any locomotive, railroad car, or watercraft used primarily in conducting interstate or foreign commerce by transporting therein or therewith property and persons for hire or used primarily in commercial deep sea fishing operations outside the territorial waters of the state;

(c) Tangible personal property that becomes a component part of any such airplane, locomotive, railroad car, or watercraft in the course of repairing, cleaning, altering, or improving the same; and

(d) Labor and services rendered in respect to such repairing, cleaning, altering, or improving.

(2) The provisions of this chapter do not apply in respect to the use by a nonresident of this state of any motor vehicle or trailer used exclusively in transporting persons or property across the boundaries of this state and in intrastate operations incidental thereto when such motor vehicle or trailer is registered and licensed in a foreign state and in respect to the use by a nonresident of this state of any motor vehicle or trailer so registered and licensed and used within this state for a period not exceeding fifteen consecutive days under such rules as the department must adopt. However, under circumstances determined to be justifiable by the department a second fifteen day period may be authorized consecutive with the first fifteen day period; and for the purposes of this exemption the term "nonresident" as used herein includes a user who has one or more places of business in this state as well as in one or more other states, but the exemption for nonresidents applies only to those vehicles which are most frequently dispatched, garaged, serviced, maintained, and operated from the user's place of business in another state.

(3) The provisions of this chapter do not apply in respect to the use of:

(a) Any motor vehicle or trailer, owned by the holder of a carrier permit issued by the interstate commerce commission or its successor agency ~~((of any motor vehicle or trailer whether owned by))~~ or leased with or without driver to the permit holder and used ~~((in substantial part))~~ in the normal and ordinary course of the user's business primarily for transporting therein persons or property for hire across the boundaries of this state; ~~((and in respect to the use of))~~

(b) Any motor vehicle or trailer while being operated under the authority of a one-transit permit issued by the director of licensing pursuant to RCW 46.16.160 and moving upon the highways from the point of delivery in this state to a point outside this state; ~~((and in respect to the use of))~~

~~(c) Tangible personal property ((which) that becomes a component part of any motor vehicle or trailer ((used by the holder of a carrier permit issued by the interstate commerce commission or its successor agency authorizing transportation by motor vehicle across the boundaries of this state whether such motor vehicle or trailer is owned by or leased with or without driver to the permit holder)) that is exempt under (a) of this subsection, in the course of repairing, cleaning, altering, or improving the same; ((also the use of)) and~~

(d) Labor and services rendered in respect to such repairing, cleaning, altering, or improving any motor vehicle or trailer that is exempt under (a) of this subsection.

## PART XI

### Foreclosure Exemption

**Sec. 1101.** RCW 82.45.010 and 2010 c ... s 206 (section 206 of this act) are each amended to read as follows:

(1) As used in this chapter, the term "sale" has its ordinary meaning and includes any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property, including standing timber, or any estate or interest therein for a valuable consideration, and any contract for such conveyance, grant, assignment, quitclaim, or transfer, and any lease with an option to purchase real property, including standing timber, or any estate or interest therein or other contract under which possession of the property is given to the purchaser, or any other person at the purchaser's direction, and title to the property is retained by the vendor as security for the payment of the purchase price. The term also includes the grant, assignment, quitclaim, sale, or transfer of improvements constructed upon leased land.

(2)(a) The term "sale" also includes the transfer or acquisition within any twelve-month period of a controlling interest in any entity with an interest in real property located in this state for a valuable consideration.

(b) For the sole purpose of determining whether, pursuant to the exercise of an option, a controlling interest was transferred or acquired within a twelve-month period, the date that the option agreement was executed is the date on which the transfer or acquisition of the controlling interest is deemed to occur. For all other purposes under this chapter, the date upon which the option is exercised is the date of the transfer or acquisition of the controlling interest.

(c) For purposes of this subsection, all acquisitions of persons acting in concert must be aggregated for purposes of determining whether a transfer or acquisition of a controlling interest has taken place. The department must adopt standards by rule to determine when persons are acting in concert. In adopting a rule for this purpose, the department must consider the following:

(i) Persons must be treated as acting in concert when they have a relationship with each other such that one person influences or controls the actions of another through common ownership; and

(ii) When persons are not commonly owned or controlled, they must be treated as acting in concert only when the unity with which the purchasers have negotiated and will consummate the transfer of ownership interests supports a finding that they are acting as a single entity. If the acquisitions are completely independent, with each purchaser buying without regard to the identity of the other purchasers, then the acquisitions are considered separate acquisitions.

(3) The term "sale" does not include:

(a) A transfer by gift, devise, or inheritance.

(b) A transfer of any leasehold interest other than of the type mentioned above.

(c) A cancellation or forfeiture of a vendee's interest in a contract for the sale of real property, whether or not such contract contains a forfeiture clause, or deed in lieu of foreclosure of a mortgage.

(d) The partition of property by tenants in common by agreement or as the result of a court decree.

(e) The assignment of property or interest in property from one spouse or one domestic partner to the other spouse or other domestic partner in accordance with the terms of a decree of dissolution of marriage or state registered domestic partnership or in fulfillment of a property settlement agreement.

(f) The assignment or other transfer of a vendor's interest in a contract for the sale of real property, even though accompanied by a conveyance of the vendor's interest in the real property involved.

(g) Transfers by appropriation or decree in condemnation proceedings brought by the United States, the state or any political subdivision thereof, or a municipal corporation.

(h) A mortgage or other transfer of an interest in real property merely to secure a debt, or the assignment thereof.

(i) ((Any)) A transfer or conveyance made (i) to the beneficiary of a deed of trust pursuant to a trustee's sale in the nonjudicial foreclosure of a deed of trust ((or)); (ii) to the mortgagee, beneficiary of the deed of trust, or lienholder pursuant to an order of sale by the court in the judicial foreclosure of any mortgage, deed of trust, or lien ((foreclosure proceeding or upon execution of a judgment, or)); (iii) to the mortgagee by the mortgagor or to the beneficiary of a deed of trust by the grantor pursuant to deed in lieu of foreclosure to satisfy a mortgage or deed of trust; or (iv) to the judgment creditor pursuant to a writ of execution to enforce a judgment.

(j) A conveyance to the federal housing administration or veterans administration by an authorized mortgagee made pursuant to a contract of insurance or guaranty with the federal housing administration or veterans administration.

(k) A transfer in compliance with the terms of any lease or contract upon which the tax as imposed by this chapter has been paid or where the lease or contract was entered into prior to the date this tax was first imposed.

(l) The sale of any grave or lot in an established cemetery.

(m) A sale by the United States, this state or any political subdivision thereof, or a municipal corporation of this state.

(n) A sale to a regional transit authority or public corporation under RCW 81.112.320 under a sale/leaseback agreement under RCW 81.112.300.

(o) A transfer of real property, however effected, if it consists of a mere change in identity or form of ownership of an entity where there is no change in the beneficial ownership. These include transfers to a corporation or partnership which is wholly owned by the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner. However, if thereafter such transferee corporation or partnership voluntarily transfers such real property, or such transferor, spouse or domestic partner, or children of the transferor or the transferor's spouse or domestic partner voluntarily transfer stock in the transferee corporation or interest in the transferee partnership capital, as the case may be, to other than (i) the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner, (ii) a trust having the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner as the only beneficiaries at the time of the transfer to the trust, or (iii) a corporation or partnership wholly owned by the original transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner, within three years of the original transfer to which this exemption applies, and the tax on the subsequent transfer has not been paid within sixty days of becoming due, excise taxes become due and payable on the original transfer as otherwise provided by law.

(p)(i) A transfer that for federal income tax purposes does not involve the recognition of gain or loss for entity formation, liquidation or dissolution, and reorganization, including but not limited to nonrecognition of gain or loss because of application of 26 U.S.C.

Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the internal revenue code of 1986, as amended.

(ii) However, the transfer described in (p)(i) of this subsection cannot be preceded or followed within a twelve-month period by another transfer or series of transfers, that, when combined with the otherwise exempt transfer or transfers described in (p)(i) of this subsection, results in the transfer of a controlling interest in the entity for valuable consideration, and in which one or more persons previously holding a controlling interest in the entity receive cash or property in exchange for any interest the person or persons acting in concert hold in the entity. This subsection (3)(p)(ii) does not apply to that part of the transfer involving property received that is the real property interest that the person or persons originally contributed to the entity or when one or more persons who did not contribute real property or belong to the entity at a time when real property was purchased receive cash or personal property in exchange for that person or persons' interest in the entity. The real estate excise tax under this subsection (3)(p)(ii) is imposed upon the person or persons who previously held a controlling interest in the entity.

(q) A qualified sale of a manufactured/mobile home community, as defined in RCW 59.20.030, that takes place on or after June 12, 2008, but before December 31, 2018.

**Sec. 1102.** RCW 82.45.080 and 1980 c 154 s 3 are each amended to read as follows:

(1) The tax levied under this chapter ~~((shall be))~~ is the obligation of the seller and the department ~~((of revenue))~~ may, at the department's option, enforce the obligation through an action of debt against the seller or the department may proceed in the manner prescribed for the foreclosure of mortgages ~~((and resort to))~~. The department's use of one course of enforcement ~~((shall))~~ is not ~~((be))~~ an election not to pursue the other.

(2) For purposes of this section and notwithstanding any other provisions of law, in a sale involving a judicial or nonjudicial foreclosure or enforcement of a judgment, the seller is the:

(a) Beneficiary of a deed of trust in any transfer or conveyance to any party other than such beneficiary pursuant to a trustee's sale in the nonjudicial foreclosure of the deed of trust;

(b) Mortgagee, beneficiary of a deed of trust, or lienholder in any transfer or conveyance to any party other than such mortgagee, beneficiary, or lienholder pursuant to an order of sale by the court in the judicial foreclosure of any mortgage, deed of trust, or lien; and

(c) Judgment creditor in any transfer or conveyance to any party other than such creditor pursuant to a writ of execution to enforce a judgment.

## PART XII Tax Debts

**Sec. 1201.** RCW 82.32.145 and 1995 c 318 s 2 are each amended to read as follows:

(1) ~~((Upon termination, dissolution, or abandonment of a corporate or limited liability company business, any officer, member, manager, or other person having control or supervision of retail sales tax funds collected and held in trust under RCW 82.08.050, or who is charged with the responsibility for the filing of returns or the payment of retail sales tax funds collected and held in trust under RCW 82.08.050, shall be personally liable for any unpaid taxes and interest and penalties on those taxes, if such officer or other person willfully fails to pay or to cause to be paid any taxes due from the corporation pursuant to chapter 82.08 RCW. For the purposes of this section, any retail sales taxes that have been paid but not collected shall be deductible from the retail sales taxes collected but not paid.~~

~~— For purposes of this subsection "willfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action.~~

~~— (2) The officer, member or manager, or other person shall be liable only for taxes collected which)) Whenever the department has issued a warrant under RCW 82.32.210 for the collection of unpaid~~

retail sales tax funds collected and held in trust under RCW 82.08.050 from a limited liability business entity and that business entity has been terminated, dissolved, or abandoned, or is insolvent, the department may pursue collection of the entity's unpaid sales taxes, including penalties and interest on those taxes, against any or all of the responsible individuals. For purposes of this subsection, "insolvent" means the condition that results when the sum of the entity's debts exceeds the fair market value of its assets. The department may presume that an entity is insolvent if the entity refuses to disclose to the department the nature of its assets and liabilities.

(2) Personal liability under this section may be imposed for state and local sales taxes.

(3)(a) For a responsible individual who is the current or a former chief executive or chief financial officer, liability under this section applies regardless of fault or whether the individual was or should have been aware of the unpaid sales tax liability of the limited liability business entity.

(b) For any other responsible individual, liability under this section applies only if he or she willfully fails to pay or to cause to be paid to the department the sales taxes due from the limited liability business entity.

(4)(a) Except as provided in this subsection (4)(a), a responsible individual who is the current or a former chief executive or chief financial officer is liable under this section only for sales tax liability accrued during the period that he or she was the chief executive or chief financial officer. However, if the responsible individual had the responsibility or duty to remit payment of the limited liability business entity's sales taxes to the department during any period of time that the person was not the chief executive or chief financial officer, that individual is also liable for sales tax liability that became due during the period that he or she had the duty to remit payment of the limited liability business entity's taxes to the department but was not the chief executive or chief financial officer.

(b) All other responsible individuals are liable under this section only for sales tax liability that became due during the period he or she had the ~~((control, supervision,))~~ responsibility~~((:))~~ or duty to ~~((act for the corporation described in subsection (1) of this section, plus interest and penalties on those taxes.~~

~~— (3))~~ remit payment of the limited liability business entity's taxes to the department.

(5) Persons ~~((liable under))~~ described in subsection ~~((4))~~ (3)(b) of this section are exempt from liability under this section in situations where nonpayment of the ~~((retail sales tax funds held in trust))~~ limited liability business entity's sales taxes is due to reasons beyond their control as determined by the department by rule.

~~((4))~~ (6) Any person having been issued a notice of assessment under this section is entitled to the appeal procedures under RCW 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

~~((5))~~ This section applies only in situations where the department has determined that there is no reasonable means of collecting the retail sales tax funds held in trust directly from the corporation.

~~— (6))~~ (7) This section does not relieve the ~~((corporation or))~~ limited liability ~~((company))~~ business entity of ~~((other tax liabilities))~~ its sales tax liability or otherwise impair other tax collection remedies afforded by law.

~~((7))~~ (8) Collection authority and procedures prescribed in this chapter apply to collections under this section.

(9) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Chief executive" means: The president of a corporation; or for other entities or organizations other than corporations or if the corporation does not have a president as one of its officers, the highest ranking executive manager or administrator in charge of the management of the company or organization.

(b) "Chief financial officer" means: The treasurer of a corporation; or for entities or organizations other than corporations or if a corporation does not have a treasurer as one of its officers, the highest senior manager who is responsible for overseeing the financial activities of the entire company or organization.

(c) "Limited liability business entity" means a type of business entity that generally shields its owners from personal liability for the debts, obligations, and liabilities of the entity, or a business entity that is managed or owned in whole or in part by an entity that generally shields its owners from personal liability for the debts, obligations, and liabilities of the entity. Limited liability business entities include corporations, limited liability companies, limited liability partnerships, trusts, general partnerships and joint ventures in which one or more of the partners or parties are also limited liability business entities, and limited partnerships in which one or more of the general partners are also limited liability business entities.

(d) "Manager" has the same meaning as in RCW 25.15.005.

(e) "Member" has the same meaning as in RCW 25.15.005, except that the term only includes members of member-managed limited liability companies.

(f) "Officer" means any officer or assistant officer of a corporation, including the president, vice-president, secretary, and treasurer.

(g)(i) "Responsible individual" includes any current or former officer, manager, member, partner, or trustee of a limited liability business entity with an unpaid tax warrant issued by the department.

(ii) "Responsible individual" also includes any current or former employee or other individual, but only if the individual had the responsibility or duty to remit payment of the limited liability business entity's unpaid sales tax liability reflected in a tax warrant issued by the department.

(iii) Whenever any taxpayer has one or more limited liability business entities as a member, manager, or partner, "responsible individual" also includes any current and former officers, members, or managers of the limited liability business entity or entities or of any other limited liability business entity involved directly in the management of the taxpayer. For purposes of this subsection (9)(g)(iii), "taxpayer" means a limited liability business entity with an unpaid tax warrant issued against it by the department.

(h) "Willfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action.

### PART XIII

#### Repealing the Business and Occupation Tax Credit for New Employment for International Service Activities

NEW SECTION. Sec. 1301. RCW 82.04.44525 (Credit--New employment for international service activities in eligible areas--Designation of census tracts for eligibility--Records--Tax due upon ineligibility-- Interest assessment--Information from employment security department) and 2009 c 535 s 1104, 2008 c 81 s 9, & 1998 c 313 s 2 are each repealed.

### PART XIV

#### Repealing the Sales and Use Tax Exemptions for Candy and Bottled Water

NEW SECTION. Sec. 1401. (1) In order to preserve funding to protect Washington state's natural resources, it is the legislature's intent to use revenue generated from assessing a sales tax on bottled water on natural resource and environmental protection activities.

(2) It is the legislature's intent to use revenue generated from assessing a sales tax on candy and gum to support public health services including children's dental services.

**Sec. 1402.** RCW 82.08.0293 and 2009 c 483 s 2 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 ~~((shall))~~ does not apply to sales of food and food ingredients. "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen,

dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include:

(a) "Alcoholic beverages," which means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume; and

(b) "Tobacco," which means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

(2) The exemption of "food and food ingredients" provided for in subsection (1) of this section ~~((shall))~~ does not apply to prepared food, soft drinks, candy, bottled water, or dietary supplements.

(a) "Prepared food" means:

(i) Food sold in a heated state or heated by the seller;

(ii) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food; or

(iii) Two or more food ingredients mixed or combined by the seller for sale as a single item, except:

(A) Food that is only cut, repackaged, or pasteurized by the seller; or

(B) Raw eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal food and drug administration in chapter 3, part 401.11 of The Food Code, published by the food and drug administration, as amended or renumbered as of January 1, 2003, so as to prevent foodborne illness.

(b) "Prepared food" does not include the following food or food ingredients, if the food or food ingredients are sold without eating utensils provided by the seller:

(i) Food sold by a seller whose proper primary North American industry classification system (NAICS) classification is manufacturing in sector 311, except subsector 3118 (bakeries), as provided in the "North American industry classification system--United States, 2002";

(ii) Food sold in an unheated state by weight or volume as a single item; or

(iii) Bakery items. The term "bakery items" includes bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, or tortillas.

(c) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include beverages that contain: Milk or milk products; soy, rice, or similar milk substitutes; or greater than fifty percent of vegetable or fruit juice by volume.

(d) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(i) Contains one or more of the following dietary ingredients:

(A) A vitamin;

(B) A mineral;

(C) An herb or other botanical;

(D) An amino acid;

(E) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(F) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subsection;

(ii) Is intended for ingestion in tablet, capsule, powder, softgel, gelpack, or liquid form, or if not intended for ingestion in such form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(iii) Is required to be labeled as a dietary supplement, identifiable by the "supplement facts" box found on the label as required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered as of January 1, 2003.

(e) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or

other ingredients or flavorings in the form of bars, drops, or pieces. "Candy" does not include any preparation containing flour and does not require refrigeration.

(f) "Bottled water" means water that is placed in a sealed container or package for human consumption or other consumer uses. Bottled water is calorie free and does not contain sweeteners or other additives except that it may contain: (i) Antimicrobial agents; (ii) fluoride; (iii) carbonation; (iv) vitamins, minerals, and electrolytes; (v) oxygen; (vi) preservatives; and (vii) only those flavors, extracts, or essences derived from a spice or fruit. "Bottled water" includes water that is delivered to the buyer in a reusable container that is not sold with the water.

(3) Notwithstanding anything in this section to the contrary, the exemption of "food and food ingredients" provided in this section shall apply to food and food ingredients that are furnished, prepared, or served as meals:

(a) Under a state administered nutrition program for the aged as provided for in the older Americans act (P.L. 95-478 Title III) and RCW 74.38.040(6);

(b) That are provided to senior citizens, individuals with disabilities, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW; or

(c) That are provided to residents, sixty-two years of age or older, of a qualified low-income senior housing facility by the lessor or operator of the facility. The sale of a meal that is billed to both spouses of a marital community or both domestic partners of a domestic partnership meets the age requirement in this subsection (3)(c) if at least one of the spouses or domestic partners is at least sixty-two years of age. For purposes of this subsection, "qualified low-income senior housing facility" means a facility:

(i) That meets the definition of a qualified low-income housing project under ~~((Title))~~ 26 U.S.C. Sec. 42 of the federal internal revenue code, as existing on August 1, 2009;

(ii) That has been partially funded under ~~((Title))~~ 42 U.S.C. Sec. 1485 ~~((of the federal internal revenue code))~~; and

(iii) For which the lessor or operator has at any time been entitled to claim a federal income tax credit under ~~((Title))~~ 26 U.S.C. Sec. 42 of the federal internal revenue code.

(4)(a) Subsection (1) of this section notwithstanding, the retail sale of food and food ingredients is subject to sales tax under RCW 82.08.020 if the food and food ingredients are sold through a vending machine, and in this case the selling price for purposes of RCW 82.08.020 is fifty-seven percent of the gross receipts.

(b) This subsection (4) does not apply to hot prepared food and food ingredients, other than food and food ingredients which are heated after they have been dispensed from the vending machine.

(c) For tax collected under this subsection (4), the requirements that the tax be collected from the buyer and that the amount of tax be stated as a separate item are waived.

**Sec. 1403.** RCW 82.12.0293 and 2009 c 483 s 4 are each amended to read as follows:

(1) The provisions of this chapter ~~((shall))~~ do not apply in respect to the use of food and food ingredients for human consumption. "Food and food ingredients" has the same meaning as in RCW 82.08.0293.

(2) The exemption of "food and food ingredients" provided for in subsection (1) of this section ~~((shall))~~ does not apply to prepared food, soft drinks, candy, bottled water, or dietary supplements. "Prepared food," "soft drinks," ~~((and))~~ "dietary supplements," "candy," and "bottled water" have the same meanings as in RCW 82.08.0293.

(3) Notwithstanding anything in this section to the contrary, the exemption of "food and food ingredients" provided in this section ~~((shall))~~ apply to food and food ingredients which are furnished, prepared, or served as meals:

(a) Under a state administered nutrition program for the aged as provided for in the older Americans act (P.L. 95-478 Title III) and RCW 74.38.040(6);

(b) Which are provided to senior citizens, individuals with disabilities, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW; or

(c) That are provided to residents, sixty-two years of age or older, of a qualified low-income senior housing facility by the lessor or operator of the facility. The sale of a meal that is billed to both spouses of a marital community or both domestic partners of a domestic partnership meets the age requirement in this subsection (3)(c) if at least one of the spouses or domestic partners is at least sixty-two years of age. For purposes of this subsection, "qualified low-income senior housing facility" has the same meaning as in RCW 82.08.0293.

**NEW SECTION. Sec. 1404.** A new section is added to chapter 82.08 RCW to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to sales of bottled water for human use dispensed or to be dispensed to patients, pursuant to a prescription for use in the cure, mitigation, treatment, or prevention of disease or medical condition.

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

(a) "Bottled water" has the same meaning as provided in RCW 82.08.0293.

(b) "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state to prescribe.

**NEW SECTION. Sec. 1405.** A new section is added to chapter 82.12 RCW to read as follows:

The provisions of this chapter do not apply in respect to the use of bottled water for human use dispensed or to be dispensed to patients, pursuant to a prescription for use in the cure, mitigation, treatment, or prevention of disease or medical condition. The definitions in section 1404 of this act apply to this section.

**NEW SECTION. Sec. 1406.** A new section is added to chapter 82.08 RCW to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to sales of bottled water for human use to persons who do not otherwise have a readily available source of potable water and who provide the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(2) The department may waive the requirement for an exemption certificate in the event of disaster or similar circumstance.

**NEW SECTION. Sec. 1407.** A new section is added to chapter 82.12 RCW to read as follows:

The provisions of this chapter do not apply in respect to the use of bottled water for human use by persons who do not otherwise have a readily available source of potable water.

#### **PART XV**

#### **Imposing Sales and Use Tax on Cosmetic Surgery, Custom Software, and Janitorial Services**

**NEW SECTION. Sec. 1501.** (1) In order to preserve funding for health care services for people with disabilities, it is the legislature's intent to use revenue generated from assessing a sales tax on elective cosmetic surgery to support basic health care programs and assistance for people with disabilities.

(2) In order to preserve funding for higher education, it is the legislature's intent to use revenue generated from assessing a sales and use tax on custom software to support the state's institutions of higher education and financial aid programs including the state need grant.

(3) In order to preserve education funding, it is the legislature's intent to use revenue generated from assessing a sales and use tax on janitorial services to support basic education including levy equalization and dropout prevention programs.



**Sec. 1502.** RCW 82.04.050 and 2009 c 563 s 301 and 2009 c 535 s 301 are each reenacted and amended to read as follows:

(1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who presents a seller's permit or uniform exemption certificate in conformity with RCW 82.04.470 and who:

(a) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person, but a purchase for the purpose of resale by a regional transit authority under RCW 81.112.300 is not a sale for resale; or

(b) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(c) Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(d) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(e) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term ~~((shall))~~ includes every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280 (2) and (7), 82.04.290, and 82.04.2908; or

(f) Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in subsection (7) of this section, if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person.

(2) The term "sale at retail" or "retail sale" includes the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of self-service laundry facilities, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and ~~((shall))~~ also includes the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The constructing, repairing, or improving of any structure upon, above, or under any real property owned by an owner who

conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

(d) The cleaning, fumigating, razing, or moving of existing buildings or structures ~~((but may not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting));~~

(e) Automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it is presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it ~~((shall be))~~ is presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

(g) The installing, repairing, altering, or improving of digital goods for consumers;

(h) Persons taxable under ~~((b), (c), (d), (e), (f), and (g))~~ through (g) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection ~~((shall))~~ may be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section may be construed to modify this subsection.

(3) The term "sale at retail" or "retail sale" includes the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

(a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers;

(b) Abstract, title insurance, and escrow services;

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

(e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(f) Service charges associated with tickets to professional sporting events; ~~((and))~~

(g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services;

(h) Cosmetic medical services; and

(i) Janitorial services. The term "janitorial services" means those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes, and upholstery. The term "janitorial services"

does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal, or sandblasting.

(4)(a) The term also includes:

(i) The renting or leasing of tangible personal property to consumers; and

(ii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A consideration of this is that the operator is necessary for the tangible personal property to perform as designed. For the purpose of this subsection (4)(a)(ii), an operator must do more than maintain, inspect, or set up the tangible personal property.

(b) The term does not include the renting or leasing of tangible personal property where the lease or rental is for the purpose of sublease or subrent.

(5) The term also includes the providing of "competitive telephone service," "telecommunications service," or "ancillary services," as those terms are defined in RCW 82.04.065, to consumers.

(6)(a) The term also includes the sale of prewritten computer software other than a sale to a person who presents a seller's permit or uniform exemption certificate in conformity with RCW 82.04.470, regardless of the method of delivery to the end user. For purposes of this subsection (6)(a), the sale of prewritten computer software includes the sale of or charge made for a key or an enabling or activation code, where the key or code is required to activate prewritten computer software and put the software into use. There is no separate sale of the key or code from the prewritten computer software, regardless of how the sale may be characterized by the vendor or by the purchaser.

~~(The term "retail sale" does not include the sale of or charge made for:~~

~~(i) Custom software; or~~

~~(ii) The customization of prewritten computer software.)~~

(b) The term also includes the charge made to consumers for the right to access and use prewritten computer software, where possession of the software is maintained by the seller or a third party, regardless of whether the charge for the service is on a per use, per user, per license, subscription, or some other basis.

(7)(a) The term also includes the sale of or charge made for custom software and the customization of prewritten computer software to a consumer, regardless of the method of delivery to the consumer.

(b) The term also includes the charge made to consumers for the right to access and use custom software and customized prewritten computer software, where possession of the software is maintained by the seller or a third party.

(8) The term also includes the sale of or charge made for an extended warranty to a consumer. For purposes of this subsection, "extended warranty" means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement. For purposes of this subsection, "sales price" has the same meaning as in RCW 82.08.010.

~~((8))~~ (9)(a) The term also includes the following sales to consumers of digital goods, digital codes, and digital automated services:

(i) Sales in which the seller has granted the purchaser the right of permanent use;

(ii) Sales in which the seller has granted the purchaser a right of use that is less than permanent;

(iii) Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and

(iv) Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

(b) A retail sale of digital goods, digital codes, or digital automated services under this subsection ~~((8))~~ (9) includes any services provided by the seller exclusively in connection with the digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

(c) For purposes of this subsection, "permanent" means perpetual or for an indefinite or unspecified length of time. A right of permanent use is presumed to have been granted unless the agreement between the seller and the purchaser specifies or the circumstances surrounding the transaction suggest or indicate that the right to use terminates on the occurrence of a condition subsequent.

~~((9))~~ (10) The term does not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

~~((10))~~ (11) The term also does not include sales of chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor does it include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to: (a) Persons who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture; (b) farmers for the purpose of producing for sale any agricultural product; and (c) farmers acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under ~~((Title))~~ 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.

~~((11))~~ (12) The term does not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor does the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor does the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other by-products of weapons production and nuclear research and development.

~~((12))~~ (13) The term does not include the sale of or charge made for labor, services, or tangible personal property pursuant to agreements providing maintenance services for bus, rail, or rail fixed guideway equipment when a regional transit authority is the recipient of the labor, services, or tangible personal property, and a transit agency, as defined in RCW 81.104.015, performs the labor or services.

NEW SECTION. Sec. 1503. A new section is added to chapter 82.04 RCW to read as follows:

(1) "Cosmetic medical service" means any medical procedure performed on an individual by a person licensed or regulated in a

health profession as described in RCW 18.120.020, and any services directly related to the performance of the medical procedure, that is directed at improving the individual's appearance and that is not medically necessary to promote the proper function of the body or prevent or treat physical illness or disease. "Cosmetic medical service" includes, but is not limited to, cosmetic surgery, hair transplants, cosmetic injections, cosmetic soft tissue fillers, dermabrasion and chemical peel, laser hair removal, laser skin resurfacing, laser treatment of leg veins, sclerotherapy, and cosmetic dentistry. Any medical procedure performed on abnormal structures caused by or related to congenital defects, developmental abnormalities, trauma, infection, tumors, or disease, including procedures to improve function or give a more normal appearance, is medically necessary. Services covered by the individual's medical or dental insurance or that are deductible by the individual as medical expenses for purposes of federal income tax are presumed to be medically necessary services.

(2) "Cosmetic surgery" means the surgical reshaping of normal structures on the body to improve the body image, self-esteem, or appearance of an individual.

(3) "Services directly related to the performance of the medical procedure" include occupancy at medical facilities and services provided by an anesthesiologist, surgeon, or other licensed or regulated health professional described in RCW 18.120.020. Services required for or directly related to cosmetic medical services do not include evaluation and referral by a primary care physician or consultation or treatment by a counselor, psychologist, or psychiatrist.

(4) An individual claiming that a medical procedure, otherwise meeting the definition of cosmetic medical service in this section, is not a cosmetic medical service must complete and provide to the seller an affidavit in a form and manner prescribed by the department documenting that the procedure is medically necessary to promote the proper function of the body or prevent or treat physical illness or disease. The seller must retain a copy of the affidavit for the seller's files.

**Sec. 1504.** RCW 82.12.020 and 2009 c 535 s 305 are each amended to read as follows:

(1) There is ~~(hereby)~~ levied and ~~((there shall be))~~ collected from every person in this state a tax or excise for the privilege of using within this state as a consumer any:

(a) Article of tangible personal property purchased at retail, or acquired by lease, gift, repossession, or bailment, or extracted or produced or manufactured by the person so using the same, or otherwise furnished to a person engaged in any business taxable under RCW 82.04.280 (2) or (7), including tangible personal property acquired at a casual or isolated sale, and including by-products used by the manufacturer thereof, except as otherwise provided in this chapter, irrespective of whether the article or similar articles are manufactured or are available for purchase within this state;

(b) Prewritten computer software, regardless of the method of delivery, but excluding prewritten computer software that is either provided free of charge or is provided for temporary use in viewing information, or both;

(c) Services defined as a retail sale in RCW 82.04.050 (2)(a) or (g), (3)(a) or (h), or (6)(b), excluding services defined as a retail sale in RCW 82.04.050(6)(b) that are provided free of charge;

(d) Extended warranty; or

(e)(i) Digital good, digital code, or digital automated service, including the use of any services provided by a seller exclusively in connection with digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

(ii) With respect to the use of digital goods, digital automated services, and digital codes acquired by purchase, the tax imposed in this subsection (1)(e) applies in respect to:

(A) Sales in which the seller has granted the purchaser the right of permanent use;

(B) Sales in which the seller has granted the purchaser a right of use that is less than permanent;

(C) Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and

(D) Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

(iii) With respect to digital goods, digital automated services, and digital codes acquired other than by purchase, the tax imposed in this subsection (1)(e) applies regardless of whether or not the consumer has a right of permanent use or is obligated to make continued payment as a condition of use.

(2) The provisions of this chapter do not apply in respect to the use of any article of tangible personal property, extended warranty, digital good, digital code, digital automated service, or service taxable under RCW 82.04.050 (2)(a) or (g), (3)(a) or (h), or (6)(b), if the sale to, or the use by, the present user or the present user's bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by the present user's bailor or donor.

(3)(a) Except as provided in this section, payment of the tax imposed by this chapter or chapter 82.08 RCW by one purchaser or user of tangible personal property, extended warranty, digital good, digital code, digital automated service, or other service does not have the effect of exempting any other purchaser or user of the same property, extended warranty, digital good, digital code, digital automated service, or other service from the taxes imposed by such chapters.

(b) The tax imposed by this chapter does not apply:

(i) If the sale to, or the use by, the present user or his or her bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by his or her bailor or donor;

(ii) In respect to the use of any article of tangible personal property acquired by bailment and the tax has once been paid based on reasonable rental as determined by RCW 82.12.060 measured by the value of the article at time of first use multiplied by the tax rate imposed by chapter 82.08 RCW or this chapter as of the time of first use;

(iii) In respect to the use of any article of tangible personal property acquired by bailment, if the property was acquired by a previous bailee from the same bailor for use in the same general activity and the original bailment was prior to June 9, 1961; or

(iv) To the use of digital goods or digital automated services, which were obtained through the use of a digital code, if the sale of the digital code to, or the use of the digital code by, the present user or the present user's bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by the present user's bailor or donor.

(4)(a) Except as provided in (b) of this subsection (4), the tax is levied and must be collected in an amount equal to the value of the article used, value of the digital good or digital code used, value of the extended warranty used, or value of the service used by the taxpayer, multiplied by the applicable rates in effect for the retail sales tax under RCW 82.08.020.

(b) In the case of a seller required to collect use tax from the purchaser, the tax must be collected in an amount equal to the purchase price multiplied by the applicable rate in effect for the retail sales tax under RCW 82.08.020.

**Sec. 1505.** RCW 82.12.010 and 2009 c 535 s 304 are each amended to read as follows:

For the purposes of this chapter:

(1) "Purchase price" means the same as sales price as defined in RCW 82.08.010;

(2)(a) "Value of the article used" ~~((shall be))~~ is the purchase price for the article of tangible personal property, the use of which is taxable under this chapter. The term also includes, in addition to the

purchase price, the amount of any tariff or duty paid with respect to the importation of the article used. In case the article used is acquired by lease or by gift or is extracted, produced, or manufactured by the person using the same or is sold under conditions wherein the purchase price does not represent the true value thereof, the value of the article used ~~((shall))~~ must be determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character under such rules as the department may prescribe.

(b) In case the articles used are acquired by bailment, the value of the use of the articles so used ~~((shall))~~ must be in an amount representing a reasonable rental for the use of the articles so bailed, determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character under such rules as the department of revenue may prescribe. In case any such articles of tangible personal property are used in respect to the construction, repairing, decorating, or improving of, and which become or are to become an ingredient or component of, new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any such articles therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, then the value of the use of such articles so used ~~((shall))~~ must be determined according to the retail selling price of such articles, or in the absence of such a selling price, as nearly as possible according to the retail selling price at place of use of similar products of like quality and character or, in the absence of either of these selling price measures, such value may be determined upon a cost basis, in any event under such rules as the department of revenue may prescribe.

(c) In the case of articles owned by a user engaged in business outside the state which are brought into the state for no more than one hundred eighty days in any period of three hundred sixty-five consecutive days and which are temporarily used for business purposes by the person in this state, the value of the article used ~~((shall))~~ must be an amount representing a reasonable rental for the use of the articles, unless the person has paid tax under this chapter or chapter 82.08 RCW upon the full value of the article used, as defined in (a) of this subsection.

(d) In the case of articles manufactured or produced by the user and used in the manufacture or production of products sold or to be sold to the department of defense of the United States, the value of the articles used ~~((shall))~~ must be determined according to the value of the ingredients of such articles.

(e) In the case of an article manufactured or produced for purposes of serving as a prototype for the development of a new or improved product, the value of the article used ~~((shall))~~ must be determined by: (i) The retail selling price of such new or improved product when first offered for sale; or (ii) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

(f) In the case of an article purchased with a direct pay permit under RCW 82.32.087, the value of the article used ~~((shall))~~ must be determined by the purchase price of such article if, but for the use of the direct pay permit, the transaction would have been subject to sales tax;

(3) "Value of the service used" means the purchase price for the digital automated service or other service, the use of which is taxable under this chapter. If the service is received by gift or under conditions wherein the purchase price does not represent the true value thereof, the value of the service used ~~((shall))~~ must be determined as nearly as possible according to the retail selling price at place of use of similar services of like quality and character under rules the department may prescribe;

(4) "Value of the extended warranty used" means the purchase price for the extended warranty, the use of which is taxable under this chapter. If the extended warranty is received by gift or under conditions wherein the purchase price does not represent the true value of the extended warranty, the value of the extended warranty used ~~((shall))~~ must be determined as nearly as possible according to the retail selling price at place of use of similar extended warranties of like quality and character under rules the department may prescribe;

(5) "Value of the digital good or digital code used" means the purchase price for the digital good or digital code, the use of which is taxable under this chapter. If the digital good or digital code is acquired other than by purchase, the value of the digital good or digital code must be determined as nearly as possible according to the retail selling price at place of use of similar digital goods or digital codes of like quality and character under rules the department may prescribe;

(6) "Use," "used," "using," or "put to use" have their ordinary meaning, and mean:

(a) With respect to tangible personal property, the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and include installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption within this state;

(b) With respect to a service defined in RCW 82.04.050(2)(a), the first act within this state after the service has been performed by which the taxpayer takes or assumes dominion or control over the article of tangible personal property upon which the service was performed (as a consumer), and includes installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption of the article within this state;

(c) With respect to an extended warranty, the first act within this state after the extended warranty has been acquired by which the taxpayer takes or assumes dominion or control over the article of tangible personal property to which the extended warranty applies, and includes installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption of the article within this state;

(d) With respect to a digital good or digital code, the first act within this state by which the taxpayer, as a consumer, views, accesses, downloads, possesses, stores, opens, manipulates, or otherwise uses or enjoys the digital good or digital code;

(e) With respect to a digital automated service, the first act within this state by which the taxpayer, as a consumer, uses, enjoys, or otherwise receives the benefit of the service;

(f) With respect to a service defined as a retail sale in RCW 82.04.050(6)(b), the first act within this state by which the taxpayer, as a consumer, accesses the prewritten computer software; ~~((and))~~

(g) With respect to a service defined as a retail sale in RCW 82.04.050(2)(g), the first act within this state after the service has been performed by which the taxpayer, as a consumer, views, accesses, downloads, possesses, stores, opens, manipulates, or otherwise uses or enjoys the digital good upon which the service was performed; and

(h) With respect to a service described in RCW 82.04.050(3)(h), the first presence within this state by the taxpayer after the service has been performed upon that taxpayer;

(7) "Taxpayer" and "purchaser" include all persons included within the meaning of the word "buyer" and the word "consumer" as defined in chapters 82.04 and 82.08 RCW;

(8)(a)(i) Except as provided in (a)(ii) of this subsection (8), "retailer" means every seller as defined in RCW 82.08.010 and every person engaged in the business of selling tangible personal property at retail and every person required to collect from purchasers the tax imposed under this chapter.

(ii) "Retailer" does not include a professional employer organization when a covered employee coemployed with the client under the terms of a professional employer agreement engages in activities that constitute a sale of tangible personal property, extended warranty, digital good, digital code, or a sale of any digital automated service or service defined as a retail sale in RCW 82.04.050 (2)(a) or (g), (3)(a), or (6)(b) that is subject to the tax imposed by this chapter. In such cases, the client, and not the professional employer organization, is deemed to be the retailer and is responsible for collecting and remitting the tax imposed by this chapter.

(b) For the purposes of (a) of this subsection, the terms "client," "covered employee," "professional employer agreement," and "professional employer organization" have the same meanings as in RCW 82.04.540;

(9) "Extended warranty" has the same meaning as in RCW 82.04.050(7);

(10) The meaning ascribed to words and phrases in chapters 82.04 and 82.08 RCW, insofar as applicable, (~~shall have~~) has full force and effect with respect to taxes imposed under the provisions of this chapter. "Consumer," in addition to the meaning ascribed to it in chapters 82.04 and 82.08 RCW insofar as applicable, (~~shall~~) also means any person who distributes or displays, or causes to be distributed or displayed, any article of tangible personal property, except newspapers, the primary purpose of which is to promote the sale of products or services. With respect to property distributed to persons within this state by a consumer as defined in this subsection (10), the use of the property (~~shall be~~) is deemed to be by such consumer.

**Sec. 1506.** RCW 82.12.035 and 2009 c 535 s 1107 are each amended to read as follows:

A credit is allowed against the taxes imposed by this chapter upon the use in this state of tangible personal property, extended warranty, digital good, digital code, digital automated service, or services defined as a retail sale in RCW 82.04.050 (2)(a) or (g), (3)(a) or (h), or (6)(b), in the amount that the present user thereof or his or her bailor or donor has paid a legally imposed retail sales or use tax with respect to such property, extended warranty, digital good, digital code, digital automated service, or service defined as a retail sale in RCW 82.04.050 (2)(a) or (g), (3)(a), or (6)(b) to any other state, possession, territory, or commonwealth of the United States, any political subdivision thereof, the District of Columbia, and any foreign country or political subdivision thereof.

**Sec. 1507.** RCW 82.04.060 and 2009 c 535 s 403 are each amended to read as follows:

"Sale at wholesale" or "wholesale sale" means:

(1) Any sale, which is not a sale at retail, of:

(a) Tangible personal property;

(b) Services defined as a retail sale in RCW 82.04.050(2) (a) or (g);

(c) Amusement or recreation services as defined in RCW 82.04.050(3)(a);

(d) Prewritten computer software;

(e) Services described in RCW 82.04.050 (6)(b) or (7);

(f) Extended warranties as defined in RCW 82.04.050(7);

(g) Competitive telephone service, ancillary services, or telecommunications service as those terms are defined in RCW 82.04.065; or

(h) Digital goods, digital codes, or digital automated services; and

(2) Any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property, if such charge is expressly defined as a retail sale by RCW 82.04.050 when rendered to or for consumers. For the purposes of this subsection (2), "real or personal property" does not include any natural products named in RCW 82.04.100.

**Sec. 1508.** RCW 82.04.190 and 2009 c 535 s 302 are each amended to read as follows:

"Consumer" means the following:

(1) Any person who purchases, acquires, owns, holds, or uses any article of tangible personal property irrespective of the nature of the person's business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than for the purpose (a) of resale as tangible personal property in the regular course of business or (b) of incorporating such property as an ingredient or component of real or personal property when installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating such real or personal property of or for consumers or (c) of consuming such property in producing for sale a new article of tangible personal property or a new substance, of which such property becomes an ingredient or component or as a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale or (d) of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon or (e) of satisfying the person's obligations under an extended warranty as defined in RCW 82.04.050(7), if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person;

(2)(a) Any person engaged in any business activity taxable under RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or uses any competitive telephone service, ancillary services, or telecommunications service as those terms are defined in RCW 82.04.065, other than for resale in the regular course of business; (c) any person who purchases, acquires, or uses any service defined in RCW 82.04.050(2) (a) or (g), other than for resale in the regular course of business or for the purpose of satisfying the person's obligations under an extended warranty as defined in RCW 82.04.050(7); (d) any person who purchases, acquires, or uses any amusement and recreation service defined in RCW 82.04.050(3)(a), other than for resale in the regular course of business; (e) any person who purchases or acquires an extended warranty as defined in RCW 82.04.050(7) other than for resale in the regular course of business; and (f) any person who is an end user of software. For purposes of this subsection (2)(f) and RCW 82.04.050(6), a person who purchases or otherwise acquires prewritten computer software, who provides services described in RCW 82.04.050(6)(b) and who will charge consumers for the right to access and use the prewritten computer software, is not an end user of the prewritten computer software;

(3) Any person engaged in the business of contracting for the building, repairing or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state of Washington or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind as defined in RCW 82.04.280, in respect to tangible personal property when such person incorporates such property as an ingredient or component of such publicly owned street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle by installing, placing or spreading the property in or upon the right-of-way of such street, place, road, highway, easement, bridge, tunnel, or trestle or in or upon the site of such mass public transportation terminal or parking facility;

(4) Any person who is an owner, lessee or has the right of possession to or an easement in real property which is being constructed, repaired, decorated, improved, or otherwise altered by a person engaged in business, excluding only (a) municipal corporations or political subdivisions of the state in respect to labor

and services rendered to their real property which is used or held for public road purposes, and (b) the United States, instrumentalities thereof, and county and city housing authorities created pursuant to chapter 35.82 RCW in respect to labor and services rendered to their real property. Nothing contained in this or any other subsection of this definition shall be construed to modify any other definition of "consumer";

(5) Any person who is an owner, lessee, or has the right of possession to personal property which is being constructed, repaired, improved, cleaned, imprinted, or otherwise altered by a person engaged in business;

(6) Any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation; also, any person engaged in the business of clearing land and moving earth of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW. Any such person (~~shall be~~) is a consumer within the meaning of this subsection in respect to tangible personal property incorporated into, installed in, or attached to such building or other structure by such person, except that consumer does not include any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, or any instrumentality thereof, if the investment project would qualify for sales and use tax deferral under chapter 82.63 RCW if undertaken by a private entity;

(7) Any person who is a lessor of machinery and equipment, the rental of which is exempt from the tax imposed by RCW 82.08.020 under RCW 82.08.02565, with respect to the sale of or charge made for tangible personal property consumed in respect to repairing the machinery and equipment, if the tangible personal property has a useful life of less than one year. Nothing contained in this or any other subsection of this section (~~shall~~) may be construed to modify any other definition of "consumer";

(8) Any person engaged in the business of cleaning up for the United States, or its instrumentalities, radioactive waste and other by-products of weapons production and nuclear research and development;

(9) Any person who is an owner, lessee, or has the right of possession of tangible personal property that, under the terms of an extended warranty as defined in RCW 82.04.050(7), has been repaired or is replacement property, but only with respect to the sale of or charge made for the repairing of the tangible personal property or the replacement property;

(10) Any person who purchases, acquires, or uses services described in RCW 82.04.050 (6)(b) or (7) other than for resale in the regular course of business; and

(11)(a) Any end user of a digital product or digital code.

(b)(i) For purposes of this subsection, "end user" means any taxpayer as defined in RCW 82.12.010 other than a taxpayer who receives by contract a digital product for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution or exhibition of the product, in whole or in part, to others. A person that purchases digital products or digital codes for the purpose of giving away such products or codes will not be considered to have engaged in the distribution or redistribution of such products or codes and will be treated as an end user;

(ii) If a purchaser of a digital code does not receive the contractual right to further redistribute, after the digital code is redeemed, the underlying digital product to which the digital code

relates, then the purchaser of the digital code is an end user. If the purchaser of the digital code receives the contractual right to further redistribute, after the digital code is redeemed, the underlying digital product to which the digital code relates, then the purchaser of the digital code is not an end user. A purchaser of a digital code who has the contractual right to further redistribute the digital code is an end user if that purchaser does not have the right to further redistribute, after the digital code is redeemed, the underlying digital product to which the digital code relates.

**Sec. 1509.** RCW 82.04.215 and 2003 c 168 s 601 are each amended to read as follows:

(1) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

(2) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task. All software is classified as either prewritten or custom. Consistent with this definition "computer software" includes only those sets of coded instructions intended for use by an end user and specifically excludes retained rights in software and master copies of software.

(3) "Custom software" means computer software created for a single person.

(4) "Customization of prewritten computer software" means any alteration, modification, or development of applications using or incorporating prewritten computer software for a specific person. "Customization of prewritten computer software" includes individualized configuration of software to work with other software and computer hardware but does not include routine installation. Customization of prewritten computer software does not change the underlying character or taxability of the original prewritten computer software.

(5) "Master copies" of software means copies of software from which a software developer, author, inventor, publisher, licensor, sublicensor, or distributor makes copies for sale or license.

(6) "Prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than such purchaser. Where a person modifies or enhances computer software of which such persons is not the author or creator, the person (~~shall be~~) is deemed to be the author or creator only of the person's modifications or enhancements. Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software; however where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement (~~shall~~) does not constitute prewritten computer software.

(7) "Retained rights" means any and all rights, including intellectual property rights such as those rights arising from copyrights, patents, and trade secret laws, that are owned or are held under contract or license by a software developer, author, inventor, publisher, licensor, sublicensor, or distributor.

**NEW SECTION. Sec. 1510.** RCW 82.04.29001 (Creation and distribution of custom software--Customization of prewritten computer software--Taxable services) and 2003 c 168 s 602 & 1998 c 332 s 4 are each repealed.

**Sec. 1511.** RCW 82.08.02088 and 2009 c 535 s 701 are each amended to read as follows:

(1) The tax imposed by RCW 82.08.020 does not apply to the sale of digital goods, digital codes, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050 (6)(b) or (7) to a buyer that provides the seller with an exemption certificate claiming multiple points of use. An exemption certificate claiming multiple points of use must be in a form and contain such information as required by the department.

(2) A buyer is entitled to use an exemption certificate claiming multiple points of use only if the buyer is a business or other organization and the digital goods or digital automated services purchased, or the digital goods or digital automated services to be obtained by the digital code purchased, or the prewritten computer software or services defined as a retail sale in RCW 82.04.050 (6)(b) or (7) purchased will be concurrently available for use within and outside this state. A buyer is not entitled to use an exemption certificate claiming multiple points of use for digital goods, digital codes, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050(6)(b) purchased for personal use.

(3) A buyer claiming an exemption under this section must report and pay the tax imposed in RCW 82.12.020 and any local use taxes imposed under the authority of chapter 82.14 RCW and RCW 81.104.170 directly to the department in accordance with RCW 82.12.02088 and 82.14.457.

(4) For purposes of this section, "concurrently available for use within and outside this state" means that employees or other agents of the buyer may use the digital goods, digital automated services, prewritten computer software, or services defined as a retail sale in RCW 82.04.050 (6)(b) or (7) simultaneously from one or more locations within this state and one or more locations outside this state. A digital code is concurrently available for use within and outside this state if employees or other agents of the buyer may use the digital goods or digital automated services to be obtained by the code simultaneously at one or more locations within this state and one or more locations outside this state.

**Sec. 1512.** RCW 82.12.010 and 2009 c 535 s 304 are each amended to read as follows:

For the purposes of this chapter:

(1) "Purchase price" means the same as sales price as defined in RCW 82.08.010;

(2)(a) "Value of the article used" (~~shall be~~) is the purchase price for the article of tangible personal property, the use of which is taxable under this chapter. The term also includes, in addition to the purchase price, the amount of any tariff or duty paid with respect to the importation of the article used. In case the article used is acquired by lease or by gift or is extracted, produced, or manufactured by the person using the same or is sold under conditions wherein the purchase price does not represent the true value thereof, the value of the article used (~~shall~~) must be determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character under such rules as the department may prescribe.

(b) In case the articles used are acquired by bailment, the value of the use of the articles so used (~~shall~~) must be in an amount representing a reasonable rental for the use of the articles so bailed, determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character under such rules as the department of revenue may prescribe. In case any such articles of tangible personal property are used in respect to the construction, repairing, decorating, or improving of, and which become or are to become an ingredient or component of, new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82

RCW, including the installing or attaching of any such articles therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, then the value of the use of such articles so used (~~shall~~) must be determined according to the retail selling price of such articles, or in the absence of such a selling price, as nearly as possible according to the retail selling price at place of use of similar products of like quality and character or, in the absence of either of these selling price measures, such value may be determined upon a cost basis, in any event under such rules as the department of revenue may prescribe.

(c) In the case of articles owned by a user engaged in business outside the state which are brought into the state for no more than one hundred eighty days in any period of three hundred sixty-five consecutive days and which are temporarily used for business purposes by the person in this state, the value of the article used (~~shall~~) must be an amount representing a reasonable rental for the use of the articles, unless the person has paid tax under this chapter or chapter 82.08 RCW upon the full value of the article used, as defined in (a) of this subsection.

(d) In the case of articles manufactured or produced by the user and used in the manufacture or production of products sold or to be sold to the department of defense of the United States, the value of the articles used (~~shall~~) must be determined according to the value of the ingredients of such articles.

(e) In the case of an article manufactured or produced for purposes of serving as a prototype for the development of a new or improved product, the value of the article used (~~shall~~) must be determined by: (i) The retail selling price of such new or improved product when first offered for sale; or (ii) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

(f) In the case of an article purchased with a direct pay permit under RCW 82.32.087, the value of the article used (~~shall be~~) is determined by the purchase price of such article if, but for the use of the direct pay permit, the transaction would have been subject to sales tax;

(3) "Value of the service used" means the purchase price for the digital automated service or other service, the use of which is taxable under this chapter. If the service is received by gift or under conditions wherein the purchase price does not represent the true value thereof, the value of the service used (~~shall~~) must be determined as nearly as possible according to the retail selling price at place of use of similar services of like quality and character under rules the department may prescribe;

(4) "Value of the extended warranty used" means the purchase price for the extended warranty, the use of which is taxable under this chapter. If the extended warranty is received by gift or under conditions wherein the purchase price does not represent the true value of the extended warranty, the value of the extended warranty used (~~shall~~) must be determined as nearly as possible according to the retail selling price at place of use of similar extended warranties of like quality and character under rules the department may prescribe;

(5) "Value of the digital good or digital code used" means the purchase price for the digital good or digital code, the use of which is taxable under this chapter. If the digital good or digital code is acquired other than by purchase, the value of the digital good or digital code must be determined as nearly as possible according to the retail selling price at place of use of similar digital goods or digital codes of like quality and character under rules the department may prescribe;

(6) "Use," "used," "using," or "put to use" have their ordinary meaning, and mean:

(a) With respect to tangible personal property, the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and include installation, storage, withdrawal from storage, distribution, or

any other act preparatory to subsequent actual use or consumption within this state;

(b) With respect to a service defined in RCW 82.04.050(2)(a), the first act within this state after the service has been performed by which the taxpayer takes or assumes dominion or control over the article of tangible personal property upon which the service was performed (as a consumer), and includes installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption of the article within this state;

(c) With respect to an extended warranty, the first act within this state after the extended warranty has been acquired by which the taxpayer takes or assumes dominion or control over the article of tangible personal property to which the extended warranty applies, and includes installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption of the article within this state;

(d) With respect to a digital good or digital code, the first act within this state by which the taxpayer, as a consumer, views, accesses, downloads, possesses, stores, opens, manipulates, or otherwise uses or enjoys the digital good or digital code;

(e) With respect to a digital automated service, the first act within this state by which the taxpayer, as a consumer, uses, enjoys, or otherwise receives the benefit of the service;

(f) With respect to a service defined as a retail sale in RCW 82.04.050 (6)(b) or (7), the first act within this state by which the taxpayer, as a consumer, accesses the (~~prewritten~~) computer software; and

(g) With respect to a service defined as a retail sale in RCW 82.04.050(2)(g), the first act within this state after the service has been performed by which the taxpayer, as a consumer, views, accesses, downloads, possesses, stores, opens, manipulates, or otherwise uses or enjoys the digital good upon which the service was performed;

(7) "Taxpayer" and "purchaser" include all persons included within the meaning of the word "buyer" and the word "consumer" as defined in chapters 82.04 and 82.08 RCW;

(8)(a)(i) Except as provided in (a)(ii) of this subsection (8), "retailer" means every seller as defined in RCW 82.08.010 and every person engaged in the business of selling tangible personal property at retail and every person required to collect from purchasers the tax imposed under this chapter.

(ii) "Retailer" does not include a professional employer organization when a covered employee coemployed with the client under the terms of a professional employer agreement engages in activities that constitute a sale of tangible personal property, extended warranty, digital good, digital code, or a sale of any digital automated service or service defined as a retail sale in RCW 82.04.050 (2)(a) or (g), (3)(a), (~~(6)(b)~~) or (7) that is subject to the tax imposed by this chapter. In such cases, the client, and not the professional employer organization, is deemed to be the retailer and is responsible for collecting and remitting the tax imposed by this chapter.

(b) For the purposes of (a) of this subsection, the terms "client," "covered employee," "professional employer agreement," and "professional employer organization" have the same meanings as in RCW 82.04.540;

(9) "Extended warranty" has the same meaning as in RCW 82.04.050(7);

(10) The meaning ascribed to words and phrases in chapters 82.04 and 82.08 RCW, insofar as applicable, (~~shall have~~) has full force and effect with respect to taxes imposed under the provisions of this chapter. "Consumer," in addition to the meaning ascribed to it in chapters 82.04 and 82.08 RCW insofar as applicable, (~~shall~~) also means any person who distributes or displays, or causes to be distributed or displayed, any article of tangible personal property, except newspapers, the primary purpose of which is to promote the sale of products or services. With respect to property distributed to

persons within this state by a consumer as defined in this subsection (10), the use of the property (~~shall be~~) is deemed to be by such consumer.

**Sec. 1513.** RCW 82.12.020 and 2009 c 535 s 305 are each amended to read as follows:

(1) There is (~~hereby~~) levied and (~~there shall be~~) collected from every person in this state a tax or excise for the privilege of using within this state as a consumer any:

(a) Article of tangible personal property purchased at retail, or acquired by lease, gift, repossession, or bailment, or extracted or produced or manufactured by the person so using the same, or otherwise furnished to a person engaged in any business taxable under RCW 82.04.280 (2) or (7), including tangible personal property acquired at a casual or isolated sale, and including by-products used by the manufacturer thereof, except as otherwise provided in this chapter, irrespective of whether the article or similar articles are manufactured or are available for purchase within this state;

(b) Prewritten computer software, regardless of the method of delivery, but excluding prewritten computer software that is either provided free of charge or is provided for temporary use in viewing information, or both;

(c) Services defined as a retail sale in RCW 82.04.050 (2)(a) or (g), (3)(a), (~~(6)(b)~~) or (7), excluding services defined as a retail sale in RCW 82.04.050(6)(b) that are provided free of charge;

(d) Extended warranty; or

(e)(i) Digital good, digital code, or digital automated service, including the use of any services provided by a seller exclusively in connection with digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

(ii) With respect to the use of digital goods, digital automated services, and digital codes acquired by purchase, the tax imposed in this subsection (1)(e) applies in respect to:

(A) Sales in which the seller has granted the purchaser the right of permanent use;

(B) Sales in which the seller has granted the purchaser a right of use that is less than permanent;

(C) Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and

(D) Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

(iii) With respect to digital goods, digital automated services, and digital codes acquired other than by purchase, the tax imposed in this subsection (1)(e) applies regardless of whether or not the consumer has a right of permanent use or is obligated to make continued payment as a condition of use.

(2) The provisions of this chapter do not apply in respect to the use of any article of tangible personal property, extended warranty, digital good, digital code, digital automated service, or service taxable under RCW 82.04.050 (2)(a) or (g), (3)(a), (~~(6)(b)~~) or (7), if the sale to, or the use by, the present user or the present user's bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by the present user's bailor or donor.

(3)(a) Except as provided in this section, payment of the tax imposed by this chapter or chapter 82.08 RCW by one purchaser or user of tangible personal property, extended warranty, digital good, digital code, digital automated service, or other service does not have the effect of exempting any other purchaser or user of the same property, extended warranty, digital good, digital code, digital automated service, or other service from the taxes imposed by such chapters.

(b) The tax imposed by this chapter does not apply:

(i) If the sale to, or the use by, the present user or his or her bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by his or her bailor or donor;



(ii) In respect to the use of any article of tangible personal property acquired by bailment and the tax has once been paid based on reasonable rental as determined by RCW 82.12.060 measured by the value of the article at time of first use multiplied by the tax rate imposed by chapter 82.08 RCW or this chapter as of the time of first use;

(iii) In respect to the use of any article of tangible personal property acquired by bailment, if the property was acquired by a previous bailee from the same bailor for use in the same general activity and the original bailment was prior to June 9, 1961; or

(iv) To the use of digital goods or digital automated services, which were obtained through the use of a digital code, if the sale of the digital code to, or the use of the digital code by, the present user or the present user's bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by the present user's bailor or donor.

(4)(a) Except as provided in (b) of this subsection (4), the tax is levied and must be collected in an amount equal to the value of the article used, value of the digital good or digital code used, value of the extended warranty used, or value of the service used by the taxpayer, multiplied by the applicable rates in effect for the retail sales tax under RCW 82.08.020.

(b) In the case of a seller required to collect use tax from the purchaser, the tax must be collected in an amount equal to the purchase price multiplied by the applicable rate in effect for the retail sales tax under RCW 82.08.020.

#### PART XVI

##### Increasing Tobacco Taxes

**NEW SECTION. Sec. 1601.** It is the intent of the legislature to use revenue raised from taxes levied on the sales of cigarettes and other tobacco products to fund basic health care services.

**Sec. 1602.** RCW 82.24.020 and 2009 c 479 s 66 are each amended to read as follows:

(1) There is levied and ~~((there shall be))~~ collected as provided in this chapter, a tax upon the sale, use, consumption, handling, possession, or distribution of all cigarettes, in an amount equal to ~~((one and fifteen one hundredths))~~ 12.125 cents per cigarette.

~~(2) ((An additional tax is imposed upon the sale, use, consumption, handling, possession, or distribution of all cigarettes, in an amount equal to five hundred twenty five one thousandths of a cent per cigarette. All revenues collected during any month from this additional tax shall be deposited in the state general fund by the twenty fifth day of the following month.~~

~~—(3) An additional tax is imposed upon the sale, use, consumption, handling, possession, or distribution of all cigarettes, in an amount equal to two and five one hundredths cents per cigarette. All revenues collected during any month from this additional tax shall be deposited in the state general fund by the twenty fifth day of the following month.~~

~~—(4)) Wholesalers subject to the payment of this tax may, if they wish, absorb five one-hundredths cents per cigarette of the tax and not pass it on to purchasers without being in violation of this section or any other act relating to the sale or taxation of cigarettes.~~

~~((5))~~ (3) For purposes of this chapter, "possession" ~~((shall))~~ means both (a) physical possession by the purchaser and, (b) when cigarettes are being transported to or held for the purchaser or his or her designee by a person other than the purchaser, constructive possession by the purchaser or his or her designee, which constructive possession ~~((shall be))~~ is deemed to occur at the location of the cigarettes being so transported or held.

~~((6))~~ (4) In accordance with federal law and rules prescribed by the department, an enrolled member of a federally recognized Indian tribe may purchase cigarettes from an Indian tribal organization under the jurisdiction of the member's tribe for the member's own use exempt from the applicable taxes imposed by this chapter. Except as provided in subsection ~~((7))~~ (5) of this section, any person, who

purchases cigarettes from an Indian tribal organization and who is not an enrolled member of the federally recognized Indian tribe within whose jurisdiction the sale takes place, is not exempt from the applicable taxes imposed by this chapter.

~~((7))~~ (5) If the state enters into a cigarette tax contract or agreement with a federally recognized Indian tribe under chapter 43.06 RCW, the terms of the contract or agreement ~~((shall))~~ take precedence over any conflicting provisions of this chapter while the contract or agreement is in effect.

**Sec. 1603.** RCW 82.24.026 and 2009 c 479 s 67 are each amended to read as follows:

(1) In addition to the tax imposed upon the sale, use, consumption, handling, possession, or distribution of cigarettes set forth in RCW 82.24.020, there is imposed a tax in an amount equal to three cents per cigarette.

(2) The revenue collected under this section ~~((shall))~~ must be deposited as follows:

(a) ~~((28.5))~~ 14 percent ~~((shall))~~ must be deposited into the general fund.

(b) The remainder ~~((shall))~~ must be deposited into the education legacy trust account.

**Sec. 1604.** RCW 82.26.010 and 2005 c 180 s 2 are each amended to read as follows:

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

(1) "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking, and any other product, regardless of form, that contains tobacco and is intended for human consumption or placement in the oral or nasal cavity or absorption into the human body by any other means, but ~~((shall))~~ does not include cigarettes as defined in RCW 82.24.010.

(2) "Manufacturer" means a person who manufactures and sells tobacco products.

(3) "Distributor" means (a) any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale, (b) any person who makes, manufactures, fabricates, or stores tobacco products in this state for sale in this state, (c) any person engaged in the business of selling tobacco products without this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers, (d) any person engaged in the business of selling tobacco products in this state who handles for sale any tobacco products that are within this state but upon which tax has not been imposed.

(4) "Retailer" means any person engaged in the business of selling tobacco products to ultimate consumers.

(5)(a) "Sale" means any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person.

(b) The term "sale" includes a gift by a person engaged in the business of selling tobacco products, for advertising, promoting, or as a means of evading the provisions of this chapter.

(6) "Business" means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this state.

(7) "Place of business" means any place where tobacco products are sold or where tobacco products are manufactured, stored, or kept for the purpose of sale, including any vessel, vehicle, airplane, train, or vending machine.

(8) "Retail outlet" means each place of business from which tobacco products are sold to consumers.

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

(10) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, the state and its departments and institutions, political subdivision of the state of Washington, corporation, limited liability company, association, society, any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise. The term excludes any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

(11) "Indian country" means the same as defined in chapter 82.24 RCW.

(12) "Actual price" means the total amount of consideration for which tobacco products are sold, valued in money, whether received in money or otherwise, including any charges by the seller necessary to complete the sale such as charges for delivery, freight, transportation, or handling.

(13) "Affiliated" means related in any way by virtue of any form or amount of common ownership, control, operation, or management.

(14) "Board" means the liquor control board.

(15) "Cigar" means a roll for smoking that is of any size or shape and that is made wholly or in part of tobacco, irrespective of whether the tobacco is pure or flavored, adulterated or mixed with any other ingredient, if the roll has a wrapper made wholly or in greater part of tobacco. "Cigar" does not include a cigarette.

(16) "Cigarette" has the same meaning as in RCW 82.24.010.

(17) "Manufacturer's representative" means a person hired by a manufacturer to sell or distribute the manufacturer's tobacco products, and includes employees and independent contractors.

(18)(a) "Taxable sales price" means:

(i) In the case of a taxpayer that is not affiliated with the manufacturer, distributor, or other person from whom the taxpayer purchased tobacco products, the actual price for which the taxpayer purchased the tobacco products;

(ii) In the case of a taxpayer that purchases tobacco products from an affiliated manufacturer, affiliated distributor, or other affiliated person, and that sells those tobacco products to unaffiliated distributors, unaffiliated retailers, or ultimate consumers, the actual price for which that taxpayer sells those tobacco products to unaffiliated distributors, unaffiliated retailers, or ultimate consumers;

(iii) In the case of a taxpayer that sells tobacco products only to affiliated distributors or affiliated retailers, the price, determined as nearly as possible according to the actual price, that other distributors sell similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers;

(iv) In the case of a taxpayer that is a manufacturer selling tobacco products directly to ultimate consumers, the actual price for which the taxpayer sells those tobacco products to ultimate consumers;

(v) In the case of a taxpayer that has acquired tobacco products under a sale as defined in subsection (5)(b) of this section, the price, determined as nearly as possible according to the actual price, that the taxpayer or other distributors sell the same tobacco products or similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers; or

(vi) In any case where (a)(i) through (v) of this subsection do not apply, the price, determined as nearly as possible according to the actual price, that the taxpayer or other distributors sell the same tobacco products or similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers.

(b) For purposes of (a)(i) and (ii) of this subsection only, "person" includes both persons as defined in subsection (10) of this section and any person immune from state taxation, including the United States or

its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

(c) The department may adopt rules regarding the determination of taxable sales price under this subsection.

(19) "Taxpayer" means a person liable for the tax imposed by this chapter.

(20) "Unaffiliated distributor" means a distributor that is not affiliated with the manufacturer, distributor, or other person from whom the distributor has purchased tobacco products.

(21) "Unaffiliated retailer" means a retailer that is not affiliated with the manufacturer, distributor, or other person from whom the retailer has purchased tobacco products.

(22) "Moist snuff" means tobacco that is finely cut, ground, or powdered; is not for smoking; and is intended to be placed in the oral, but not the nasal, cavity.

(23) "Little cigar" means a cigar that has a cellulose acetate filter.

**Sec. 1605.** RCW 82.26.020 and 2009 c 479 s 70 are each amended to read as follows:

(1) There is levied and ~~((there shall be))~~ collected a tax upon the sale, handling, or distribution of all tobacco products in this state at the following rate:

(a) ~~((Seventy-five))~~ For cigars except little cigars, ninety-five percent of the taxable sales price of cigars, not to exceed ((fifty)) sixty-five cents per cigar; ((€))

(b) ~~((Seventy-five))~~ For all tobacco products except those covered under separate provisions of this subsection, ninety-five percent of the taxable sales price ((of all tobacco products that are not cigars));

(c) For moist snuff, as established in this subsection (1)(c) and computed on the net weight listed by the manufacturer:

(i) On each single unit consumer-sized can or package whose net weight is one and two-tenths ounces or less, a rate per single unit that is equal to the greater of 3.025 dollars or the cigarette tax under chapter 82.24 RCW multiplied by twenty; or

(ii) On each single unit consumer-sized can or package whose net weight is more than one and two-tenths ounces, a proportionate tax at the rate established in (c)(i) of this subsection (1) on each ounce or fractional part of an ounce; and

(d) For little cigars, an amount per cigar equal to the cigarette tax under chapter 82.24 RCW.

(2) Taxes under this section ~~((shall))~~ must be imposed at the time the distributor (a) brings, or causes to be brought, into this state from without the state tobacco products for sale, (b) makes, manufactures, fabricates, or stores tobacco products in this state for sale in this state, (c) ships or transports tobacco products to retailers in this state, to be sold by those retailers, or (d) handles for sale any tobacco products that are within this state but upon which tax has not been imposed.

(3) The moneys collected under this section ~~((shall))~~ must be deposited into the state general fund.

**NEW SECTION. Sec. 1606.** A new section is added to chapter 82.26 RCW to read as follows:

(1)(a) Within one year following the date on which the requirement for a tobacco product code is effective, payment of, or exemption from, the tax imposed in RCW 82.26.020 must be verifiable on each single-unit consumer-sized can or package of moist snuff, as provided in (b) of this subsection.

(b) Within thirty days following the date on which notice of proposed rule making to require a tobacco product code is published in the federal register, the department must commence to develop a method for using a tobacco product code to verify payment of, or exemption from, the tax imposed in RCW 82.26.020; to develop and implement a pilot project to test the method; and to develop a plan for adoption of rules to implement the method. The department must report to the legislature on its progress annually by December 1st through the year following the year in which the method is implemented.

(2) If notice of proposed rule making to require a tobacco product code is not published in the federal register by July 1, 2011, the department must determine and recommend to the legislature by November 1, 2014, a method to verify payment of, or exemption from, the tax imposed in RCW 82.26.020, by means of stamping, use of manufacturers' digitally readable product identifiers, or any other method, and must complete and present to the legislature a study of compliance with the tax imposed in RCW 82.26.020, the effect of noncompliance on state revenue, and the effect of adopting a method to verify payment of, or exemption from, the tax.

(3) For purposes of this section, "tobacco product code" means a code that is required on the label of a tobacco product for purposes of tracking or tracing the product through the distribution system under final regulations adopted by the secretary of the United States department of health and human services.

**Sec. 1607.** RCW 82.26.030 and 2005 c 180 s 1 are each amended to read as follows:

It is the intent and purpose of this chapter to levy a tax on all tobacco products sold, used, consumed, handled, or distributed within this state and to collect the tax from the distributor as defined in RCW 82.26.010. It is the further intent and purpose of this chapter to impose the tax once, and only once, on all tobacco products for sale in this state, but nothing in this chapter ~~(shall)~~ may be construed to exempt any person taxable under any other law or under any other tax imposed under Title 82 RCW. It is the further intent and purpose of this chapter that the distributor who first possesses the tobacco product in this state ~~(shall be)~~ is the distributor liable for the tax and that (1) for moist snuff the tax will be based on the net weight listed by the manufacturer and (2) in most other instances the tax will be based on the actual price that the distributor paid for the tobacco product, unless the distributor is affiliated with the seller.

**NEW SECTION. Sec. 1608.** The following acts or parts of acts are each repealed:

(1) RCW 82.24.027 (Additional tax imposed--Rate--Deposited into the general fund) and 2009 c 479 s 68, 2008 c 86 s 303, 1999 c 309 s 925, & 1986 c 3 s 12; and

(2) RCW 82.24.028 (Additional tax imposed--Rate--Deposited into the general fund) and 2009 c 479 s 69, 2008 c 86 s 304, & 2002 c 2 s 3.

## PART XVII

### Rural County Tax Incentive Programs

**Sec. 1701.** RCW 82.60.010 and 1985 c 232 s 1 are each amended to read as follows:

The legislature finds that there are several areas in the state that are characterized by very high levels of unemployment and poverty. The ~~(legislative legislature))~~ legislature further finds that economic stagnation is the primary cause of this high unemployment rate and poverty; that new state policies are necessary in order to promote economic stimulation and new employment opportunities in these distressed areas; and that policies providing incentives for economic growth in these distressed areas are essential. For these reasons, the legislature ~~(hereby))~~ reestablishes a tax deferral program to be effective solely in distressed ~~(areas and under circumstances where the deferred tax payments are for investments or costs that result in the creation of a specified number of jobs))~~ counties. The legislature declares that this limited program serves the vital public purpose of creating employment opportunities and reducing poverty in the distressed ~~(areas))~~ counties of the state.

**Sec. 1702.** RCW 82.60.020 and 2006 c 142 s 1 are each amended to read as follows:

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

(1) "Applicant" means a person applying for a tax deferral under this chapter.

(2) "Department" means the department of revenue.

(3) "Distressed county" means a county that has an unemployment rate, as determined by the employment security department, which is at least twenty percent above the state average for the three calendar years immediately preceding the year in which the list of distressed counties is established or updated, as the case may be, as provided in section 1703 of this act.

~~(4)~~ "Eligible area" means:

~~(a) Through June 30, 2010,~~ a rural county as defined in RCW 82.14.370; and

~~(b) Beginning July 1, 2010,~~ a distressed county.

~~((4))~~ ~~(5)~~ (a) "Eligible investment project" means an investment project that is located, as of the date the application required by RCW 82.60.030 is received by the department, in an eligible area as defined in subsection ~~((3))~~ (4) of this section.

~~(b) ((The lessor or owner of a qualified building is not eligible for a deferral unless:~~

~~(i) The underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person; or~~

~~(ii) (A) The lessor by written contract agrees to pass the economic benefit of the deferral to the lessee;~~

~~(B) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual survey required under RCW 82.60.070; and~~

~~(C) The economic benefit of the deferral passed to the lessee is no less than the amount of tax deferred by the lessor and is evidenced by written documentation of any type of payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee.~~

~~(e))~~ "Eligible investment project" does not include any portion of an investment project undertaken by a light and power business as defined in RCW 82.16.010~~((5))~~ (4), other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part, or investment projects ~~((which))~~ that have already received deferrals under this chapter.

~~((5))~~ (6) "Initiation of construction" has the same meaning as in RCW 82.63.010.

~~(7)~~ "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project.

~~((6))~~ (8) "Manufacturing" means the same as defined in RCW 82.04.120. "Manufacturing" also includes:

~~(a) Before July 1, 2010:~~ (i) Computer programming, the production of computer software, and other computer-related services, but only when the computer programming, production of computer software, or other computer-related services are performed by a manufacturer as defined in RCW 82.04.110 and contribute to the production of a new, different, or useful substance or article of tangible personal property for sale; (ii) the activities performed by research and development laboratories and commercial testing laboratories~~(;);~~ and (iii) the conditioning of vegetable seeds; and

~~(b) Beginning July 1, 2010:~~ (i) The activities performed by research and development laboratories and commercial testing laboratories; and (ii) the conditioning of vegetable seeds.

~~((7))~~ (9) "Person" has the meaning given in RCW 82.04.030.

~~((8))~~ (10) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity used for manufacturing ~~(and)~~ or research and development activities, including plant offices and warehouses or other facilities for the storage of raw material or finished goods if such facilities are an essential or an integral part of a factory, mill, plant, or laboratory used for manufacturing or research and development. If a building is used partly for manufacturing or research and development and partly for other purposes, the applicable tax deferral ~~((shall))~~ must be

determined by apportionment of the costs of construction under rules adopted by the department.

~~((99))~~ (11) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The term "entire tax year" means a full-time position that is filled for a period of twelve consecutive months. The term "full-time" means at least thirty-five hours a week, four hundred fifty-five hours a quarter, or one thousand eight hundred twenty hours a year.

~~((40))~~ (12) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; operating structures; and all equipment used to control or operate the machinery.

~~((44))~~ (13) "Recipient" means a person receiving a tax deferral under this chapter.

~~((42))~~ (14) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun, but only when such activities are intended to ultimately result in the production of a new, different, or useful substance or article of tangible personal property for sale. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

NEW SECTION. Sec. 1703. A new section is added to chapter 82.60 RCW to read as follows:

The department, with the assistance of the employment security department, must establish a list of distressed counties effective July 1, 2010. The list of distressed counties is effective for a twenty- four month period and must be updated by July 1st of the year that is two calendar years after the list was established or last updated, as the case may be.

NEW SECTION. Sec. 1704. A new section is added to chapter 82.60 RCW to read as follows:

The lessor or owner of a qualified building is not eligible for a deferral unless:

(1) The underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person; or

(2)(a) The lessor by written contract agrees to pass the economic benefit of the deferral to the lessee;

(b) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual survey required under RCW 82.60.070; and

(c) The economic benefit of the deferral passed to the lessee is no less than the amount of tax deferred by the lessor and is evidenced by written documentation of any type of payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee.

**Sec. 1705.** RCW 82.60.030 and 1994 sp.s. c 1 s 2 are each amended to read as follows:

(1) Application for deferral of taxes under this chapter must be made before initiation of the construction of the investment project or acquisition of equipment or machinery. The application ~~((shall))~~ must be made to the department in a form and manner prescribed by the department. The application ~~((shall))~~ must contain information regarding the location of the investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information

required by the department. The department ~~((shall))~~ must rule on the application within sixty days.

(2) This section expires July 1, 2020.

**Sec. 1706.** RCW 82.60.040 and 2004 c 25 s 4 are each amended to read as follows:

(1) The department ~~((shall))~~ must issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on each eligible investment project ~~((that is located in an eligible area as defined in RCW 82.60.020)).~~

(2) The department ~~((shall))~~ must keep a running total of all deferrals granted under this chapter during each fiscal biennium.

(3) This section expires July 1, ~~((2010))~~ 2020.

**Sec. 1707.** RCW 82.60.049 and 2004 c 25 s 5 are each amended to read as follows:

(1) For the purposes of this section:

(a) "Eligible area" also means: Through June 30, 2010, a designated community empowerment zone approved under RCW 43.31C.020 or a county containing a community empowerment zone; and beginning July 1, 2010, a designated community empowerment zone approved under RCW 43.31C.020.

(b) "Eligible investment project" also means an investment project in an eligible area as defined in this section.

(2) In addition to the provisions of RCW 82.60.040, the department ~~((shall))~~ must issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW, on each eligible investment project that is located in an eligible area, if the applicant establishes that at the time the project is operationally complete:

(a) The applicant will hire at least one qualified employment position for each seven hundred fifty thousand dollars of investment for which a deferral is requested; and

(b) The positions will be filled by persons who at the time of hire are residents of the community empowerment zone. As used in this subsection, "resident" means the person makes his or her home in the community empowerment zone. A mailing address alone is insufficient to establish that a person is a resident for the purposes of this section. The persons must be hired after the date the application is filed with the department.

(3) All other provisions and eligibility requirements of this chapter apply to applicants eligible under this section.

(4) The qualified employment position must be filled by the end of the calendar year following the year in which the project is certified as operationally complete. If a person does not meet the requirements for qualified employment positions by the end of the second calendar year following the year in which the project is certified as operationally complete, all deferred taxes are immediately due.

**Sec. 1708.** RCW 82.60.060 and 2000 c 106 s 5 are each amended to read as follows:

(1) The recipient ~~((shall))~~ must begin paying the deferred taxes in the third year after the date certified by the department as the date on which the ~~((construction))~~ investment project has been operationally completed. The first payment will be due on December 31st of the third calendar year after such certified date, with subsequent annual payments due on December 31st of the following four years with amounts of payment scheduled as follows:

Repayment Year	% of Deferred Tax Repaid
1	10%
2	15%
3	20%

4	25%
5	30%

(2) The department may authorize an accelerated repayment schedule upon request of the recipient.

(3) Interest ~~((shall))~~ may not be charged on any taxes deferred under this chapter for the period of deferral, although all other penalties and interest applicable to delinquent excise taxes may be assessed and imposed for delinquent payments under this chapter. The debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral.

**Sec. 1709.** RCW 82.60.070 and 2004 c 25 s 7 are each amended to read as follows:

(1)(a) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how a tax incentive is used.

(b) Each recipient of a deferral granted under this chapter after June 30, 1994, ~~((shall))~~ must complete an annual survey. If the economic benefits of the deferral are passed to a lessee as provided in ~~((RCW 82.60.020(4)))~~ section 1704 of this act, the lessee ~~((shall agree to))~~ must complete the annual survey and the applicant is not required to complete the annual survey. The survey is due by March 31st of the year following the calendar year in which the investment project is certified by the department as having been operationally complete and the seven succeeding calendar years. The survey ~~((shall))~~ must include the amount of tax deferred, the number of new products or research projects by general classification, and the number of trademarks, patents, and copyrights associated with activities at the investment project. The survey ~~((shall))~~ must also include the following information for employment positions in Washington:

- (i) The number of total employment positions;
- (ii) Full-time, part-time, and temporary employment positions as a percent of total employment;
- (iii) The number of employment positions according to the following wage bands: Less than thirty thousand dollars; thirty thousand dollars or greater, but less than sixty thousand dollars; and sixty thousand dollars or greater. A wage band containing fewer than three individuals may be combined with another wage band; and
- (iv) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands.

(c) As part of the survey, the department may request additional information necessary to measure the results of, or determine eligibility for, the deferral program, to be submitted at the same time as the survey.

(d) All information collected under this subsection, except the amount of the tax deferral taken, is deemed taxpayer information under RCW 82.32.330 and is not disclosable. Information on the amount of tax deferral taken is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(e) The department ~~((shall))~~ must use the information from this section to prepare summary descriptive statistics by category. No fewer than three taxpayers ~~((shall))~~ may be included in any category. The department ~~((shall))~~ must report these statistics to the legislature each year by September 1st.

(f) The department ~~((shall))~~ must also use the information to study the tax deferral program authorized under this chapter. The department ~~((shall))~~ must report to the legislature by December 1, ~~((2009))~~ 2019. The report ~~((shall))~~ must measure the effect of the program on job creation, the number of jobs created for residents of

eligible areas, company growth, the introduction of new products, the diversification of the state's economy, growth in research and development investment, the movement of firms or the consolidation of firms' operations into the state, and such other factors as the department selects.

(2)(a) If, on the basis of a survey under this section or other information, the department finds that an investment project is not eligible for tax deferral under this chapter, the amount of deferred taxes outstanding for the project ~~((shall be immediately due))~~.

(b) If a recipient of the deferral fails to complete the annual survey required under subsection (1) of this section by the date due, twelve and one-half percent of the deferred tax ~~((shall))~~ will be immediately due. If the economic benefits of the deferral are passed to a lessee as provided in ~~((RCW 82.60.020(4)))~~ section 1704 of this act, the lessee ~~((shall be))~~ is responsible for payment to the extent the lessee has received the economic benefit.

(3) Notwithstanding any other subsection of this section, deferred taxes need not be repaid on machinery and equipment for lumber and wood products industries, and sales of or charges made for labor and services, of the type which qualifies for exemption under RCW 82.08.02565 or 82.12.02565 to the extent the taxes have not been repaid before July 1, 1995.

(4) Notwithstanding any other subsection of this section, deferred taxes on the following need not be repaid:

- (a) Machinery and equipment, and sales of or charges made for labor and services, which at the time of purchase would have qualified for exemption under RCW 82.08.02565; and
- (b) Machinery and equipment which at the time of first use would have qualified for exemption under RCW 82.12.02565.

**Sec. 1710.** RCW 82.32.600 and 2009 c 461 s 8 are each amended to read as follows:

(1) Persons required to file annual surveys or annual reports under RCW 82.04.4452, 82.32.5351, 82.32.545, 82.32.610, 82.32.630, 82.82.020, 82.32.632, 82.60.070, or 82.74.040 must electronically file with the department all surveys, reports, returns, and any other forms or information the department requires in an electronic format as provided or approved by the department. As used in this section, "returns" has the same meaning as "return" in RCW 82.32.050.

(2) Any survey, report, return, or any other form or information required to be filed in an electronic format under subsection (1) of this section is not filed until received by the department in an electronic format.

(3) The department may waive the electronic filing requirement in subsection (1) of this section for good cause shown.

**Sec. 1711.** RCW 82.60.100 and 1987 c 49 s 1 are each amended to read as follows:

Applications, reports, and any other information received by the department under this chapter ~~((shall)),~~ except applications not approved by the department, are not ~~((be))~~ confidential and ~~((shall be))~~ are subject to disclosure.

**Sec. 1712.** RCW 82.62.010 and 2007 c 485 s 1 are each amended to read as follows:

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

- (1) "Applicant" means a person applying for a tax credit under this chapter.
- (2) "Department" means the department of revenue.
- (3) "Eligible area" means ~~((an area))~~ a "rural county" as defined in RCW ~~((82.60.020))~~ 82.14.370.

(4)(a) "Eligible business project" means manufacturing or research and development activities which are conducted by an applicant in an eligible area at a specific facility, provided the applicant's average qualified employment positions at the specific facility will be at least fifteen percent greater in the four consecutive full calendar quarters after the calendar quarter during which the first qualified employment position is filled than the applicant's average

qualified employment positions at the same facility in the four consecutive full calendar quarters immediately preceding the calendar quarter during which the first qualified employment position is filled.

(b) "Eligible business project" does not include any portion of a business project undertaken by a light and power business as defined in RCW 82.16.010(~~(5))~~ (4) or that portion of a business project creating qualified full-time employment positions outside an eligible area.

(5) "First qualified employment position" means the first qualified employment position filled for which a credit under this chapter is sought.

(6) "Manufacturing" means the same as defined in RCW 82.04.120. "Manufacturing" also includes:

(a) Before July 1, 2010: (i) Computer programming, the production of computer software, and other computer-related services, but only when the computer programming, production of computer software, or other computer-related services are performed by a manufacturer as defined in RCW 82.04.110 and contribute to the production of a new, different, or useful substance or article of tangible personal property for sale; and (ii) the activities performed by research and development laboratories and commercial testing laboratories; and

(b) Beginning July 1, 2010, the activities performed by research and development laboratories and commercial testing laboratories.

(7) "Person" has the meaning given in RCW 82.04.030.

(8)(a)(i) "Qualified employment position" means a permanent full-time employee employed in the eligible business project during four consecutive full calendar quarters.

(ii) For seasonal employers, "qualified employment position" also includes the equivalent of a full-time employee in work hours for four consecutive full calendar quarters.

(b) For purposes of this subsection, "full time" means a normal work week of at least thirty-five hours.

(c) Once a permanent, full-time employee has been employed, a position does not cease to be a qualified employment position solely due to periods in which the position goes vacant, as long as:

(i) The cumulative period of any vacancies in that position is not more than one hundred twenty days in the four-quarter period; and

(ii) During a vacancy, the employer is training or actively recruiting a replacement permanent, full-time employee for the position.

(9) "Recipient" means a person receiving tax credits under this chapter.

(10) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun, but only when such activities are intended to ultimately result in the production of a new, different, or useful substance or article of tangible personal property for sale. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(11) "Seasonal employee" means an employee of a seasonal employer who works on a seasonal basis. For the purposes of this subsection and subsection (12) of this section, "seasonal basis" means a continuous employment period of less than twelve consecutive months.

(12) "Seasonal employer" means a person who regularly hires more than fifty percent of its employees to work on a seasonal basis.

**NEW SECTION. Sec. 1713.** RCW 82.60.900 and 82.60.901 are each decodified.

**NEW SECTION. Sec. 1714.** The following acts or parts of acts are each repealed:

(1) RCW 82.60.050 (Expiration of RCW 82.60.030 and 82.60.040) and 2004 c 25 s 6, 1994 sp.s. c 1 s 7, 1993 sp.s. c 25 s 404, 1988 c 41 s 5, & 1985 c 232 s 10; and

(2) RCW 82.60.110 (Competing projects--Impact study) and 1998 c 245 s 169 & 1994 sp.s. c 1 s 8.

**NEW SECTION. Sec. 1715.** The amendments to the definitions of "manufacturing" and "research and development" in sections 1702 and 1712 of this act apply retroactively as well as prospectively.

#### PART XVIII

##### PUD Privilege Tax Clarification

**Sec. 1801.** RCW 54.28.011 and 1957 c 278 s 12 are each amended to read as follows:

"Gross revenue" (~~(shall)~~) means the amount received from the sale of electric energy, which also includes any regularly recurring charge billed to consumers as a condition of receiving electric energy, and excluding any tax levied by a municipal corporation upon the district pursuant to RCW 54.28.070.

#### PART XIX

##### Business and Occupation Surtax on Certain Services

**NEW SECTION. Sec. 1901.** In order to preserve education funding, it is the legislature's intent to use revenue generated from increasing the business and occupation tax on certain business activities to support basic education including levy equalization and dropout prevention programs.

**NEW SECTION. Sec. 1902.** A new section is added to chapter 82.04 RCW to read as follows:

(1) There is levied and collected for the period July 1, 2010, through June 30, 2013, from every person for the act or privilege of engaging in any business activity defined as a selected business service, an additional tax equal to the gross income of the business from such activity multiplied by the rate of 0.5 percent.

(2) For the purpose of this section, "selected business service" means:

(a) Accounting, auditing, tax preparation, bookkeeping, payroll, and other related services.

(b) Agent and management services for artists, athletes, entertainers, and other public figures.

(c) Attorney services, paralegal services, arbitration and conciliation services, mediation product services, legal research services, and court reporting services.

(d) Business support services including but not limited to: Document preparation services, telephone call telephone answering services, telemarketing services, debt collection services, repossession services, and court reporting and stenotype services.

(e) Computer systems design and related services including but not limited to: Computer systems design services, computer facilities management services, other computer facilities management services, and other computer related services (such as computer disaster recovery services and software installation services). Computer systems design and related services does not include custom computer programming services.

(f) Data processing, hosting, and related services including but not limited to: Application hosting services, application service provider services, automated data processing services, computer input preparation services, computer time rental services, data entry services, media streaming services, optical scanning services, and web hosting services.

(g) Facilities support services.

(h) Investment advice services including but not limited to: Financial investment advice services, financial planning services, investment advice consulting services, and investment advisory services.

(i) Management, scientific, and technical consulting services including but not limited to: Administrative management and general management services (such as business consulting services, medical office management services, site location consulting services, strategic planning consulting services, and financial management consulting services), human resources consulting services (such as actuarial consulting services, benefit consulting services, employee

benefit consulting services, human resource consulting services, labor relations consulting services, and personnel management consulting services), marketing consulting services (such as customer service management consulting services, marketing consulting services, and sales management consulting services), process, physical distribution, and logistics consulting services (such as efficiency management consulting services, freight traffic consulting services, inventory planning and control management consulting services, operations research consulting services, and transportation management consulting services), environmental consulting services (such as sanitation consulting services and site remediation services), and other scientific and technical consulting services (such as agricultural consulting services, chemical consulting services, economic consulting services, energy consulting services, hydrology consulting services, livestock breeding consulting services, and security consulting services).

(j) Marketing research and public opinion polling services.

(k) Office administrative services including but not limited to: Business management services, executive management services, hotel management services, and office management services.

(l) Parking lot management services.

(m) Promoting services for performing arts, sporting, and similar events.

(n) Public relations services including but not limited to: Lobbying services, political consulting services, and other public relations consulting services.

(o) Scientific research and development services including but not limited to research and development in the physical, engineering, and life sciences (such as agriculture, bacteriological, biotechnology, chemical, life sciences, and physical science research and development laboratories or services) and research and development in the social sciences and humanities (such as archaeological, behavioral, cognitive, economic, language, and learning research or development services).

(p) Software publishing support services.

(q) The following professional, scientific, and technical services not otherwise included within the definition of selected business service: Business brokers except real estate brokers, commodity inspection services, consumer credit counseling services, consumer credit repair services, estate assessment services, handwriting analysis services, handwriting expert services, marine surveyor services, meteorological services, outplacement services, patent broker services, electric transmission or gas line visual inspection services, pipeline inspection services, power line visual inspection services, quantity surveyor services, and weather forecasting services.

**PART XX**

**Solar Energy Tax Incentives**

**Sec. 2001.** RCW 82.04.294 and 2009 c 469 s 501 are each amended to read as follows:

~~(1)((a) Beginning October 1, 2005, upon every person engaging within this state in the business of manufacturing solar energy systems using photovoltaic modules, or of manufacturing solar grade silicon to be used exclusively in components of such systems; as to such persons the amount of tax with respect to such business shall, in the case of manufacturers, be equal to the value of the product manufactured, or in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of 0.2904 percent.~~

~~—(b) Beginning October 1, 2009,)) Upon every person engaging within this state in the business of manufacturing solar energy systems using photovoltaic modules or stirling converters, or of manufacturing solar grade silicon, silicon solar wafers, silicon solar cells, thin film solar devices, or compound semiconductor solar wafers to be used exclusively in components of such systems; as to such persons the amount of tax with respect to such business is, in the case of manufacturers, equal to the value of the product~~

manufactured, or in the case of processors for hire, equal to the gross income of the business, multiplied by the rate of 0.275 percent.

~~(2)((a) Beginning October 1, 2005, upon every person engaging within this state in the business of making sales at wholesale of solar energy systems using photovoltaic modules, or of solar grade silicon to be used exclusively in components of such systems, manufactured by that person; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the solar energy systems using photovoltaic modules, or of the solar grade silicon to be used exclusively in components of such systems, multiplied by the rate of 0.2904 percent.~~

~~—(b) Beginning October 1, 2009,))~~ Upon every person engaging within this state in the business of making sales at wholesale of solar energy systems using photovoltaic modules or stirling converters, or of solar grade silicon, silicon solar wafers, silicon solar cells, thin film solar devices, or compound semiconductor solar wafers to be used exclusively in components of such systems, manufactured by that person; as to such persons the amount of tax with respect to such business is equal to the gross proceeds of sales of the solar energy systems using photovoltaic modules or stirling converters, or of the solar grade silicon to be used exclusively in components of such systems, multiplied by the rate of 0.275 percent.

(3) ~~((Beginning October 1, 2009,))~~ Silicon solar wafers, silicon solar cells, thin film solar devices, or compound semiconductor solar wafers are "semiconductor materials" for the purposes of RCW 82.08.9651 and 82.12.9651.

(4) The definitions in this subsection apply throughout this section.

(a) "Compound semiconductor solar wafers" means a semiconductor solar wafer composed of elements from two or more different groups of the periodic table.

(b) "Module" means the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output.

(c) "Photovoltaic cell" means a device that converts light directly into electricity without moving parts.

(d) "Silicon solar cells" means a photovoltaic cell manufactured from a silicon solar wafer.

(e) "Silicon solar wafers" means a silicon wafer manufactured for solar conversion purposes.

(f) "Solar energy system" means any device or combination of devices or elements that rely upon direct sunlight as an energy source for use in the generation of electricity.

(g) "Solar grade silicon" means high-purity silicon used exclusively in components of solar energy systems using photovoltaic modules to capture direct sunlight. "Solar grade silicon" does not include silicon used in semiconductors.

(h) "Stirling converter" means a device that produces electricity by converting heat from a solar source utilizing a stirling engine.

~~(i) "Thin film solar devices" means a nonparticipating substrate on which various semiconducting materials are deposited to produce a photovoltaic cell that is used to generate electricity.~~

(5) This section expires June 30, 2014.

**Sec. 2002.** RCW 82.16.110 and 2009 c 469 s 504 are each amended to read as follows:

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

(1)(a) "Community solar project" means:

(i) A solar energy system owned by local individuals, households, nonprofit organizations, or nonutility businesses that is placed on the property owned by a cooperating local governmental entity that is not in the light and power business or in the gas distribution business; or

(ii) A utility-owned solar energy system that is voluntarily funded by the utility's ratepayers where, in exchange for their financial support, the utility gives contributors a payment or credit on their utility bill for the value of the electricity produced by the project.

(b) For the purposes of "community solar project" as defined in (a) of this subsection:

(i) "Nonprofit organization" means an organization exempt from taxation under ~~((Title))~~ 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code of 1986, as amended, as of January 1, 2009; and

(ii) "Utility" means a light and power business, an electric cooperative, or a mutual corporation that provides electricity service.

(2) "Customer-generated electricity" means a community solar project or the alternating current electricity that is generated from a renewable energy system located on an individual's, businesses', or local government's real property that is also provided electricity generated by a light and power business. Except for community solar projects, a system located on a leasehold interest does not qualify under this definition. Except for community solar projects, "customer-generated electricity" does not include electricity generated by a light and power business with greater than one thousand megawatt hours of annual sales or a gas distribution business.

(3) "Economic development kilowatt-hour" means the actual kilowatt-hour measurement of customer-generated electricity multiplied by the appropriate economic development factor.

(4) "Local governmental entity" means any unit of local government of this state including, but not limited to, counties, cities, towns, municipal corporations, quasi-municipal corporations, special purpose districts, and school districts.

(5) "Photovoltaic cell" means a device that converts light directly into electricity without moving parts.

(6) "Renewable energy system" means a solar energy system, an anaerobic digester as defined in RCW 82.08.900, or a wind generator used for producing electricity.

(7) "Solar energy system" means any device or combination of devices or elements that rely upon direct sunlight as an energy source for use in the generation of electricity.

(8) "Solar inverter" means the device used to convert direct current to alternating current in a ~~((photovoltaic cell))~~ solar energy system.

(9) "Solar module" means the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output.

(10) "Stirling converter" means a device that produces electricity by converting heat from a solar source utilizing a stirling engine.

**Sec. 2003.** RCW 82.16.120 and 2009 c 469 s 505 are each amended to read as follows:

(1) Any individual, business, local governmental entity, not in the light and power business or in the gas distribution business, or a participant in a community solar project may apply to the light and power business serving the situs of the system, each fiscal year beginning on July 1, 2005, for an investment cost recovery incentive for each kilowatt-hour from a customer-generated electricity renewable energy system. No incentive may be paid for kilowatt-hours generated before July 1, 2005, or after June 30, 2020.

(2)(a) Before submitting for the first time the application for the incentive allowed under subsection (4) of this section, the applicant must submit to the department of revenue and to the climate and rural energy development center at the Washington State University, established under RCW 28B.30.642, a certification in a form and manner prescribed by the department that includes, but is not limited to, the following information:

(i) The name and address of the applicant and location of the renewable energy system;

(ii) The applicant's tax registration number;

(iii) That the electricity produced by the applicant meets the definition of "customer-generated electricity" and that the renewable energy system produces electricity with:

(A) Any solar inverters and solar modules manufactured in Washington state;

(B) A wind generator powered by blades manufactured in Washington state;

(C) A solar inverter manufactured in Washington state;

(D) A solar module manufactured in Washington state; ~~((or))~~

(E) A stirling converter manufactured in Washington state; or

(F) Solar or wind equipment manufactured outside of Washington state;

(iv) That the electricity can be transformed or transmitted for entry into or operation in parallel with electricity transmission and distribution systems;

(v) The date that the renewable energy system received its final electrical permit from the applicable local jurisdiction.

(b) Within thirty days of receipt of the certification the department of revenue must notify the applicant by mail, or electronically as provided in RCW 82.32.135, whether the renewable energy system qualifies for an incentive under this section. The department may consult with the climate and rural energy development center to determine eligibility for the incentive. System certifications and the information contained therein are subject to disclosure under RCW 82.32.330(3)(m).

(3)(a) By August 1st of each year application for the incentive ~~((shall))~~ must be made to the light and power business serving the situs of the system by certification in a form and manner prescribed by the department that includes, but is not limited to, the following information:

(i) The name and address of the applicant and location of the renewable energy system;

(ii) The applicant's tax registration number;

(iii) The date of the notification from the department of revenue stating that the renewable energy system is eligible for the incentives under this section;

(iv) A statement of the amount of kilowatt-hours generated by the renewable energy system in the prior fiscal year.

(b) Within sixty days of receipt of the incentive certification the light and power business serving the situs of the system ~~((shall))~~ must notify the applicant in writing whether the incentive payment will be authorized or denied. The business may consult with the climate and rural energy development center to determine eligibility for the incentive payment. Incentive certifications and the information contained therein are subject to disclosure under RCW 82.32.330(3)(m).

(c)(i) Persons receiving incentive payments ~~((shall))~~ must keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of incentive applied for and received. Such records ~~((shall))~~ must be open for examination at any time upon notice by the light and power business that made the payment or by the department. If upon examination of any records or from other information obtained by the business or department it appears that an incentive has been paid in an amount that exceeds the correct amount of incentive payable, the business may assess against the person for the amount found to have been paid in excess of the correct amount of incentive payable and ~~((shall))~~ must add thereto interest on the amount. Interest ~~((shall be))~~ is assessed in the manner that the department assesses interest upon delinquent tax under RCW 82.32.050.

(ii) If it appears that the amount of incentive paid is less than the correct amount of incentive payable the business may authorize additional payment.

(4) Except for community solar projects, the investment cost recovery incentive may be paid fifteen cents per economic development kilowatt-hour unless requests exceed the amount authorized for credit to the participating light and power business. For community solar projects, the investment cost recovery incentive may be paid thirty cents per economic development kilowatt-hour unless requests exceed the amount authorized for credit to the participating light and power business. For the purposes of this



section, the rate paid for the investment cost recovery incentive may be multiplied by the following factors:

(a) For customer-generated electricity produced using solar modules manufactured in Washington state or a solar ~~stirling~~ converter manufactured in Washington state, two and four-tenths;

(b) For customer-generated electricity produced using a solar or a wind generator equipped with an inverter manufactured in Washington state, one and two-tenths;

(c) For customer-generated electricity produced using an anaerobic digester, or by other solar equipment or using a wind generator equipped with blades manufactured in Washington state, one; and

(d) For all other customer-generated electricity produced by wind, eight-tenths.

(5) No individual, household, business, or local governmental entity is eligible for incentives provided under subsection (4) of this section for more than five thousand dollars per year. Each applicant in a community solar project is eligible for up to five thousand dollars per year.

(6) If requests for the investment cost recovery incentive exceed the amount of funds available for credit to the participating light and power business, the incentive payments ~~((shall))~~ must be reduced proportionately.

(7) The climate and rural energy development center at Washington State University energy program may establish guidelines and standards for technologies that are identified as Washington manufactured and therefore most beneficial to the state's environment.

(8) The environmental attributes of the renewable energy system belong to the applicant, and do not transfer to the state or the light and power business upon receipt of the investment cost recovery incentive.

#### PART XXI

##### Sales and Use Tax Exemption for Investment Castings

NEW SECTION. Sec. 2101. A new section is added to chapter 82.08 RCW to read as follows:

(1) The tax levied by RCW 82.08.020 does not apply to sales of wax and ceramic materials used to create molds consumed during the process of creating ferrous and nonferrous investment castings used in industrial applications. The tax also does not apply to labor or services used to create wax patterns and ceramic shells used as molds and consumed during the process of creating ferrous and nonferrous investment castings used in industrial applications.

(2) A person claiming the exemption under this section must claim the exemption in a form and manner prescribed by the department.

(3) This section expires July 1, 2020.

NEW SECTION. Sec. 2102. A new section is added to chapter 82.12 RCW to read as follows:

(1) The provisions of this chapter do not apply with respect to the use of wax and ceramic materials used to create molds consumed during the process of creating ferrous and nonferrous investment castings used in industrial applications.

(2) This section expires July 1, 2020.

#### PART XXII

##### Tax Relief for Aluminum Smelters

Sec. 2201. RCW 82.04.2909 and 2006 c 182 s 1 are each amended to read as follows:

(1) Upon every person who is an aluminum smelter engaging within this state in the business of manufacturing aluminum; as to such persons the amount of tax with respect to such business ~~((shall))~~ is, in the case of manufacturers, ~~((be))~~ equal to the value of the product manufactured, or in the case of processors for hire, ~~((be))~~ equal to the gross income of the business, multiplied by the rate of .2904 percent.

(2) Upon every person who is an aluminum smelter engaging within this state in the business of making sales at wholesale of aluminum manufactured by that person, as to such persons the amount of tax with respect to such business ~~((shall be))~~ is equal to the gross proceeds of sales of the aluminum multiplied by the rate of .2904 percent.

(3) This section expires January 1, ~~((2012))~~ 2017.

Sec. 2202. RCW 82.04.4481 and 2006 c 182 s 2 are each amended to read as follows:

(1) In computing the tax imposed under this chapter, a credit is allowed for all property taxes paid during the calendar year on property owned by a direct service industrial customer and reasonably necessary for the purposes of an aluminum smelter.

(2) A person taking the credit under this section is subject to all the requirements of chapter 82.32 RCW. A credit earned during one calendar year may be carried over to be credited against taxes incurred in the subsequent calendar year, but may not be carried over a second year. Credits carried over must be applied to tax liability before new credits. No refunds may be granted for credits under this section.

(3) Credits may not be claimed under this section for property taxes levied for collection in ~~((2012))~~ 2017 and thereafter.

Sec. 2203. RCW 82.08.805 and 2009 c 535 s 513 are each amended to read as follows:

(1) A person who has paid tax under RCW 82.08.020 for personal property used at an aluminum smelter, tangible personal property that will be incorporated as an ingredient or component of buildings or other structures at an aluminum smelter, or for labor and services rendered with respect to such buildings, structures, or personal property, is eligible for an exemption from the state share of the tax in the form of a credit, as provided in this section. A person claiming an exemption must pay the tax and may then take a credit equal to the state share of retail sales tax paid under RCW 82.08.020. The person ~~((shall))~~ must submit information, in a form and manner prescribed by the department, specifying the amount of qualifying purchases or acquisitions for which the exemption is claimed and the amount of exempted tax.

(2) For the purposes of this section, "aluminum smelter" has the same meaning as provided in RCW 82.04.217.

(3) Credits may not be claimed under this section for taxable events occurring on or after January 1, ~~((2012))~~ 2017.

Sec. 2204. RCW 82.12.805 and 2009 c 535 s 620 are each amended to read as follows:

(1) A person who is subject to tax under RCW 82.12.020 for personal property used at an aluminum smelter, or for tangible personal property that will be incorporated as an ingredient or component of buildings or other structures at an aluminum smelter, or for labor and services rendered with respect to such buildings, structures, or personal property, is eligible for an exemption from the state share of the tax in the form of a credit, as provided in this section. The amount of the credit ~~((shall be))~~ is equal to the state share of use tax computed to be due under RCW 82.12.020. The person ~~((shall))~~ must submit information, in a form and manner prescribed by the department, specifying the amount of qualifying purchases or acquisitions for which the exemption is claimed and the amount of exempted tax.

(2) For the purposes of this section, "aluminum smelter" has the same meaning as provided in RCW 82.04.217.

(3) Credits may not be claimed under this section for taxable events occurring on or after January 1, ~~((2012))~~ 2017.

Sec. 2205. RCW 82.12.022 and 2006 c 182 s 5 are each amended to read as follows:

(1) There is ~~((hereby))~~ levied and ~~((there shall be))~~ collected from every person in this state a use tax for the privilege of using natural gas or manufactured gas within this state as a consumer.

(2) The tax ~~((shall be))~~ is levied and collected in an amount equal to the value of the article used by the taxpayer multiplied by the rate in effect for the public utility tax on gas distribution businesses under RCW 82.16.020. The "value of the article used" does not include any amounts that are paid for the hire or use of a gas distribution business as defined in RCW 82.16.010~~((7))~~ (2) in transporting the gas subject to tax under this subsection if those amounts are subject to tax under that chapter.

(3) The tax levied in this section ~~((shall))~~ does not apply to the use of natural or manufactured gas delivered to the consumer by other means than through a pipeline.

(4) The tax levied in this section ~~((shall))~~ does not apply to the use of natural or manufactured gas if the person who sold the gas to the consumer has paid a tax under RCW 82.16.020 with respect to the gas for which exemption is sought under this subsection.

(5) The tax levied in this section ~~((shall))~~ does not apply to the use of natural or manufactured gas by an aluminum smelter as that term is defined in RCW 82.04.217 before January 1, ~~((2012))~~ 2017.

(6) There ~~((shall be))~~ is a credit against the tax levied under this section in an amount equal to any tax paid by:

(a) The person who sold the gas to the consumer when that tax is a gross receipts tax similar to that imposed pursuant to RCW 82.16.020 by another state with respect to the gas for which a credit is sought under this subsection; or

(b) The person consuming the gas upon which a use tax similar to the tax imposed by this section was paid to another state with respect to the gas for which a credit is sought under this subsection.

(7) The use tax hereby imposed ~~((shall))~~ must be paid by the consumer to the department.

(8) There is imposed a reporting requirement on the person who delivered the gas to the consumer to make a quarterly report to the department. Such report ~~((shall))~~ must contain the volume of gas delivered, name of the consumer to whom delivered, and such other information as the department ~~((shall))~~ requires by rule.

(9) The department may adopt rules under chapter 34.05 RCW for the administration and enforcement of sections 1 through 6, chapter 384, Laws of 1989.

**Sec. 2206.** RCW 82.32.570 and 2006 c 182 s 6 are each amended to read as follows:

(1) For the purposes of this section, "smelter tax incentive" means the preferential tax rate under RCW 82.04.2909, or an exemption or credit under RCW 82.04.4481, 82.08.805, 82.12.805, or 82.12.022(5).

(2) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information to evaluate whether the stated goals of legislation were achieved.

(3) The goals of the smelter tax incentives are to retain family-wage jobs in rural areas by:

(a) Enabling the aluminum industry to maintain production of aluminum at a level that will preserve at least 75 percent of the jobs that were on the payroll effective January 1, 2004, as adjusted for employment reductions publicly announced before November 30, 2003; and

(b) Allowing the aluminum industry to continue producing aluminum in this state through ~~((2012))~~ 2017 so that the industry will be positioned to preserve and create new jobs when the anticipated reduction of energy costs occurs.

(4)(a) An aluminum smelter receiving the benefit of a smelter tax incentive ~~((shall))~~ must make an annual report to the department detailing employment, wages, and employer-provided health and retirement benefits per job at the manufacturing site. The report is due by March 31st following any year in which a tax incentive is claimed or used. The report ~~((shall))~~ may not include names of employees. The report ~~((shall))~~ must detail employment by the total number of full-time, part-time, and temporary positions. The report

~~((shall))~~ must indicate the quantity of aluminum smelted at the plant during the time period covered by the report. The first report filed under this subsection ~~((shall))~~ must include employment, wage, and benefit information for the twelve-month period immediately before first use of a tax incentive. Employment reports ~~((shall))~~ must include data for actual levels of employment and identification of the number of jobs affected by any employment reductions that have been publicly announced at the time of the report. Information in a report under this section is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(b) If a person fails to submit an annual report under (a) of this subsection by the due date of the report, the department ~~((shall))~~ must declare the amount of taxes exempted or credited, or reduced in the case of the preferential business and occupation tax rate, for that year to be immediately due and payable. Excise taxes payable under this subsection are subject to interest but not penalties, as provided under this chapter. This information is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

~~((5) By December 1, 2007, December 1, 2010, and December 1, 2015, the fiscal committees of the house of representatives and the senate, in consultation with the department, shall report to the legislature on the effectiveness of the smelter tax incentives under RCW 82.04.4482 and 82.16.0498. The reports shall measure the effect of the tax incentives on job retention for Washington residents and any other factors the committees may select.))~~

### PART XXIII

#### Preferential Business and Occupation Tax Rate for Certain Aviation Repair Businesses

**Sec. 2301.** RCW 82.04.250 and 2008 c 81 s 5 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of making sales at retail, except persons taxable as retailers under other provisions of this chapter, as to such persons, the amount of tax with respect to such business ~~((shall be))~~ is equal to the gross proceeds of sales of the business, multiplied by the rate of 0.471 percent.

(2) Upon every person engaging within this state in the business of making sales at retail that are exempt from the tax imposed under chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or 82.08.0263, except persons taxable under RCW 82.04.260(11) or subsection (3) of this section, as to such persons, the amount of tax with respect to such business ~~((shall be))~~ is equal to the gross proceeds of sales of the business, multiplied by the rate of 0.484 percent.

(3)(a) Until July 1, 2024, upon every person classified by the federal aviation administration as a federal aviation regulation part 145 certificated repair station and that is engaging within this state in the business of making sales at retail that are exempt from the tax imposed under chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or 82.08.0263, as to such persons, the amount of tax with respect to such business ~~((shall be))~~ is equal to the gross proceeds of sales of the business, multiplied by the rate of .2904 percent.

(b) A person reporting under the tax rate provided in this subsection (3) must file a complete annual report with the department under RCW 82.32.--- (section 103, chapter -- (SHB 3066), Laws of 2010).

### PART XXIV

#### Excise Taxation of Publicly Owned Facilities Accredited by the Association of Zoos and Aquariums

**NEW SECTION. Sec. 2401.** The legislature finds that publicly owned facilities accredited by the association of zoos and aquariums in Washington serve a public purpose by providing educational and recreational opportunities for Washington citizens and spurring economic development in the state. The legislature also finds that organizations operating accredited zoos and aquariums are similar to other artistic or cultural organizations, which currently receive

favorable tax treatment. The legislature intends to provide certain excise tax relief to organizations operating accredited zoo and aquarium facilities in order to further their public purpose and stimulate economic development.

**NEW SECTION. Sec. 2402.** A new section is added to chapter 82.04 RCW to read as follows:

(1) In computing tax there may be deducted from the measure of tax by persons subject to payment of the tax on manufacturing under RCW 82.04.240, the value of the products manufactured to the extent the manufacturing activities are: (a) Undertaken by a nonprofit organization or metropolitan park district operating a zoological facility; and (b) solely for the purpose of manufacturing articles for use by the organization or district in displaying or presenting zoological exhibitions, presentations, performances, or education programs at the zoological facility.

(2) In computing tax there may be deducted from the measure of tax those amounts received:

(a) By a nonprofit organization or metropolitan park district where the income is derived from business activities conducted by the organization or district with respect to a zoological facility; or

(b) By a nonprofit organization or metropolitan park district from the United States or any instrumentality thereof or from the state of Washington or any municipal corporation or subdivision thereof as compensation for, or to support, zoological exhibitions, presentations, performances, or education programs at a zoological facility.

(3) For the purposes of this section:

(a) "Metropolitan park district" or "district" means a metropolitan park district created under chapter 35.61 RCW.

(b) "Nonprofit organization" means a business entity incorporated or authorized to conduct affairs in this state under chapter 24.03 RCW.

(c) "Zoological facility" means a publicly owned facility accredited by the association of zoos and aquariums.

(4) This section expires July 1, 2020.

#### PART XXV

##### Sales and Use Tax Deferral for Performing Arts Centers

**NEW SECTION. Sec. 2501.** A new section is added to chapter 82.32 RCW to read as follows:

(1) The governing board of a nonprofit organization, corporation, or association may apply for deferral of taxes on taxable activity related to an eligible facility. Application must be made to the department in a form and manner prescribed by the department. The application must contain information regarding the location of the facility, estimated or actual costs of the facility, time schedules for completion and operation of the facility, and other information required by the department. The department must rule on the application within sixty days. All applications for the tax deferral under this section must be submitted prior to the initiation of construction and no later than December 31, 2012.

(2) The department must issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW for sales or charges made for taxable activity related to an eligible facility.

(3) The nonprofit organization, corporation, or association must begin paying the deferred taxes in the fifth year after the date in which the eligible facility is issued an occupancy permit by the local permit issuing authority. The first payment is due by December 31st of the fifth calendar year after such certified date, with subsequent annual payments due by December 31st of the following nine years. Each payment must equal ten percent of the deferred tax.

(4) The department may authorize an accelerated repayment schedule upon request of the nonprofit organization, corporation, or association.

(5) Except as provided in subsection (6) of this section, interest may not be charged on any taxes deferred under this section for the period of deferral. The debt for deferred taxes is not extinguished by

insolvency or other failure of the nonprofit organization, corporation, or association.

(6) If the facility is not operationally complete within five calendar years from issuance of the tax deferral certificate or if at any time the department finds that the facility is not eligible for tax deferral under this section, the amount of deferred taxes outstanding for the facility is immediately due and payable. If deferred taxes must be repaid under this subsection, the department must assess interest, but not penalties, on amounts due under this subsection. Interest is assessed at the rate provided for delinquent taxes under this chapter, retroactively to the date of deferral, and accrues until the deferred taxes due are repaid.

(7) Applications and any other information received by the department of revenue under this section are not confidential under RCW 82.32.330. This chapter applies to the administration of this section.

(8) This section applies to taxable activity for an eligible facility that occurs on or after July 1, 2011.

(9) The following definitions apply to this section:

(a) "Eligible facility" means a facility that is: (i) Owned and operated by a nonprofit organization, corporation, or association; (ii) used primarily as a performing arts center; and (iii) located in a city with an estimated population between one hundred fifteen thousand and one hundred fifty thousand at the time construction of the facility is initiated.

(b) "Facility" means a new structure and fixtures that are permanently affixed to and become a physical part of the structure.

(c) "Nonprofit organization, corporation, or association" means an organization, corporation, or association exempt from tax under section 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code of 1986, as amended as of the effective date of this section.

(d) "Performing arts center" means a facility that is used for music, dance, drama, or similar presentations and has a seating capacity of one thousand seven hundred or more.

(e) "Site preparation" includes soil testing, site clearing and grading, demolition, or any other related activities that are initiated before construction. Site preparation does not include landscaping services or landscaping materials.

(f) "Taxable activity" means construction of new structures, the acquisition and installation of fixtures, and site preparation.

#### PART XXVI

##### Miscellaneous Provisions

**NEW SECTION. Sec. 2601.** (1) Except as provided in subsection (2) of this section, if any provision of sections 101 through 108 of this act or its application to any person or circumstance is held invalid, the remainder of sections 101 through 108 of this act or the application of the provision to other persons or circumstances is not affected.

(2) If a court of competent jurisdiction, in a final judgment not subject to appeal, adjudges any provision of section 104(1)(c) of this act unconstitutional or otherwise invalid, sections 101 through 108 of this act are null and void in their entirety.

**NEW SECTION. Sec. 2602.** Sections 101 through 108 of this act apply with respect to gross income of the business, as defined in RCW 82.04.080, including gross income from royalties as defined in RCW 82.04.2907, generated on and after April 1, 2010. For purposes of calculating the thresholds in section 104(1)(c) of this act for the 2010 tax year, property, payroll, and receipts are based on the entire 2010 tax year.

**NEW SECTION. Sec. 2603.** Sections 201 through 213 of this act must be construed liberally to effectuate the legislature's intent to ensure that all businesses and individuals pay their fair share of taxes.

**NEW SECTION. Sec. 2604.** (1) Except as provided in subsection (2) of this section, section 201 of this act applies to tax periods beginning January 1, 2006.

(2) Section 201 of this act does not apply to any tax periods ending before April 1, 2010, that were included in a completed field audit conducted by the department.

**NEW SECTION. Sec. 2605.** Sections 502, 802, 1701, and 1702 of this act apply both retroactively and prospectively.

**NEW SECTION. Sec. 2606.** In accordance with Article VIII, section 5 of the state Constitution, sections 802 and 2605 of this act do not authorize refunds of business and occupation tax validly collected before April 1, 2010, on amounts received by an individual from a corporation as compensation for serving as a member of that corporation's board of directors.

**NEW SECTION. Sec. 2607.** Section 502 of this act does not affect any final judgments, not subject to appeal, entered by a court of competent jurisdiction before the effective date of this section.

**NEW SECTION. Sec. 2608.** Sections 1101 and 1102 of this act apply to transfers or conveyances as described in RCW 82.45.010(3)(i) occurring on and after April 1, 2010.

**NEW SECTION. Sec. 2609.** Section 1602 of this act applies only with respect to tax liability incurred under chapter 82.24 RCW on or after April 1, 2010, for the sale, use, consumption, handling, possession, or distribution of cigarettes.

**NEW SECTION. Sec. 2610.** Section 1605(1) (a), (b), and (d) of this act applies only with respect to tax liability incurred under chapter 82.24 RCW on or after April 1, 2010, for the sale, handling, or distribution of cigars, little cigars, and other tobacco products.

**NEW SECTION. Sec. 2611.** Section 1605(1)(c), chapter . . . , Laws of 2010 (this act) applies only with respect to tax liability incurred under chapter 82.24 RCW on or after October 1, 2010, for the sale, handling, or distribution of moist snuff.

**NEW SECTION. Sec. 2612.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION. Sec. 2613.** Except as otherwise provided in this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect April 1, 2010.

**NEW SECTION. Sec. 2614.** Parts II and XVII of this act take effect July 1, 2010.

**NEW SECTION. Sec. 2615.** Section 902 of this act takes effect January 1, 2011.

**NEW SECTION. Sec. 2616.** Sections 1701, 1702, 1704 through 1708, and 1712 through 1715 of this act take effect July 1, 2010.

**NEW SECTION. Sec. 2617.** Sections 1709 and 1710 of this act take effect July 1, 2010, if the legislature does not enact Substitute House Bill No. 1597 by July 1, 2010.

**NEW SECTION. Sec. 2618.** Section 605 of this act expires July 1, 2011.

**NEW SECTION. Sec. 2619.** Section 606 of this act takes effect July 1, 2011.

**NEW SECTION. Sec. 2620.** Section 1801 of this act applies prospectively only."

Correct the title.

With the consent of the House, amendment (1564) to amendment (1531) was withdrawn.

Representative Orcutt moved the adoption of amendment (1561) to amendment (1531).

On page 2, line 12 of the amendment, after "income" insert "for state business and occupation tax purposes"

On page 2, line 20 of the amendment, after "82.04.460" insert ", or cities with a business and occupation tax to implement or to apply apportionment of gross income provided in this act"

Representatives Orcutt and Hunter spoke in favor of the adoption of the amendment to the amendment.

Amendment (1561) to amendment (1531) was adopted.

Representative Carlyle moved the adoption of amendment (1556) to amendment (1531).

On page 20, after line 23 of the amendment, insert the following: "(4) This section expires July 1, 2011."

Representatives Carlyle and Hunter spoke in favor of the adoption of the amendment to the amendment.

Representative Orcutt spoke against the adoption of the amendment to the amendment.

Division was demanded and the demand was sustained. The Speaker (Representative Morris presiding) divided the House. The result was 56 - YEAS; 41 - NAYS.

Amendment (1556) to amendment (1531) was adopted.

Representative Santos moved the adoption of amendment (1562) to amendment (1531).

On page 1, beginning on line 20, strike all of section 201 and section 202 and insert the following:

**"NEW SECTION. Sec. 201.** A new section is added to chapter 82.32 RCW to read as follow:

(1) It is the intent of the legislature to require all taxpayers to pay their fair share of taxes. To accomplish this purpose, it is the legislature's intent to identify and prohibit transactions, plans, and arrangements that are designed to deceptively avoid taxes.

(2) The legislature directs the department to prepare a report that identifies transactions, plans, and arrangements that are primarily designed to deceptively avoid the payment of taxes. These include a transaction, plan, or arrangement that:

(a) Disguises income received, or otherwise avoids tax on income, from a person that is not affiliated with the taxpayer;

(b) Disguises the purchase or sale of property or services from or to a person that is not affiliated with the taxpayer;

(c) Avoids the tax imposed by RCW 82.12.020 on the use of property in the state that is owned by an entity organized outside of the state;

(d) Is a sham transaction in fact or in substance; is intended solely for tax avoidance purposes and lacks economic substance;

(e) Elevates form over substance;

(f) Is completed in multiple steps, rather than a single transaction, where the intent in using multiple steps is to avoid taxation; or

(g) Assigns or transfers a taxpayer's earned income to another person where the intent is to avoid tax.

(3) Beginning December 1, 2010, and by December 1 of each subsequent year, the department must submit its report to the house of representatives finance committee and the senate ways and means committee, or their successors. The department may include draft legislation to address the deceptive tax avoidance transactions, plan, or arrangements identified in the report.

(4) The definitions in this subsection apply to this section.

(a) "Affiliated" means under common control;

(b) "Control" means the possession, directly or indirectly, of more than fifty percent of the power to direct or cause the direction of the management and policies of a person, whether through ownership or voting shares, by contract, or otherwise;

(c) "Lacks economic substance" means having no purpose other than to obtain a tax benefit where a participant's risk of profit or loss is insignificant when compared to the tax benefit; and

(d) "Sham" means fictitious, deceptive, and fraudulent.

(5) The legislature specifies the following as transactions, plans, or arrangements that may be primarily designed to deceptively avoid the payment of taxes:

(a) A joint venture arrangement between a contractor required to register under RCW 18.27.020 and an owner or developer of a construction project when the arrangement: (i) provides for guaranteed payments to the contractor for construction services; and (ii) does not entitle the contractor to share in substantial profits and bear significant risk from the project.

(b) (i) A parent/subsidiary organizational structure or arrangement wherein the parent: (A) creates a subsidiary outside of Washington; (B) provides services to customers outside of Washington; (C) assigns out-of-state customer contracts to the out-of-state subsidiary; (D) requires out-of-state customers to pay for services to the out-of-state subsidiary; and (E) receives income that represents payment for these out-of-state customer contracts through a dividend or transfer from the out-of-state subsidiary.

(ii) A parent/subsidiary organizational structure or arrangement described in this subsection (5) (b) will not be considered primarily designed to deceptively avoid the payment of taxes if the services provided to the customers outside Washington are primarily performed by employees of the out-of-state subsidiary.

(6) The department may disregard any transaction, plan, or arrangement that is specified in subsection (5) of this section, except if:

(a) The taxpayer initiated the transaction, plan, or arrangement before April 1, 2010; and (b) the taxpayer had reported its tax liability in conformance with: (i) specific written instructions provided by the department to the taxpayer; or (ii) a published determination or any other document published by the department.

(7)(a) For purposes of subsection (6) of this section, "specific written instructions" means tax reporting instructions provided to a taxpayer which specifically identify the taxpayer to whom the instructions apply. Specific written instructions may be provided as part of an audit, tax assessment, determination, closing agreement, or in response to a binding ruling request.

(b) Subsection (6) of this section applies to tax periods beginning January 1, 2006, but does not apply to any tax periods ending before April 1, 2010, that were included in a completed field audit conducted by the department.

(c) Subsection (6) of this section must be construed narrowly to ensure that only transactions, plans, or arrangements where there is clear and convincing evidence of deceptive tax avoidance are subject to tax liability."

On page 23, at the beginning of line 1, after "(6)" strike all of the material through "department" on line 14 and insert the following:

"If the department finds that all or any part of a deficiency resulted from engaging in a disregarded transaction, as described in section 201(2)(a), (b), (c), (d), (e), (f), and (g) of this act, the department must assess a penalty of thirty-five percent of the additional tax found to be due as a result of engaging in a transaction disregarded by the department under section 201(2)(a), (b), (c), (d), (e), (f), and (g) of this act. The penalty provided in this subsection may be assessed together with any other applicable penalties provided in this section on the same tax found to be due, except for the evasion penalty provided in subsection (7) of this section. The department may not assess the penalty under this subsection if, before the department discovers the taxpayer's use of a transaction described under section 201(2)(a), (b), (c), (d), (e),

(f), and (g) of this act, the taxpayer discloses its participation in the transaction to the department"

On page 23, on line 23, after "impose" strike "both" and insert ~~(both)~~

On page 23, on line 24 after "penalty" strike "and" and insert "~~(and)~~,"

On page 23, on line 25 after "instructions" insert "1"

On page 23, beginning on line 32 of the amendment, strike all of section 204 and insert the following:

**"Sec. 204.** A new section is added to chapter 82.32 RCW to read as follow:

(1) The legislature finds that this state's tax policy with respect to the taxation of transactions between affiliated entities and the income derived from such transactions (intercompany transactions) has motivated some taxpayers to engage in transactions designed solely or primarily to minimize the tax effects of intercompany transactions. The legislature further finds that some intercompany transactions result from taxpayers that are required to establish affiliated entities to comply with regulatory mandates and that transactions between such affiliates effectively increases the tax burden in this state on the affiliated group of entities.

(2)(a) The department of revenue is directed to conduct a review of the state's tax policy with respect to the taxation of intercompany transactions. The review must:

(i) Include the impacts of such transactions under the state's business and occupation tax and state and local sales and use taxes;

(ii) Examine how this state's tax policy compares to the tax policy of other states with respect to the taxation of intercompany transactions; and

(iii) Analyze potential alternatives to the current policy of taxing intercompany transactions, including their estimated revenue impacts if practicable.

(b) In conducting this review, the department must seek input from members of the business community and others as it deems appropriate.

(c) The department must report its findings to the fiscal committees of the house of representatives and senate by December 1, 2010. However, if the department has not completed its review by December 1, 2010, the department must provide the fiscal committees of the legislature with a brief status report by December 1, 2010, and the final report by December 1, 2011."

Re-number the remaining sections consecutively and correct the internal references accordingly

Representatives Santos, Orcutt and Hinkle spoke in favor of the adoption of the amendment to the amendment.

Representative Hunter spoke against the adoption of the amendment to the amendment.

Amendment (1562) to amendment (1531) was not adopted.

Representative Parker moved the adoption of amendment (1566) to amendment (1531).

On page 36, line 10 of the amendment, after "exceed" strike "one" and insert "two"

Representatives Parker, Ericksen and Parker (again) and Ericksen (again) spoke in favor of the adoption of the amendment to the amendment.

Representatives Hunter and Liias spoke against the adoption of the amendment to the amendment.

An electronic roll call was requested.

The Speaker (Representative Morris presiding) stated the question before the House to be the adoption of amendment (1566) to amendment (1531) to Engrossed Substitute Senate Bill No. 6143.

### ROLL CALL

The Clerk called the roll on the adoption of amendment (1566) to amendment (1531) to Engrossed Substitute Senate Bill No. 6143 and the amendment was not adopted by the following vote: Yeas, 46; Nays, 51; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Angel, Armstrong, Bailey, Campbell, Carlyle, Chandler, Crouse, Dammeier, DeBolt, Driscoll, Ericks, Ericksen, Fagan, Finn, Haler, Herrera, Hinkle, Hope, Hurst, Johnson, Kelley, Klippert, Kretz, Kristiansen, Linville, McCune, Nealey, Orcutt, Parker, Pearson, Priest, Probst, Roach, Rodne, Ross, Santos, Schmick, Seaquist, Shea, Short, Smith, Springer, Taylor, Walsh and Warnick.

Voting nay: Representatives Anderson, Appleton, Blake, Chase, Clibborn, Cody, Conway, Darneille, Dickerson, Dunshee, Eddy, Flannigan, Goodman, Green, Haigh, Hasegawa, Hudgins, Hunt, Hunter, Jacks, Kagi, Kenney, Kessler, Kirby, Lias, Maxwell, McCoy, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Ormsby, Orwall, Pedersen, Pettigrew, Quall, Roberts, Rolfes, Sells, Simpson, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, White, Williams, Wood and Mr. Speaker.

Excused: Representative Condotta.

Amendment (1566) to amendment (1531) was not adopted.

Representative Orcutt moved the adoption of amendment (1550) to amendment (1531).

On page 36, after line 10 of the amendment, strike all of Part IV

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

Representatives Orcutt, Herrera, Ericksen, Haler, Klippert, Ross and Schmick spoke in favor of the adoption of the amendment to the amendment.

Representatives Moeller and Hunter spoke against the adoption of the amendment to the amendment.

An electronic roll call was requested.

The Speaker (Representative Morris presiding) stated the question before the House to be the adoption of amendment (1550) to amendment (1531) to Engrossed Substitute Senate Bill No. 6143.

### ROLL CALL

The Clerk called the roll on the adoption of amendment (1550) to amendment (1531) to Engrossed Substitute Senate Bill No. 6143 and the amendment was not adopted by the following vote: Yeas, 44; Nays, 53; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Armstrong, Bailey, Campbell, Chandler, Crouse, Dammeier, DeBolt, Driscoll, Ericksen, Fagan, Haler, Herrera, Hinkle, Hope, Hurst, Jacks, Johnson, Kelley, Klippert, Kretz, Kristiansen, McCune, Nealey, Orcutt, Parker, Pearson, Priest, Probst, Roach, Rodne, Ross, Schmick, Seaquist, Shea, Short, Smith, Takko, Taylor, Wallace, Walsh and Warnick.

Voting nay: Representatives Appleton, Blake, Carlyle, Chase, Clibborn, Cody, Conway, Darneille, Dickerson, Dunshee, Eddy, Ericks, Finn, Flannigan, Goodman, Green, Haigh, Hasegawa, Hudgins, Hunt, Hunter, Kagi, Kenney, Kessler, Kirby, Lias, Linville, Maxwell, McCoy, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Ormsby, Orwall, Pedersen, Pettigrew, Quall, Roberts, Rolfes, Santos, Sells, Simpson, Springer, Sullivan, Upthegrove, Van De Wege, White, Williams, Wood and Mr. Speaker.

Excused: Representative Condotta.

Amendment (1550) to amendment (1531) was not adopted.

Representative Orcutt moved the adoption of amendment (1552) to amendment (1531).

On page 37, line 23 of the amendment, after "(1)" strike "Prior to April 1, 2010, this" and insert "This"

Representatives Orcutt, Chandler and Klippert spoke in favor of the adoption of the amendment to the amendment.

Representative Hunter spoke against the adoption of the amendment to the amendment.

An electronic roll call was requested.

The Speaker (Representative Morris presiding) stated the question before the House to be the adoption of amendment (1552) to amendment (1531) to Engrossed Substitute Senate Bill No. 6143.

### ROLL CALL

The Clerk called the roll on the adoption of amendment (1552) to amendment (1531) to Engrossed Substitute Senate Bill No. 6143 and the amendment was not adopted by the following vote: Yeas, 42; Nays, 55; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Armstrong, Bailey, Campbell, Chandler, Crouse, Dammeier, DeBolt, Driscoll, Ericksen, Fagan, Haler, Herrera, Hinkle, Hope, Hurst, Johnson, Kelley, Klippert, Kretz, Kristiansen, McCune, Nealey, Orcutt, Parker, Pearson, Priest, Probst, Roach, Rodne, Ross, Schmick, Seaquist, Shea, Short, Smith, Taylor, Wallace, Walsh and Warnick.

Voting nay: Representatives Appleton, Blake, Carlyle, Chase, Clibborn, Cody, Conway, Darneille, Dickerson, Dunshee, Eddy, Ericks, Finn, Flannigan, Goodman, Green, Haigh, Hasegawa, Hudgins, Hunt, Hunter, Jacks, Kagi, Kenney, Kessler, Kirby, Lias, Linville, Maxwell, McCoy, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Ormsby, Orwall, Pedersen, Pettigrew, Quall, Roberts, Rolfes, Santos, Sells, Simpson, Springer, Sullivan, Takko, Upthegrove, Van De Wege, White, Williams, Wood and Mr. Speaker.

Excused: Representative Condotta.

Amendment (1552) to amendment (1531) was not adopted.

Representative Hunter moved the adoption of amendment (1555) to amendment (1531).

On page 68, line 32 of the amendment, strike all of subsection (6)

On page 69, line 29 of the amendment, strike all of subsection (5)

Representatives Hunter and Schmick spoke in favor of the adoption of the amendment to the amendment.

Amendment (1555) to amendment (1531) was adopted.

Representative Rolfes moved the adoption of amendment (1548) to amendment (1531).

On page 72, line 8, after "(2)" insert the following:

"The tax imposed under subsection (1) of this section on aircraft with a date of manufacture before December 31, 1970 may not exceed the following:

Type of aircraft	Tax
Single engine fixed wing	100
Small multi-engine fixed wing	130
Large multi-engine fixed wing	160
Turboprop multi-engine fixed wing	200
Turbojet multi-engine fixed wing	250
Helicopter	150
Sailplane	40
Lighter than air	40
Home built	40

(3)"

Renumber the subsections consecutively and correct any internal references accordingly.

Representatives Rolfes and Hunter spoke in favor of the adoption of the amendment to the amendment.

Representative Orcutt spoke against the adoption of the amendment to the amendment.

Amendment (1548) to amendment (1531) was adopted.

Representative Conway moved the adoption of amendment (1569) to amendment (1531).

On page 92, after line 15, insert the following:

**"NEW SECTION. Sec. 1408.** (1) The legislature finds that the definition of candy under the national streamlined sales and use tax agreement is ambiguous and also excludes certain items through its definition that are unquestionably considered candy, such as Kit Kat, Twix, Reese Sticks, and licorice.

(2) It is the intent of the legislature that the department of revenue develop an alternative definition of candy for the purpose addressing the issues specified under subsection (1) of this section and petitioning the streamlined sales and use tax agreement governing board for a change in the definition of candy.

(3) To achieve the purpose described in subsection (2) of this section, the department of revenue, through the Washington state streamlined sales tax project advisory group, shall recommend modifications to the definition of candy. As part of this process, the department shall take input from stakeholders in the confectionary industry."

Representative Conway spoke in favor of the adoption of the amendment to the amendment.

Division was demanded and the demand was sustained. The Speaker (Representative Morris presiding) divided the House. The result was 56 - YEAS; 41 - NAYS.

Amendment (1569) to amendment (1531) was adopted.

Representative Hasegawa moved the adoption of amendment (1546) to amendment (1531).

On page 92, line 18, strike "**Surgery, Custom Software, and Janitorial Services**" and insert "**Surgery and Custom Software**"

On page 92, beginning on line 29, strike all of subsection (3)

On page 94, beginning on line 31, strike all of subsection (2)(d) and insert the following:

"(d) The cleaning, fumigating, razing, or moving of existing buildings or structures, but may not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;"

On page 96, beginning on line 13, strike all of subsection (3)(i)

Representatives Hasegawa, Orcutt, Anderson and Hunter spoke in favor of the adoption of the amendment to the amendment.

Amendment (1546) to amendment (1531) was adopted.

Representative Hasegawa moved the adoption of amendment (1554) to amendment (1531).

On page 99, after line 30 of the amendment, insert the following: "(14)(a) The term includes the sale of or charge made for the following services:

(i) Accounting, auditing, tax preparation, bookkeeping, payroll, and other related services.

(ii) Agent and management services for artists, athletes, entertainers, and other public figures.

(iii) Attorney services, paralegal services, arbitration and conciliation services, mediation product services, legal research services, and court reporting services.

(iv) Business support services including but not limited to: Document preparation services, telephone call telephone answering services, telemarketing services, debt collection services, repossession services, and court reporting and stenotype services.

(v) Computer systems design and related services including but not limited to: Computer systems design services, computer facilities management services, other computer facilities management services, and other computer related services (such as computer disaster recovery services and software installation services). Computer systems design and related services do not include custom computer programming services.

(vi) Data processing, hosting, and related services including but not limited to: Application hosting services, application service provider services, automated data processing services, computer input preparation services, computer time rental services, data entry services, media streaming services, optical scanning services, and web hosting services.

(vii) Facilities support services.

(viii) Investment advice services including but not limited to: Financial investment advice services, financial planning services, investment advice consulting services, and investment advisory services.

(ix) Management, scientific, and technical consulting services including but not limited to: Administrative management and general management services (such as business consulting services, medical office management services, site location consulting services, strategic planning consulting services, and financial management consulting services), human resources consulting services (such as actuarial consulting services, benefit consulting services, employee benefit consulting services, human resource consulting services, labor

relations consulting services, and personnel management consulting services), marketing consulting services (such as customer service management consulting services, marketing consulting services, and sales management consulting services), process, physical distribution, and logistics consulting services (such as efficiency management consulting services, freight traffic consulting services, inventory planning and control management consulting services, operations research consulting services, and transportation management consulting services), environmental consulting services (such as sanitation consulting services and site remediation services), and other scientific and technical consulting services (such as agricultural consulting services, chemical consulting services, economic consulting services, energy consulting services, hydrology consulting services, livestock breeding consulting services, and security consulting services).

(x) Marketing research and public opinion polling services.

(xi) Office administrative services including but not limited to: Business management services, executive management services, hotel management services, and office management services.

(xii) Parking lot management services.

(xiii) Promoting services for performing arts, sporting, and similar events.

(xiv) Public relations services including but not limited to: Lobbying services, political consulting services, and other public relations consulting services.

(xv) Scientific research and development services including but not limited to research and development in the physical, engineering, and life sciences (such as agriculture, bacteriological, biotechnology, chemical, life sciences, and physical science research and development laboratories or services) and research and development in the social sciences and humanities (such as archaeological, behavioral, cognitive, economic, language, and learning research or development services).

(xvi) Software publishing support services.

(xvii) The following professional, scientific, and technical services not otherwise included within the definition of selected business service: Business brokers except real estate brokers, commodity inspection services, consumer credit counseling services, consumer credit repair services, estate assessment services, handwriting analysis services, handwriting expert services, marine surveyor services, meteorological services, outplacement services, patent broker services, electric transmission or gas line visual inspection services, pipeline inspection services, power line visual inspection services, quantity surveyor services, and weather forecasting services.

(b) A person may apply to the department, in a form and manner required by the department, for fifty percent of state and local sales taxes paid on the services subject to tax under this subsection (14)."

Beginning on page 141, line 4 of the amendment, strike all of Part XIX

Representative Hasegawa spoke in favor of the adoption of the amendment to the amendment.

Representatives Orcutt and Hunter spoke against the adoption of the amendment to the amendment.

Amendment (1554) to amendment (1531) was not adopted.

Representative Kirby moved the adoption of amendment (1549) to amendment (1531).

On page 121, beginning on line 29, strike all of Part XVI

Re-number the remaining parts and sections consecutively and correct any internal references accordingly.

Representatives Kirby, Orcutt, Ross, Hurst, Flannigan, Armstrong, Walsh and Anderson spoke in favor of the adoption of the amendment to the amendment.

Representatives Cody, Hunter and Roberts spoke against the adoption of the amendment to the amendment.

Amendment (1549) to amendment (1531) was not adopted.

Representative Chase moved the adoption of amendment (1563) to amendment (1531).

On page 133, on line 24 of the amendment, after "project," insert "estimated or actual new employment available for the local work force, estimated or actual reductions in local unemployment."

Representatives Chase and Hunter spoke in favor of the adoption of the amendment to the amendment.

Representatives Orcutt and Anderson spoke against the adoption of the amendment to the amendment.

Division was demanded and the demand was sustained. The Speaker (Representative Morris presiding) divided the House. The result was 56 - YEAS; 41 - NAYS.

Amendment (1563) to amendment (1531) was adopted.

There being no objection, House Rule 13 (C) was suspended allowing the House to work past 10:00 p.m.

Representative Bailey moved the adoption of amendment (1551) to amendment (1531).

On page 160, line 2 of the amendment, after "after" strike "April 1, 2010" and insert "the effective date of this section"

On page 160, line 13 of the amendment, after "before" strike "April 1, 2010," and insert "the effective date of this section"

On page 160, line 20 of the amendment, after "before" strike "April 1, 2010," and insert "the effective date of this section"

On page 160, line 28 of the amendment, after "after" strike "April 1, 2010" and insert "the effective date of this section"

On page 161, line 1 of the amendment, after "after" strike "April 1, 2010," and insert "the effective date of this act"

On page 161, line 5 of the amendment, after "after" strike "April 1, 2010," and insert "the effective date of this section"

On page 161, beginning on line 15 of the amendment, strike all of section 2613

Re-number the remaining sections consecutively and correct any internal references accordingly.

Representatives Bailey, Orcutt, Armstrong, Haler and Anderson spoke in favor of the adoption of the amendment to the amendment.

Representative Hunter spoke against the adoption of the amendment to the amendment.

An electronic roll call was requested.

The Speaker (Representative Morris presiding) stated the question before the House to be the adoption of amendment (1551) to amendment (1531) to Engrossed Substitute Senate Bill No. 6143.

**ROLL CALL**



The Clerk called the roll on the adoption of amendment (1551) to amendment (1531) to Engrossed Substitute Senate Bill No. 6143 and the amendment was not adopted by the following vote: Yeas, 43; Nays, 54; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Armstrong, Bailey, Campbell, Chandler, Crouse, Dammeier, DeBolt, Driscoll, Ericksen, Fagan, Finn, Haler, Herrera, Hinkle, Hope, Hurst, Johnson, Kelley, Klippert, Kretz, Kristiansen, McCune, Miloscia, Nealey, Orcutt, Parker, Pearson, Priest, Probst, Roach, Rodne, Ross, Schmick, Seaquist, Shea, Short, Smith, Taylor, Walsh and Warnick.

Voting nay: Representatives Appleton, Blake, Carlyle, Chase, Clibborn, Cody, Conway, Darneille, Dickerson, Dunshee, Eddy, Ericks, Flannigan, Goodman, Green, Haigh, Hasegawa, Hudgins, Hunt, Hunter, Jacks, Kagi, Kenney, Kessler, Kirby, Lias, Linville, Maxwell, McCoy, Moeller, Morrell, Morris, Nelson, O'Brien, Ormsby, Orwall, Pedersen, Pettigrew, Quall, Roberts, Rolfes, Santos, Sells, Simpson, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, White, Williams, Wood and Mr. Speaker.

Excused: Representative Condotta.

Amendment (1551) to amendment (1531) was not adopted.

Representative Hunter moved the adoption of amendment (1557) to amendment (1531).

On page 160, line 2 of the amendment, strike "April" and insert "July"

On page 161, line 19 of the amendment, strike "Parts II and XVII" and insert "Parts I and II"

Representatives Hunter and Parker spoke in favor of the adoption of the amendment to the amendment.

Amendment (1557) to amendment (1531) was adopted.

Representative Hunter moved the adoption of amendment (1565) to amendment (1531).

On page 161, line 19, after "Parts II" insert ", III,"

Representatives Hunter and Parker spoke in favor of the adoption of the amendment to the amendment.

Amendment (1565) to amendment (1531) was adopted.

Representative Hinkle moved the adoption of amendment (1553) to amendment (1531).

On page 162, after line 4 of the amendment, insert the following:

**"NEW SECTION. Sec. 2621.** The secretary of state shall submit this act to the people for their adoption and ratification, or rejection, at the next general election to be held in this state, in accordance with Article II, section 1 of the state Constitution and the laws adopted to facilitate its operation."

Representatives Hinkle, Ericksen, Orcutt, Armstrong and Anderson spoke in favor of the adoption of the amendment to the amendment.

Representatives Hunter, Dickerson and Hudgins spoke against the adoption of the amendment to the amendment.

An electronic roll call was requested.

The Speaker (Representative Morris presiding) stated the question before the House to be the adoption of amendment (1553) to amendment (1531) to Engrossed Substitute Senate Bill No. 6143.

### ROLL CALL

The Clerk called the roll on the adoption of amendment (1553) to amendment (1531) to Engrossed Substitute Senate Bill No. 6143 and the amendment was not adopted by the following vote: Yeas, 43; Nays, 54; Absent, 0; Excused, 1.

Voting yea: Representatives Alexander, Anderson, Angel, Armstrong, Bailey, Campbell, Chandler, Crouse, Dammeier, DeBolt, Driscoll, Ericksen, Fagan, Haler, Herrera, Hinkle, Hope, Hurst, Johnson, Kelley, Klippert, Kretz, Kristiansen, McCune, Miloscia, Morrell, Nealey, Orcutt, Parker, Pearson, Priest, Probst, Roach, Rodne, Ross, Schmick, Seaquist, Shea, Short, Smith, Taylor, Walsh and Warnick.

Voting nay: Representatives Appleton, Blake, Carlyle, Chase, Clibborn, Cody, Conway, Darneille, Dickerson, Dunshee, Eddy, Ericks, Finn, Flannigan, Goodman, Green, Haigh, Hasegawa, Hudgins, Hunt, Hunter, Jacks, Kagi, Kenney, Kessler, Kirby, Lias, Linville, Maxwell, McCoy, Moeller, Morris, Nelson, O'Brien, Ormsby, Orwall, Pedersen, Pettigrew, Quall, Roberts, Rolfes, Santos, Sells, Simpson, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, White, Williams, Wood and Mr. Speaker.

Excused: Representative Condotta.

Amendment (1553) to amendment (1531) was not adopted.

The Speaker (Representative Morris presiding) stated the question before the House to be the adoption of amendment (1531) as amended.

Division was demanded and the demand was sustained. The Speaker (Representative Morris presiding) divided the House. The result was 55 - YEAS; 42 - NAYS.

Amendment (1531) was adopted as amended.

There being no objection, the rules were suspended, the second reading considered the third and the bill as amended by the House, was placed on final passage.

Representatives Hunter, Springer, Cody, Hunt, Kagi, Linville, Finn, Darneille, White, Sullivan, Nelson, Appleton, Hudgins, Dunshee, Lias and Orwall spoke in favor of the passage of the bill.

Representatives Orcutt, Haler, Rodne, Parker, Johnson, Hinkle, Roach, Angel, Chandler, Armstrong, Short, Shea, Smith, Alexander, Anderson, Schmick, Pearson, Dammeier, Taylor, Warnick, McCune, Bailey, Fagan, Herrera, Nealey, Kristiansen, Klippert and Ericksen spoke against the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Engrossed Substitute Senate Bill No. 6143, as amended by the House.

### ROLL CALL

The Clerk called the roll on the final passage of Engrossed Substitute Senate Bill No. 6143, as amended by the House, and the bill passed the House by the following vote: Yeas: 52 Nays: 45 Absent: 0 Excused: 1

Voting yea: Representatives Appleton, Blake, Carlyle, Chase, Clibborn, Cody, Conway, Darneille, Dickerson, Dunshee, Ericks,

Finn, Flannigan, Goodman, Green, Haigh, Hasegawa, Hudgins, Hunt, Hunter, Jacks, Kagi, Kenney, Kessler, Kirby, Lias, Linville, Maxwell, McCoy, Moeller, Morris, Nelson, O'Brien, Ormsby, Orwall, Pedersen, Pettigrew, Roberts, Rolfes, Santos, Sells, Simpson, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, White, Williams, Wood, and Mr. Speaker

Voting nay: Representatives Alexander, Anderson, Angel, Armstrong, Bailey, Campbell, Chandler, Crouse, Dammeier, DeBolt, Driscoll, Eddy, Ericksen, Fagan, Haler, Herrera, Hinkle, Hope, Hurst, Johnson, Kelley, Klippert, Kretz, Kristiansen, McCune, Miloscia, Morrell, Nealey, Orcutt, Parker, Pearson, Priest, Probst, Quall, Roach, Rodne, Ross, Schmick, Seaquist, Shea, Short, Smith, Taylor, Walsh, and Warnick

Excused: Representative Condotta

ENGROSSED SUBSTITUTE SENATE BILL NO. 6143, as amended by the House, having received the necessary constitutional majority, was declared passed.

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

There being no objection, the House adjourned until 10:00 a.m., March 9, 2010, the 58th Day of the Regular Session.

FRANK CHOPP, Speaker

1761-S2	
Final Passage .....	28
Other Action .....	28
Messages .....	27
1880	
Final Passage .....	14
Other Action .....	14
Messages .....	13
2179-S	
Final Passage .....	29
Other Action .....	29
Messages .....	28
2424-S	
Other Action .....	12
Messages .....	2
2534-S	
Final Passage .....	17
Other Action .....	17
Messages .....	14
2596-S	
Other Action .....	13
Messages .....	13
2625	
Final Passage .....	19
Other Action .....	19
Messages .....	17
2680-S	
Final Passage .....	23
Other Action .....	23
Messages .....	20
2681	
Final Passage .....	30
Other Action .....	30
Messages .....	30
2717-S	
Final Passage .....	25
Other Action .....	24
Messages .....	23
2731-S2	
Other Action .....	13
Messages .....	12
2776-S	
Other Action .....	69
Messages .....	64
2867-S2	
Final Passage .....	31
Other Action .....	31
Messages .....	30
2939-S	
Final Passage .....	27
Other Action .....	27
Messages .....	25
2961-S2	
Final Passage .....	32
Other Action .....	32
Messages .....	31
3016-S	
Final Passage .....	34
Other Action .....	33
Messages .....	32
3026-S2	
Final Passage .....	35
Other Action .....	34
Messages .....	34
3105-S	
Final Passage .....	35

Other Action .....	35
Messages .....	35
4220-S	
Final Passage .....	19
Other Action .....	19
Messages .....	19
5295-S	
Messages .....	27
5529-S	
Messages .....	27
5543-S	
Messages .....	1
President Signed .....	64
5704-S	
Messages .....	27
5742-S	
Messages .....	64
6143-S	
Introduction & 1st Reading .....	1
Second Reading .....	69
Third Reading Final Passage .....	109
Other Action .....	2
Messages .....	1
6192-S	
Messages .....	64
6202-S	
Messages .....	64
6206	
Messages .....	64
6207-S	
Messages .....	27
6208-S	
Messages .....	1
President Signed .....	64
6214-S	
Messages .....	27
6261	
Messages .....	1
President Signed .....	64
6332-S	
Messages .....	64
6339-S	
Messages .....	64
6340-S	
Messages .....	64
6342-S	
Messages .....	64
6343-S	
Messages .....	64
6346-S	
President Signed .....	64
6356-S	
Messages .....	1
President Signed .....	64
6359-S	
Messages .....	1
President Signed .....	64
6361-S	
President Signed .....	64
6364	
Messages .....	1
6373-S	
Messages .....	27
6379	
Messages .....	1
President Signed .....	64

6381-S	
Second Reading .....	36
Amendment Offered .....	36
Third Reading Final Passage .....	64
6392-S	
Messages .....	64
6459-S	
Messages .....	27
6540	
President Signed .....	64
6557-S	
Messages .....	27
6578-S2	
Messages .....	64
6590-S	
Messages .....	64
6614-S	
Messages .....	64
6673-S	
Messages .....	64
6724-S	
Messages .....	64
6764	
Messages .....	64
6833	
Messages .....	64
6844-S	
Messages .....	64
6870	
Messages .....	64
6874-S	
Introduction & 1st Reading .....	1
Messages .....	1
HOUSE OF REPRESENTATIVES (Representative Moeller presiding)	
Point of Order Representative Green Senate Amendment to 2596-S .....	13
SPEAKER OF THE HOUSE (Representative Moeller presiding)	
Speaker's Ruling .....	13