FIFTY-THIRD DAY

MORNING SESSION

Senate Chamber, Olympia, Thursday, March 6, 2008

The Senate was called to order at 9:00 a.m. by President Owen. The Secretary called the roll and announced to the President that all Senators were present with the exception of Senators Fairley, Hatfield, Holmquist, Kauffman, Murray and Rasmussen.

The Sergeant at Arms Color Guard consisting of Pages David Batschi and Mackenzie Glisson, presented the Colors. Pastor Mark Driscoll of the Mars Hill Church offered the prayer.

MOTION

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

MOTION

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

MESSAGE FROM THE HOUSE

March 5, 2008

MR. PRESIDENT:
The House has passed the following bills:
SUBSTITUTE SENATE BILL NO. 6181,
ENGROSSED SUBSTITUTE SENATE BILL NO. 6437,
SUBSTITUTE SENATE BILL NO. 6572,
ENGROSSED SENATE BILL NO. 6663,
SENATE BILL NO. 6677,
SUBSTITUTE SENATE BILL NO. 6710,
SENATE BILL NO. 6717,
SENATE BILL NO. 6740,
SENATE BILL NO. 6799,
SUBSTITUTE SENATE BILL NO. 6857,
SUBSTITUTE SENATE BILL NO. 6879,
SENATE BILL NO. 6885,
SENATE JOINT MEMORIAL NO. 8024,
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

March 5, 2008

MR. PRESIDENT:
The House has passed the following bills:
ENGROSSED SUBSTITUTE SENATE BILL NO. 5179,
SENATE BILL NO. 6183,
SENATE BILL NO. 6196,
SENATE BILL NO. 6216,
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

March 5, 2008

MR. PRESIDENT:
The House has passed the following bills:
SUBSTITUTE SENATE BILL NO. 5256,
SUBSTITUTE SENATE BILL NO. 6224,
SENATE BILL NO. 6237,
SUBSTITUTE SENATE BILL NO. 6246,
SENATE BILL NO. 6267,
SENATE BILL NO. 6275,
SUBSTITUTE SENATE BILL NO. 6343,
SENATE BILL NO. 6369,
SENATE BILL NO. 6398,
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MOTION

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

SECOND READING
CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator Rockefeller moved that Gubernatorial Appointment No. 9381, Richard K. Wallace, as a member of the Northwest Power and Conservation Council, be confirmed.

Senator Rockefeller spoke in favor of the motion.

MOTION

On motion of Senator Regala, Senators Hatfield and Kauffman were excused.

MOTION

On motion of Senator Brandland, Senators Benton, Hewitt, Holmquist, Honeyford and Swecker were excused.

APPOINTMENT OF RICHARD K. WALLACE

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9381, Richard K. Wallace as a member of the Northwest Power and Conservation Council.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9381, Richard K. Wallace as a member of the Northwest Power and Conservation Council and the appointment was confirmed by the following vote: Yeas, 43; Nays, 0; Absent, 3; Excused, 3.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Franklin, Fraser, Hargrove, Haugen, Hewitt, Hobbs, Honeyford, Jacobsen, Kastama, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Oemig, Parlette, Pflug, Prentice, Pridemore, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 43

Absent: Senators Fairley, Murray and Rasmussen - 3

Excused: Senators Hatfield, Holmquist and Kauffman - 3

Gubernatorial Appointment No. 9381, Richard K. Wallace, having received the constitutional majority was declared confirmed as a member of the Northwest Power and Conservation Council.

INTRODUCTION OF SPECIAL GUESTS

The President welcomed and introduced former Senator Barney Goltz who was seated in the gallery.

INTRODUCTION OF SPECIAL GUESTS

The President welcomed and introduced the 2008 Tulip Ambassadors; Ambassador Claire Kenning, age 10 and Ambassador Carl Johnson, age 11, students at Conway Elementary School, who were seated in the gallery.

The President also welcomed Cindy Verge, Executive Director of the Skagit Valley Tulip Festival; Mr. Barry Kenning; Ron and Amy Johnson; Miss. Emily Johnson; Melissa Decker, Marketing Director of the Hampton Inn and Suites and member of the Tulip Festival Board of Directors; Ms. Lindsay Budzier of Outlet Shoppers of Burlington, Tulip Festival sponsor, who were seated in the gallery and guest of Senators Brandland, Haugen, Spanel and Stevens.

PERSONAL PRIVILEGE

Senator Spanel: "Well, once again, it's great have the Tulip Ambassadors here and I welcome Claire Kenning and Carl Johnson with their families and with the rest of the group. It's always good to welcome everybody to come to the Skagit Valley again. On your desks is a program for the month-long event for April and you'll be very welcome. You'll see beautiful tulips and thank you once again coming down and doing your advertising. Then I have to turn to the other gallery because Senator Barney Goltz who was my Senator for many years until he got districted out of my district but he told me I'm the one who got redistricted when the south part of Bellingham went into the Fortieth but I agree with everything you said Lt. Governor, he is a great person and was a great person to come to the Senate too, a few years later."

PERSONAL PRIVILEGE

Senator Haugen: "Thank you Mr. President. I too want to welcome these young ambassadors. I think it's so appropriate that the Skagit Valley uses young people as ambassadors because actually Spring is about youth and new beginnings and I think this really is one of the more appropriate things that they do up there. I will tell you that the Skagit Valley is one of the most beautiful places in the Spring to visit. If you come early in the season for tulips you're very apt to see the beautiful snow geese and also the trumpeter swans that make that their home. Skagit Valley is probably extraordinary to visit any time of year but when the Spring is there and those wonderful colors, bright colors, colors that you and I wouldn't put in our house because they'd clash but somehow God doesn't make mistakes when he does colors in flowers so you see purples and greens and yellows and reds all mixed up together in the fields and they're just magnificent. I just would urge you, take time, come to the Valley. Get out of your car. Walk through the fields. Visit our wonderful shops. Enjoy the hospitality of that community. It is a wonderful experience and again, if you come early, you can see the birds and that really is spectacular viewing opportunity."

MOTION TO LIMIT DEBATE

Senator Eide: "Mr. President, I move that the members of the Senate be allowed to speak but once on each question before the Senate, that such speech be limited to three minutes and that members be prohibited from yielding their time, however, the maker of a motion shall be allowed to open and close debate. This motion shall be in effect through March 6, 2008."

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

The motion by Senator Eide carried and debate was limited through March 6, 2008.

MOTION

On motion of Senator Eide, Rule 15 was suspended for the remainder of the day for the purpose of allowing continued floor action.

EDITOR'S NOTE: Senate Rule 15 establishes the floor schedule and calls for a lunch and dinner break of 90 minutes each per day during regular daily sessions.

MOTION

On motion of Senator Eide, Senate Rule 20 was suspended for the remainder of the day to allow consideration of additional floor resolutions.

EDITOR'S NOTE: Senate Rule 20 limits consideration of floor resolutions not essential to the operation of the Senate to one per day during regular daily sessions.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2014, by House Committee on Housing (originally sponsored by Representatives Chase, Santos, Kenney, Hasegawa, Miloscia, Simpson and Ormsby)

Addressing the regulation of conversion condominiums.

The measure was read the second time.

MOTION

Senator Weinstein moved that the following committee striking amendment by the Committee on Consumer Protection & Housing be not adopted.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 64.34.440 and 1992 c 220 s 25 are each amended to read as follows:

(1)(a) A declarant of a conversion condominium, and any dealer who intends to offer units in such a condominium, shall give each of the residential tenants and any residential subtenant in possession of a portion of a conversion condominium notice of the conversion and provide those persons with the public offering statement no later than ((~~ninety~~)) one hundred twenty days before the tenants and any subtenant in possession are required to vacate. The notice must:

(i) Set forth generally the rights of tenants and subtenants under this section ((~~and shall~~));

(ii) Be delivered pursuant to notice requirements set forth in RCW 59.12.040; and

(iii) Expressly state whether there is a county or city relocation assistance program for tenants or subtenants of conversion condominiums in the jurisdiction in which the property is located. If the county or city does have a relocation assistance program, the following must also be included in the notice:

(A) A summary of the terms and conditions under which relocation assistance is paid; and

(B) Contact information for the city or county relocation assistance program, which must include, at a minimum, a telephone number of the city or county department that administers the relocation assistance program for conversion condominiums.

(b) No tenant or subtenant may be required to vacate upon less than ((~~ninety~~)) one hundred twenty days' notice, except by reason of nonpayment of rent, waste, conduct that disturbs other tenants' peaceful enjoyment of the premises, or act of unlawful detainer as defined in RCW 59.12.030, and the terms of the tenancy may not be altered during that period except as provided in (c) of this subsection.

(c) At the declarant's option, the declarant may provide all tenants in a single building with an option to terminate their lease or rental agreements without cause or consequence after providing the declarant with thirty days' notice. In such case,

tenants continue to have access to relocation assistance under subsection (6)(e) of this section.

(d) Nothing in this subsection shall be deemed to waive or repeal RCW 59.18.200(2). Failure to give notice as required by this section is a defense to an action for possession.

(2) For sixty days after delivery or mailing of the notice described in subsection (1) of this section, the person required to give the notice shall offer to convey each unit or proposed unit occupied for residential use to the tenant who leases that unit. If a tenant fails to purchase the unit during that sixty-day period, the offeror may offer to dispose of an interest in that unit during the following one hundred eighty days at a price or on terms more favorable to the offeree than the price or terms offered to the tenant only if: (a) Such offeror, by written notice mailed to the tenant's last known address, offers to sell an interest in that unit at the more favorable price and terms, and (b) such tenant fails to accept such offer in writing within ten days following the mailing of the offer to the tenant. This subsection does not apply to any unit in a conversion condominium if that unit will be restricted exclusively to nonresidential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion.

(3) If a seller, in violation of subsection (2) of this section, conveys a unit to a purchaser for value who has no knowledge of the violation, recording of the deed conveying the unit extinguishes any right a tenant may have to purchase that unit but does not affect the right of a tenant to recover damages from the seller for a violation of subsection (2) of this section.

(4) If a notice of conversion specifies a date by which a unit or proposed unit must be vacated and otherwise complies with the provisions of this chapter and chapter 59.18 RCW, the notice also constitutes a notice to vacate specified by that statute.

(5) Nothing in this section permits termination of a lease by a declarant in violation of its terms.

(6) Notwithstanding RCW 64.34.050(1), a city or county may by appropriate ordinance require with respect to any conversion condominium within the jurisdiction of such city or county that:

(a) In addition to the statement required by RCW 64.34.415(1)(a), the public offering statement shall contain a copy of the written inspection report prepared by the appropriate department of such city or county, which report shall list any violations of the housing code or other governmental regulation, which code or regulation is applicable regardless of whether the real property is owned as a condominium or in some other form of ownership; said inspection shall be made within forty-five days of the declarant's written request therefor and said report shall be issued within fourteen days of said inspection being made. Such inspection may not be required with respect to any building for which a final certificate of occupancy has been issued by the city or county within the preceding twenty-four months; and any fee imposed for the making of such inspection may not exceed the fee that would be imposed for the making of such an inspection for a purpose other than complying with this subsection (6)(a);

(b) Prior to the conveyance of any residential unit within a conversion condominium, other than a conveyance to a declarant or affiliate of a declarant: (i) All violations disclosed in the inspection report provided for in (a) of this subsection, and not otherwise waived by such city or county, shall be repaired, and (ii) a certification shall be obtained from such city or county that such repairs have been made, which certification shall be based on a reinspection to be made within seven days of the declarant's written request therefor and which certification shall be issued within seven days of said reinspection being made;

(c) The repairs required to be made under (b) of this subsection shall be warranted by the declarant against defects due to workmanship or materials for a period of one year following the completion of such repairs;

(d) Prior to the conveyance of any residential unit within a conversion condominium, other than a conveyance to a declarant or affiliate of a declarant: (i) The declarant shall establish and maintain, during the one-year warranty period provided under (c) of this subsection, an account containing a sum equal to ten percent of the actual cost of making the repairs required under (b) of this subsection; (ii) during the one-year warranty period, the funds in such account shall be used exclusively for paying the actual cost of making repairs required, or for otherwise satisfying claims made, under such warranty; (iii) following the expiration of the one-year warranty period, any funds remaining in such account shall be immediately disbursed to the declarant; and (iv) the declarant shall notify in writing the association and such city or county as to the location of such account and any disbursements therefrom; ((~~and~~))

(e) A declarant shall pay relocation assistance ((~~not to exceed five hundred dollars per unit shall be paid~~)), in an amount to be determined by the city or county, which may not exceed a sum equal to three months of the tenant's or subtenant's rent at the time the conversion notice required under subsection (1) of this section is received, to tenants and subtenants:

(i) Who elect not to purchase a unit ((~~and~~));

(ii) Who are in lawful occupancy for residential purposes of a unit; and

(iii) Whose monthly household income from all sources, on the date of the notice described in subsection (1) of this section, was less than an amount equal to eighty percent of (((~~(i)~~)):

(A) The monthly median income for comparably sized households in the standard metropolitan statistical area, as defined and established by the United States department of housing and urban development, in which the condominium is located((~~,~~)); or (((~~(ii)~~)))

(B) If the condominium is not within a standard metropolitan statistical area, the monthly median income for comparably sized households in the state of Washington, as defined and determined by said department.

The household size of a unit shall be based on the number of persons actually in lawful occupancy of the unit. The tenant or subtenant actually in lawful occupancy of the unit shall be entitled to the relocation assistance. Relocation assistance shall be paid on or before the date the tenant or subtenant vacates and shall be in addition to any damage deposit or other compensation or refund to which the tenant is otherwise entitled. Unpaid rent or other amounts owed by the tenant or subtenant to the landlord may be offset against the relocation assistance;

(f) Except as authorized under (g) of this subsection, a declarant and any dealer shall not begin any construction, remodeling, or repairs to any interior portion of an occupied building that is to be converted to a condominium during the one hundred twenty-day notice period provided for in subsection (1) of this section unless all residential tenants and residential subtenants who have elected not to purchase a unit and who are in lawful occupancy in the building have vacated the premises. For the purposes of this subsection:

(i) "Construction, remodeling, or repairs" means the work that is done for the purpose of converting the condominium, not work that is done to maintain the building or lot for the residential use of the existing tenants or subtenants;

(ii) "Occupied building" means a stand-alone structure occupied by tenants and does not include other stand-alone buildings located on the property or detached common area facilities; and

(g)(i) A declarant and any dealer may begin construction, remodeling, or repairs to interior portions of an occupied building under the following circumstances:

(A) To repair or remodel vacant units to be used as model units, if the repair or remodel is limited to one model for each unit type in the building;

(B) To repair or remodel a vacant unit or common area for use as a sales office; and

(C) The declarant or dealer has offered existing tenants an option to terminate an existing lease or rental agreement without cause or consequence under subsection (1)(c) of this section.

(ii) The work performed under this subsection (6)(g) must not violate the tenant's or subtenant's rights of quiet enjoyment during the one hundred twenty-day notice period.

(7) Violations of any city or county ordinance adopted as authorized by subsection (6) of this section shall give rise to such remedies, penalties, and causes of action which may be lawfully imposed by such city or county. Such violations shall not invalidate the creation of the condominium or the conveyance of any interest therein.

Sec. 2. RCW 82.02.020 and 2006 c 149 s 3 are each amended to read as follows:

Except only as expressly provided in chapters 67.28 and 82.14 RCW, the state preempts the field of imposing taxes upon retail sales of tangible personal property, the use of tangible personal property, parimutuel wagering authorized pursuant to RCW 67.16.060, conveyances, and cigarettes, and no county, town, or other municipal subdivision shall have the right to impose taxes of that nature. Except as provided in RCW 64.34.440 and 82.02.050 through 82.02.090, no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land. However, this section does not preclude dedications of land or easements within the proposed development or plat which the county, city, town, or other municipal corporation can demonstrate are reasonably necessary as a direct result of the proposed development or plat to which the dedication of land or easement is to apply.

This section does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of a proposed development, subdivision, or plat. A local government shall not use such voluntary agreements for local off-site transportation improvements within the geographic boundaries of the area or areas covered by an adopted transportation program authorized by chapter 39.92 RCW. Any such voluntary agreement is subject to the following provisions:

(1) The payment shall be held in a reserve account and may only be expended to fund a capital improvement agreed upon by the parties to mitigate the identified, direct impact;

(2) The payment shall be expended in all cases within five years of collection; and

(3) Any payment not so expended shall be refunded with interest to be calculated from the original date the deposit was received by the county and at the same rate applied to tax refunds pursuant to RCW 84.69.100; however, if the payment is not expended within five years due to delay attributable to the developer, the payment shall be refunded without interest.

No county, city, town, or other municipal corporation shall require any payment as part of such a voluntary agreement which the county, city, town, or other municipal corporation cannot establish is reasonably necessary as a direct result of the proposed development or plat.

Nothing in this section prohibits cities, towns, counties, or other municipal corporations from collecting reasonable fees from an applicant for a permit or other governmental approval to cover the cost to the city, town, county, or other municipal corporation of processing applications, inspecting and reviewing plans, or preparing detailed statements required by chapter 43.21C RCW.

This section does not limit the existing authority of any county, city, town, or other municipal corporation to impose special assessments on property specifically benefitted thereby in the manner prescribed by law.

Nothing in this section prohibits counties, cities, or towns from imposing or permits counties, cities, or towns to impose water, sewer, natural gas, drainage utility, and drainage system charges: PROVIDED, That no such charge shall exceed the proportionate share of such utility or system's capital costs which the county, city, or town can demonstrate are attributable to the property being charged: PROVIDED FURTHER, That these provisions shall not be interpreted to expand or contract any existing authority of counties, cities, or towns to impose such charges.

Nothing in this section prohibits a transportation benefit district from imposing fees or charges authorized in RCW 36.73.120 nor prohibits the legislative authority of a county, city, or town from approving the imposition of such fees within a transportation benefit district.

Nothing in this section prohibits counties, cities, or towns from imposing transportation impact fees authorized pursuant to chapter 39.92 RCW.

Nothing in this section prohibits counties, cities, or towns from requiring property owners to provide relocation assistance to tenants under RCW 59.18.440 and 59.18.450.

Nothing in this section limits the authority of counties, cities, or towns to implement programs consistent with RCW 36.70A.540, nor to enforce agreements made pursuant to such programs.

This section does not apply to special purpose districts formed and acting pursuant to Titles 54, 57, or 87 RCW, nor is the authority conferred by these titles affected.

NEW SECTION. **Sec. 3.** A new section is added to chapter 64.34 RCW to read as follows:

All cities and counties planning under RCW 36.70A.040, which have allowed any conversion condominiums within the jurisdiction within the previous twelve-month period, must report annually to the department of community, trade, and economic development the following information:

(1) The total number of apartment units converted into condominiums;

(2) The total number of conversion condominium projects; and

(3) The total number of apartment tenants who receive relocation assistance and the total amount of that assistance per tenant.

Sec. 4. RCW 59.18.200 and 2003 c 7 s 1 are each amended to read as follows:

(1)(a) When premises are rented for an indefinite time, with monthly or other periodic rent reserved, such tenancy shall be construed to be a tenancy from month to month, or from period to period on which rent is payable, and shall be terminated by written notice of twenty days or more, preceding the end of any of the months or periods of tenancy, given by either party to the other.

(b) Any tenant who is a member of the armed forces, including the national guard and armed forces reserves, or that tenant's spouse or dependant, may terminate a rental agreement with less than twenty days' notice if the tenant receives reassignment or deployment orders that do not allow a twenty-day notice.

(2)(a) Whenever a landlord ((~~plans to change any apartment or apartments to a condominium form of ownership or~~)) plans to change to a policy of excluding children, the landlord shall give a written notice to a tenant at least ninety days before termination of the tenancy to effectuate such change in policy. Such ninety-day notice shall be in lieu of the notice required by subsection (1) of this section. However, if after giving the ninety-day notice the change in policy is delayed, the notice requirements of subsection (1) of this section shall apply unless waived by the tenant.

(b) Whenever a landlord plans to change any apartment or apartments to a condominium form of ownership, the landlord shall provide a written notice to a tenant at least one hundred twenty days before termination of the tenancy, in compliance with RCW 64.34.440(1), to effectuate such change. The one hundred twenty-day notice is in lieu of the notice required in subsection (1) of this section. However, if after providing the one hundred twenty-day notice the change to a condominium form of ownership is delayed, the notice requirements in subsection (1) of this section apply unless waived by the tenant.

NEW SECTION. **Sec. 5.** This act does not apply to any conversion condominiums for which a notice required under RCW 64.34.440(1) has been delivered before the effective date of this act.

NEW SECTION. **Sec. 6.** This act takes effect August 1, 2008."

On page 1, line 1 of the title, after "condominiums;" strike the remainder of the title and insert "amending RCW 64.34.440,

82.02.020, and 59.18.200; adding a new section to chapter 64.34 RCW; creating a new section; and providing an effective date."

The President declared the question before the Senate to be the motion by Senator Weinstein to not adopt the committee striking amendment by the Committee on Consumer Protection & Housing to Substitute House Bill No. 2014.

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

MOTION

Senator Weinstein moved that the following striking amendment by Senator Weinstein be adopted:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 64.34.440 and 1992 c 220 s 25 are each amended to read as follows:

(1)(a) A declarant of a conversion condominium, and any dealer who intends to offer units in such a condominium, shall give each of the residential tenants and any residential subtenant in possession of a portion of a conversion condominium notice of the conversion and provide those persons with the public offering statement no later than ((~~ninety~~)) one hundred twenty days before the tenants and any subtenant in possession are required to vacate. The notice must:

(i) Set forth generally the rights of tenants and subtenants under this section ((~~and shall~~));

(ii) Be delivered pursuant to notice requirements set forth in RCW 59.12.040; and

(iii) Expressly state whether there is a county or city relocation assistance program for tenants or subtenants of conversion condominiums in the jurisdiction in which the property is located. If the county or city does have a relocation assistance program, the following must also be included in the notice:

(A) A summary of the terms and conditions under which relocation assistance is paid; and

(B) Contact information for the city or county relocation assistance program, which must include, at a minimum, a telephone number of the city or county department that administers the relocation assistance program for conversion condominiums.

(b) No tenant or subtenant may be required to vacate upon less than ((~~ninety~~)) one hundred twenty days' notice, except by reason of nonpayment of rent, waste, conduct that disturbs other tenants' peaceful enjoyment of the premises, or act of unlawful detainer as defined in RCW 59.12.030, and the terms of the tenancy may not be altered during that period except as provided in (c) of this subsection.

(c) At the declarant's option, the declarant may provide all tenants in a single building with an option to terminate their lease or rental agreements without cause or consequence after providing the declarant with thirty days' notice. In such case, tenants continue to have access to relocation assistance under subsection (6)(e) of this section.

(d) Nothing in this subsection shall be deemed to waive or repeal RCW 59.18.200(2). Failure to give notice as required by this section is a defense to an action for possession.

(e) The city or county in which the property is located may require the declarant to forward a copy of the conversion notice required in (a) of this subsection to the appropriately designated department or agency in the city or county for the purpose of maintaining a list of conversion condominium projects proposed in the jurisdiction.

(2) For sixty days after delivery or mailing of the notice described in subsection (1) of this section, the person required to give the notice shall offer to convey each unit or proposed unit occupied for residential use to the tenant who leases that unit. If a tenant fails to purchase the unit during that sixty-day period, the offeror may offer to dispose of an interest in that unit during the following one hundred eighty days at a price or on terms more favorable to the offeree than the price or terms offered to the tenant only if: (a) Such offeror, by written notice mailed to the tenant's last known address, offers to sell an interest in that unit at the more favorable price and terms, and (b) such tenant fails to accept such offer in writing within ten days following the mailing of the offer to the tenant. This subsection does not apply to any unit in a conversion condominium if that unit will be restricted exclusively to nonresidential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion.

(3) If a seller, in violation of subsection (2) of this section, conveys a unit to a purchaser for value who has no knowledge of the violation, recording of the deed conveying the unit extinguishes any right a tenant may have to purchase that unit but does not affect the right of a tenant to recover damages from the seller for a violation of subsection (2) of this section.

(4) If a notice of conversion specifies a date by which a unit or proposed unit must be vacated and otherwise complies with the provisions of this chapter and chapter 59.18 RCW, the notice also constitutes a notice to vacate specified by that statute.

(5) Nothing in this section permits termination of a lease by a declarant in violation of its terms.

(6) Notwithstanding RCW 64.34.050(1), a city or county may by appropriate ordinance require with respect to any conversion condominium within the jurisdiction of such city or county that:

(a) In addition to the statement required by RCW 64.34.415(1)(a), the public offering statement shall contain a copy of the written inspection report prepared by the appropriate department of such city or county, which report shall list any violations of the housing code or other governmental regulation, which code or regulation is applicable regardless of whether the real property is owned as a condominium or in some other form of ownership; said inspection shall be made within forty-five days of the declarant's written request therefor and said report shall be issued within fourteen days of said inspection being made. Such inspection may not be required with respect to any building for which a final certificate of occupancy has been issued by the city or county within the preceding twenty-four months; and any fee imposed for the making of such inspection may not exceed the fee that would be imposed for the making of such an inspection for a purpose other than complying with this subsection (6)(a);

(b) Prior to the conveyance of any residential unit within a conversion condominium, other than a conveyance to a declarant or affiliate of a declarant: (i) All violations disclosed in the inspection report provided for in (a) of this subsection, and not otherwise waived by such city or county, shall be repaired, and (ii) a certification shall be obtained from such city or county that such repairs have been made, which certification shall be based on a reinspection to be made within seven days of the declarant's written request therefor and which certification shall be issued within seven days of said reinspection being made;

(c) The repairs required to be made under (b) of this subsection shall be warranted by the declarant against defects due to workmanship or materials for a period of one year following the completion of such repairs;

(d) Prior to the conveyance of any residential unit within a conversion condominium, other than a conveyance to a declarant or affiliate of a declarant: (i) The declarant shall establish and maintain, during the one-year warranty period provided under (c) of this subsection, an account containing a sum equal to ten percent of the actual cost of making the repairs required under (b) of this subsection; (ii) during the one-year warranty period, the funds in such account shall be used exclusively for paying the actual cost of making repairs required, or for otherwise satisfying claims made, under such warranty; (iii) following the expiration of the one-year warranty period, any funds remaining in such account shall be immediately disbursed to the declarant; and (iv) the declarant shall notify in writing the association and such city or county as to the location of such account and any disbursements therefrom; ((~~and~~))

(e) A declarant shall pay relocation assistance ((~~not to exceed five hundred dollars per unit shall be paid~~)), in an amount to be determined by the city or county, which may not

exceed a sum equal to three months of the tenant's or subtenant's rent at the time the conversion notice required under subsection (1) of this section is received, to tenants and subtenants:

(i) Who do not elect ((~~not~~)) to purchase a unit ((~~and~~));

(ii) Who are in lawful occupancy for residential purposes of a unit; and

(iii) Whose ((~~monthly~~)) annual household income from all sources, on the date of the notice described in subsection (1) of this section, was less than an amount equal to eighty percent of (((~~(i)~~))):

(A) The ((~~monthly~~)) annual median income for comparably sized households in the standard metropolitan statistical area, as defined and established by the United States department of housing and urban development, in which the condominium is located((~~,~~)); or (((~~(ii)~~)))

(B) If the condominium is not within a standard metropolitan statistical area, the ((~~monthly~~)) annual median income for comparably sized households in the state of Washington, as defined and determined by said department.

The household size of a unit shall be based on the number of persons actually in lawful occupancy of the unit. The tenant or subtenant actually in lawful occupancy of the unit shall be entitled to the relocation assistance. Relocation assistance shall be paid on or before the date the tenant or subtenant vacates and shall be in addition to any damage deposit or other compensation or refund to which the tenant is otherwise entitled. Unpaid rent or other amounts owed by the tenant or subtenant to the landlord may be offset against the relocation assistance;

(f) Except as authorized under (g) of this subsection, a declarant and any dealer shall not begin any construction, remodeling, or repairs to any interior portion of an occupied building that is to be converted to a condominium during the one hundred twenty-day notice period provided for in subsection (1) of this section unless all residential tenants and residential subtenants who have elected not to purchase a unit and who are in lawful occupancy in the building have vacated the premises. For the purposes of this subsection:

(i) "Construction, remodeling, or repairs" means the work that is done for the purpose of converting the condominium, not work that is done to maintain the building or lot for the residential use of the existing tenants or subtenants;

(ii) "Occupied building" means a stand-alone structure occupied by tenants and does not include other stand-alone buildings located on the property or detached common area facilities; and

(g)(i) If a declarant or dealer has offered existing tenants an option to terminate an existing lease or rental agreement without cause or consequence as authorized under subsection (1)(c) of this section, a declarant and any dealer may begin construction, remodeling, or repairs to interior portions of an occupied building (A) to repair or remodel vacant units to be used as model units, if the repair or remodel is limited to one model for each unit type in the building, (B) to repair or remodel a vacant unit or common area for use as a sales office, or (C) to do both.

(ii) The work performed under this subsection (6)(g) must not violate the tenant's or subtenant's rights of quiet enjoyment during the one hundred twenty-day notice period.

(7) Violations of any city or county ordinance adopted as authorized by subsection (6) of this section shall give rise to such remedies, penalties, and causes of action which may be lawfully imposed by such city or county. Such violations shall not invalidate the creation of the condominium or the conveyance of any interest therein.

Sec. 2. RCW 82.02.020 and 2006 c 149 s 3 are each amended to read as follows:

Except only as expressly provided in chapters 67.28 and 82.14 RCW, the state preempts the field of imposing taxes upon retail sales of tangible personal property, the use of tangible personal property, parimutuel wagering authorized pursuant to RCW 67.16.060, conveyances, and cigarettes, and no county, town, or other municipal subdivision shall have the right to impose taxes of that nature. Except as provided in RCW 64.34.440 and 82.02.050 through 82.02.090, no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land. However, this section does not preclude dedications of land or easements within the proposed development or plat which the county, city, town, or other municipal corporation can demonstrate are reasonably necessary as a direct result of the proposed development or plat to which the dedication of land or easement is to apply.

This section does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of a proposed development, subdivision, or plat. A local government shall not use such voluntary agreements for local off-site transportation improvements within the geographic boundaries of the area or areas covered by an adopted transportation program authorized by chapter 39.92 RCW. Any such voluntary agreement is subject to the following provisions:

(1) The payment shall be held in a reserve account and may only be expended to fund a capital improvement agreed upon by the parties to mitigate the identified, direct impact;

(2) The payment shall be expended in all cases within five years of collection; and

(3) Any payment not so expended shall be refunded with interest to be calculated from the original date the deposit was received by the county and at the same rate applied to tax refunds pursuant to RCW 84.69.100; however, if the payment is not expended within five years due to delay attributable to the developer, the payment shall be refunded without interest.

No county, city, town, or other municipal corporation shall require any payment as part of such a voluntary agreement which the county, city, town, or other municipal corporation cannot establish is reasonably necessary as a direct result of the proposed development or plat.

Nothing in this section prohibits cities, towns, counties, or other municipal corporations from collecting reasonable fees from an applicant for a permit or other governmental approval to cover the cost to the city, town, county, or other municipal corporation of processing applications, inspecting and reviewing plans, or preparing detailed statements required by chapter 43.21C RCW.

This section does not limit the existing authority of any county, city, town, or other municipal corporation to impose special assessments on property specifically benefitted thereby in the manner prescribed by law.

Nothing in this section prohibits counties, cities, or towns from imposing or permits counties, cities, or towns to impose water, sewer, natural gas, drainage utility, and drainage system charges: PROVIDED, That no such charge shall exceed the proportionate share of such utility or system's capital costs which the county, city, or town can demonstrate are attributable to the property being charged: PROVIDED FURTHER, That these provisions shall not be interpreted to expand or contract any existing authority of counties, cities, or towns to impose such charges.

Nothing in this section prohibits a transportation benefit district from imposing fees or charges authorized in RCW 36.73.120 nor prohibits the legislative authority of a county, city, or town from approving the imposition of such fees within a transportation benefit district.

Nothing in this section prohibits counties, cities, or towns from imposing transportation impact fees authorized pursuant to chapter 39.92 RCW.

Nothing in this section prohibits counties, cities, or towns from requiring property owners to provide relocation assistance to tenants under RCW 59.18.440 and 59.18.450.

Nothing in this section limits the authority of counties, cities, or towns to implement programs consistent with RCW 36.70A.540, nor to enforce agreements made pursuant to such programs.

This section does not apply to special purpose districts formed and acting pursuant to Titles 54, 57, or 87 RCW, nor is the authority conferred by these titles affected.

NEW SECTION. **Sec. 3.** A new section is added to chapter 64.34 RCW to read as follows:

(1) All cities and counties planning under RCW 36.70A.040, which have allowed any conversion condominiums within the jurisdiction within the previous twelve-month period, must report annually to the department of community, trade, and economic development the following information:

(a) The total number of apartment units converted into condominiums;

(b) The total number of conversion condominium projects; and

(c) The total number of apartment tenants who receive relocation assistance.

(2) Upon completion of a conversion condominium project, a city or county may require the declarant to provide the information described in subsection (1) of this section to the appropriately designated department or agency in the city or county for the purpose of complying with subsection (1) of this section.

Sec. 4. RCW 59.18.200 and 2003 c 7 s 1 are each amended to read as follows:

(1)(a) When premises are rented for an indefinite time, with monthly or other periodic rent reserved, such tenancy shall be construed to be a tenancy from month to month, or from period to period on which rent is payable, and shall be terminated by written notice of twenty days or more, preceding the end of any of the months or periods of tenancy, given by either party to the other.

(b) Any tenant who is a member of the armed forces, including the national guard and armed forces reserves, or that tenant's spouse or dependant, may terminate a rental agreement with less than twenty days' notice if the tenant receives reassignment or deployment orders that do not allow a twenty-day notice.

(2)(a) Whenever a landlord ((~~plans to change any apartment or apartments to a condominium form of ownership or~~)) plans to change to a policy of excluding children, the landlord shall give a written notice to a tenant at least ninety days before termination of the tenancy to effectuate such change in policy. Such ninety-day notice shall be in lieu of the notice required by subsection (1) of this section. However, if after giving the ninety-day notice the change in policy is delayed, the notice requirements of subsection (1) of this section shall apply unless waived by the tenant.

(b) Whenever a landlord plans to change any apartment or apartments to a condominium form of ownership, the landlord shall provide a written notice to a tenant at least one hundred twenty days before termination of the tenancy, in compliance with RCW 64.34.440(1), to effectuate such change. The one hundred twenty-day notice is in lieu of the notice required in subsection (1) of this section. However, if after providing the one hundred twenty-day notice the change to a condominium form of ownership is delayed, the notice requirements in subsection (1) of this section apply unless waived by the tenant.

NEW SECTION. **Sec. 5.** This act does not apply to any conversion condominiums for which a notice required under RCW 64.34.440(1) has been delivered before the effective date of this act.

NEW SECTION. **Sec. 6.** This act takes effect August 1, 2008."

MOTION

Senator Kohl-Welles moved that the following amendment by Senators Kohl-Welles and Weinstein to the striking amendment be adopted.

On page 4, line 19 of the amendment, after "(e)" insert "(i)"

Reletter the remaining subsections consecutively and correct any internal references accordingly.

On page 5, after line 9 of the amendment, insert the following:

"(ii) Elderly or special needs tenants who otherwise meet the requirements of (e)(i)(A) of this subsection shall receive relocation assistance, the greater of:

(A) The sum described in (e)(i) of this subsection; or

(B) The sum of actual relocation expenses of the tenant, up to a maximum of one thousand five hundred dollars in excess of the sum described in (e)(i) of this subsection, which may include costs associated with the physical move, first month's rent, and the security deposit for the dwelling unit to which the tenant is relocating, rent differentials for up to a six-month period, and any other reasonable costs or fees associated with the relocation. Receipts for relocation expenses must be provided to the declarant by eligible tenants, and declarants shall provide the relocation assistance to tenants in a timely manner. The city or county may provide additional guidelines for the relocation assistance;

(iii) For the purposes of this subsection (6)(e):

(A) "Special needs" means, but is not limited to, a chronic mental illness or physical disability, a developmental disability, or other condition affecting cognition, disease, chemical dependency, or a medical condition that is permanent, not reversible or curable, or is long lasting, and severely limits a person's mental or physical capacity for self care; and

(B) "Elderly" means a person who is at least sixty-five years of age."

Senator Kohl-Welles spoke in favor of adoption of the amendment to the striking amendment.

Senator Honeyford spoke against adoption of the amendment to the striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Kohl-Welles and Weinstein on page 4, line 19 to the striking amendment to Substitute House Bill No. 2014.

The motion by Senator Kohl-Welles carried and the amendment to the striking amendment was adopted by voice vote.

The President declared the question before the Senate to be the adoption of the striking amendment by Senator Weinstein as amended to Substitute House Bill No. 2014.

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

MOTION

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

On page 1, line 1 of the title, after "condominiums;" strike the remainder of the title and insert "amending RCW 64.34.440, 82.02.020, and 59.18.200; adding a new section to chapter 64.34 RCW; creating a new section; and providing an effective date."

MOTION

On motion of Senator Kohl-Welles, the rules were suspended, Substitute House Bill No. 2014 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Weinstein and Tom spoke in favor of passage of the bill.

Senator Honeyford spoke against passage of the bill.

MOTION

On motion of Senator Regala, Senators Fairley, Murray and Rasmussen were excused.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2014 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2014 as amended by the Senate and

the bill passed the Senate by the following vote: Yeas, 36; Nays, 11; Absent, 0; Excused, 2.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Eide, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hobbs, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Sheldon, Shin, Spanel, Swecker, Tom and Weinstein - 36

Voting nay: Senators Carrell, Delvin, Hewitt, Holmquist, Honeyford, King, McCaslin, Morton, Schoesler, Stevens and Zarelli - 11

Excused: Senators Fairley and Murray - 2

SUBSTITUTE HOUSE BILL NO. 2014 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SECOND SUBSTITUTE HOUSE BILL NO. 2514, by House Committee on Appropriations Subcommittee on General Government & Audit Review (originally sponsored by Representatives Quall, Appleton, McCoy, Morris, McIntire, Nelson, Kagi and Upthegrove)

Protecting orca whales from the impacts from vessels.

The measure was read the second time.

MOTION

Senator Jacobsen moved that the following committee striking amendment by the Committee on Natural Resources, Ocean & Recreation be adopted.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** The legislature finds that the resident population of orca whales in Washington waters *(Orcinus orca)*, commonly referred to as the southern residents, are enormously significant to the state. These highly social, intelligent, and playful marine mammals, which the legislature designated as the official marine mammal of the state of Washington, serve as a symbol of the Pacific Northwest and illustrate the biological diversity and rich natural heritage that all Washington citizens and its visitors enjoy.

However, the legislature also finds that the southern resident orcas are currently in a serious decline. Southern residents experienced an almost twenty percent decline between 1996 and 2001. The federal government listed this orca population as depleted in 2003, and as an endangered species in 2005. The federal government has identified impacts from vessels as a significant threat to these marine mammals.

In 2006, after listing the southern resident orcas as endangered, the federal government designated critical orca habitat and released a proposed recovery plan for the southern resident orcas. The federal government has initiated the process to adopt orca conservation rules, but this process may be lengthy. Additionally, although existing whale and wildlife viewing guidelines are an excellent educational resource, these guidelines are voluntary measures that cannot be enforced.

Therefore, the legislature intends to protect southern resident orca whales from impacts from vessels, and to educate the public on how to reduce the risk of disturbing these important marine mammals.

NEW SECTION. **Sec. 2.** A new section is added to chapter 77.15 RCW to read as follows:

(1) Except as provided in subsection (2) of this section, it is unlawful to:

(a) Approach, by any means, within three hundred feet of a southern resident orca whale *(Orcinus orca)*;

(b) Cause a vessel or other object to approach within three hundred feet of a southern resident orca whale;

(c) Intercept a southern resident orca whale. A person intercepts a southern resident orca whale when that person places a vessel or allows a vessel to remain in the path of a whale and the whale approaches within three hundred feet of that vessel;

(d) Fail to disengage the transmission of a vessel that is within three hundred feet of a southern resident orca whale, for which the vessel operator is strictly liable; or

(e) Feed a southern resident orca whale, for which any person feeding a southern resident orca whale is strictly liable.

(2) A person is exempt from subsection (1) of this section where:

(a) A reasonably prudent person in that person's position would determine that compliance with the requirements of subsection (1) of this section will threaten the safety of the vessel, the vessel's crew or passengers, or is not feasible due to vessel design limitations, or because the vessel is restricted in its ability to maneuver due to wind, current, tide, or weather;

(b) That person is lawfully participating in a commercial fishery and is engaged in actively setting, retrieving, or closely tending commercial fishing gear;

(c) That person is acting in the course of official duty for a state, federal, tribal, or local government agency; or

(d) That person is acting pursuant to and consistent with authorization from a state or federal government agency.

(3) Nothing in this section is intended to conflict with existing rules regarding safe operation of a vessel or vessel navigation rules.

(4) For the purpose of this section, "vessel" includes aircraft, canoes, fishing vessels, kayaks, personal watercraft, rafts, recreational vessels, tour boats, whale watching boats, vessels engaged in whale watching activities, or other small craft including power boats and sail boats.

(5) A violation of this section is a natural resource infraction punishable under chapter 7.84 RCW.

NEW SECTION. **Sec. 3.** The legislature encourages the state's law enforcement agencies to utilize existing statutes and regulations to protect southern resident orca whales from impacts from vessels, including the vessel operation and enforcement standards contained in chapter 79A.60 RCW.

NEW SECTION. **Sec. 4.** A new section is added to chapter 77.12 RCW to read as follows:

The department and the state parks and recreation commission shall disseminate information about section 2 of this act, whale and wildlife viewing guidelines, and other responsible wildlife viewing messages to educate Washington's citizens on how to reduce the risk of disturbing southern resident orca whales. The department and the state parks and recreation commission must, at minimum, disseminate this information on their internet sites and through appropriate agency publications, brochures, and other information sources. The department and the state parks and recreation commission shall also attempt to reach the state's boating community by coordinating with appropriate state and nongovernmental entities to provide this information at marinas, boat shows, boat dealers, during boating safety training courses, and in conjunction with vessel registration or licensing.

NEW SECTION. **Sec. 5.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2008, in the omnibus appropriations act, this act is null and void."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Natural Resources, Ocean & Recreation to Second Substitute House Bill No. 2514.

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

MOTION

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

On page 1, line 2 of the title, after "vessels;" strike the remainder of the title and insert "adding a new section to chapter

77.15 RCW; adding a new section to chapter 77.12 RCW; creating new sections; and prescribing penalties."

MOTION

On motion of Senator Morton, the rules were suspended, Second Substitute House Bill No. 2514 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

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

Senator Morton spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Second Substitute House Bill No. 2514 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Second Substitute House Bill No. 2514 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 41; Nays, 7; Absent, 0; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Tom, Weinstein and Zarelli - 41

Voting nay: Senators Delvin, Holmquist, Honeyford, McCaslin, Morton, Stevens and Swecker - 7

Excused: Senator Murray - 1

SECOND SUBSTITUTE HOUSE BILL NO. 2514 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SECOND SUBSTITUTE HOUSE BILL NO. 2674, by House Committee on Appropriations (originally sponsored by Representatives Barlow, Morrell, Moeller, Conway, Simpson and Kenney)

Modifying credentialing standards for counselors.

The measure was read the second time.

MOTION

Senator Keiser moved that the following committee striking amendment by the Committee on Health & Long-Term Care be not adopted.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 18.19.020 and 2001 c 251 s 18 are each amended to read as follows:

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

(1) "Agency" means an agency or facility operated, licensed, or certified by the state of Washington.

(2) "Agency affiliated counselor" means a person registered under this chapter who is engaged in counseling and employed by an agency.

(3) "Certified counselor" means a person certified under this chapter who is engaged in private practice counseling.

(4) "Client" means an individual who receives or participates in counseling or group counseling.

((~~(2)~~)) (5) "Counseling" means employing any therapeutic techniques, including but not limited to social work, mental health counseling, marriage and family therapy, and hypnotherapy, for a fee that offer, assist or attempt to assist an individual or individuals in the amelioration or adjustment of mental, emotional, or behavioral problems, and includes therapeutic techniques to achieve sensitivity and awareness of self and others and the development of human potential. For the purposes of this chapter, nothing may be construed to imply that the practice of hypnotherapy is necessarily limited to counseling.

((~~(3)~~)) (6) "Counselor" means an individual, practitioner, therapist, or analyst who engages in the practice of counseling to the public for a fee, including for the purposes of this chapter, hypnotherapists.

((~~(4)~~)) (7) "Department" means the department of health.

((~~(5)~~)) (8) "Hypnotherapist" means a person registered under this chapter who is practicing hypnosis as a modality.

(9)"Mental disorder" means, for the purposes of this chapter, a score of sixty or lower on the global assessment of functioning scale as set forth in the 1994 edition of the diagnostic and statistical manual of mental disorders, 4th edition.

(10) "Private practice counseling" means the practice of counseling by a certified counselor and is limited to: (a) Appropriate screening of the client's condition. Recognition of a mental or physical disorder requires that the certification holder recommend that the client seek diagnosis and treatment from an appropriate health care professional; and (b) counseling and guiding clients in adjusting to life situations, developing new skills, and making desired changes, in accordance with the theories and techniques of a specific counseling method and established practice standards.

(11) "Psychotherapy" means the practice of counseling through the diagnosis of mental illness according to the diagnostic and statistical manual of mental disorders, 4th edition, text revision and international classification of diseases codes, and the development of treatment plans for counseling based on a diagnosis in accordance with established practice standards.

(12) "Secretary" means the secretary of the department or the secretary's designee.

Sec. 2. RCW 18.19.030 and 2001 c 251 s 19 are each amended to read as follows:

((~~No~~)) A person may not, ((~~for a fee or~~)) as a part of his or her position as an employee of a state agency, practice counseling without being registered to practice as an agency affiliated counselor by the department under this chapter unless exempt under RCW 18.19.040.

NEW SECTION. **Sec. 3.** A new section is added to chapter 18.19 RCW to read as follows:

A person may not, for a fee or as a part of his or her position as an employee of a state agency, practice hypnotherapy without being registered to practice as a hypnotherapist by the department under this chapter unless exempt under RCW 18.19.040.

Sec. 4. RCW 18.19.040 and 2001 c 251 s 20 are each amended to read as follows:

Nothing in this chapter may be construed to prohibit or restrict:

(1) The practice of a profession by a person who is either registered, certified, licensed, or similarly regulated under the laws of this state and who is performing services within the person's authorized scope of practice, including any attorney admitted to practice law in this state when providing counseling incidental to and in the course of providing legal counsel;

(2) The practice of counseling by an employee or trainee of any federal agency, or the practice of counseling by a student of a college or university, if the employee, trainee, or student is practicing solely under the supervision of and accountable to the agency, college, or university, through which he or she performs such functions as part of his or her position for no additional fee other than ordinary compensation;

(3) The practice of counseling by a person ((~~without a mandatory charge~~)) for no compensation;

(4) The practice of counseling by persons offering services for public and private nonprofit organizations or charities not

primarily engaged in counseling for a fee when approved by the organizations or agencies for whom they render their services;

(5) Evaluation, consultation, planning, policy-making, research, or related services conducted by social scientists for private corporations or public agencies;

(6) The practice of counseling by a person under the auspices of a religious denomination, church, or organization, or the practice of religion itself;

(7) The practice of counseling by peer counselors who use their own experience to encourage and support people with similar conditions;

(8) Counselors ((~~whose residency is not~~)) who reside outside Washington state from providing up to ten days per quarter of training or workshops in the state, as long as they ((~~don't~~)) do not hold themselves out to be registered or certified in Washington state.

Sec. 5. RCW 18.19.050 and 2001 c 251 s 21 are each amended to read as follows:

(1) In addition to any other authority provided by law, the secretary has the following authority:

(a) To adopt rules, in accordance with chapter 34.05 RCW, necessary to implement this chapter;

(b) To set all registration, certification, and renewal fees in accordance with RCW 43.70.250 and to collect and deposit all such fees in the health professions account established under RCW 43.70.320;

(c) To establish forms and procedures necessary to administer this chapter;

(d) To hire clerical, administrative, and investigative staff as needed to implement this chapter;

(e) To issue a registration or certification to any applicant who has met the requirements for registration or certification; and

(f) To ((~~develop a dictionary of recognized professions and occupations providing counseling services to the public included under this chapter~~)) establish education equivalency, examination, supervisory, consultation, and continuing education requirements for certified counselors.

(2) The uniform disciplinary act, chapter 18.130 RCW, governs the issuance and denial of registrations and certifications and the discipline of registrants under this chapter. The secretary shall be the disciplining authority under this chapter. ((~~The absence of educational or training requirements for counselors registered under this chapter or the counselor's use of nontraditional nonabusive therapeutic techniques shall not, in and of itself, give the secretary authority to unilaterally determine the training and competence or to define or restrict the scope of practice of such individuals.~~))

(3) The department shall publish and disseminate information ((~~in order~~)) to educate the public about the responsibilities of counselors, the types of counselors, and the rights and responsibilities of clients established under this chapter. ((~~Solely for the purposes of administering this education requirement,~~)) The secretary ((~~shall~~)) may assess an additional fee for each application and renewal((~~, equal to five percent of the fee. The revenue collected from the assessment fee may be appropriated by the legislature for the department's use in educating consumers pursuant to this section. The authority to charge the assessment fee shall terminate on June 30, 1994~~)) to fund public education efforts under this section.

Sec. 6. RCW 18.19.060 and 2001 c 251 s 22 are each amended to read as follows:

((~~Persons registered under this chapter~~)) Certified counselors shall provide clients at the commencement of any program of treatment with accurate disclosure information concerning their practice, in accordance with guidelines developed by the department, that will inform clients of the purposes of and resources available under this chapter, including the right of clients to refuse treatment, the responsibility of clients for choosing the provider and treatment modality which best suits their needs, and the extent of confidentiality provided by this chapter, the department, another agency, or other jurisdiction. The disclosure statement must inform the client of the certified counselor's supervisory or consultation arrangement as defined in rules adopted by the secretary. The disclosure information provided by the certified counselor, the receipt of which shall be acknowledged in writing by the certified counselor and client, shall include any relevant education and training, the therapeutic orientation of the practice, the proposed course of treatment where known, any financial requirements, referral resources, and such other information as the department may require by rule. The disclosure information shall also include a statement that ((~~registration~~)) the certification of an individual under this chapter does not include a recognition of any practice standards, nor necessarily imply the effectiveness of any treatment. Certified counselors must also disclose that they are not credentialed to diagnose or treat mental disorders or to conduct psychotherapy. The client is not liable for any fees or charges for services rendered prior to receipt of the disclosure statement.

Sec. 7. RCW 18.19.090 and 1991 c 3 s 24 are each amended to read as follows:

((~~The secretary shall issue a registration to any applicant who submits, on forms provided by the secretary, the applicant's name, address, occupational title, name and location of business, and other information as determined by the secretary, including information necessary to determine whether there are grounds for denial of registration or issuance of a conditional registration under this chapter or chapter 18.130 RCW. Applicants for registration shall register as counselors or may register as hypnotherapists if employing hypnosis as a modality. Applicants shall, in addition, provide in their titles a description of their therapeutic orientation, discipline, theory, or technique.~~)) (1) Application for agency affiliated counselor, certified counselor, or hypnotherapist must be made on forms approved by the secretary. The secretary may require information necessary to determine whether applicants meet the qualifications for the credential and whether there are any grounds for denial of the credential, or for issuance of a conditional credential, under this chapter or chapter 18.130 RCW. The application for agency affiliated counselor or certified counselor must include a description of the applicant's orientation, discipline, theory, or technique. Each applicant shall pay a fee determined by the secretary as provided in RCW 43.70.250, which shall accompany the application.

(2) Applicants for agency affiliated counselor must provide satisfactory documentation that they are employed by an agency or have an offer of employment from an agency.

(3) Applicants for certified counselor prior to July 1, 2009, who are currently registered counselors are required to:

(a) Have been registered for no less than five years;

(b) Have a registration that is in good standing and be in compliance with any disciplinary process and orders;

(c) Show evidence of having completed course work in risk assessment, ethics, appropriate screening and referral, and Washington state law and other subjects identified by the secretary;

(d) Pass an examination in risk assessment, ethics, appropriate screening and referral, and Washington state law, and other subjects as determined by the secretary; and

(e) Have a written consultation agreement with a credential holder who meets the qualifications established by the secretary.

(4) Unless eligible for certification under subsection (3) of this section, applicants for certified counselor are required to:

(a) Have a bachelors degree in a counseling related field, or the equivalent in education and supervised experience, that may, among other things, include an associate degree in a counseling-related field plus a supervised internship, to be determined by the secretary;

(b) Pass an examination in risk assessment, ethics, appropriate screening and referral, and Washington state law, and other subjects as determined by the secretary; and

(c) Have a written supervisory agreement with a supervisor who meets the qualifications established by the secretary.

(5) Each applicant shall include payment of the fee determined by the secretary as provided in RCW 43.70.250.

NEW SECTION. **Sec. 8.** A new section is added to chapter 18.19 RCW to read as follows:

Agency affiliated counselors shall notify the department if they are either no longer employed by the agency identified on

their application or are now employed with another agency, or both. Agency affiliated counselors may not engage in the practice of counseling unless they are currently affiliated with an agency.

Sec. 9. RCW 18.19.100 and 1996 c 191 s 5 are each amended to read as follows:

The secretary shall establish administrative procedures, administrative requirements, continuing education, and fees for renewal of ((~~registrations~~)) credentials as provided in RCW 43.70.250 and 43.70.280. When establishing continuing education requirements for agency affiliated counselors, the secretary shall consult with the appropriate state agency director responsible for licensing, certifying, or operating the relevant agency practice setting.

Sec. 10. RCW 18.225.010 and 2001 c 251 s 1 are each amended to read as follows:

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

(1) "Advanced social work" means the application of social work theory and methods including emotional and biopsychosocial assessment, psychotherapy under the supervision of a licensed independent clinical social worker, case management, consultation, advocacy, counseling, and community organization.

(2) "Applicant" means a person who completes the required application, pays the required fee, is at least eighteen years of age, and meets any background check requirements and uniform disciplinary act requirements.

(3) "Associate" means a prelicensure candidate who has a graduate degree in a mental health field under RCW 18.225.090 and is gaining the supervision and supervised experience necessary to become a licensed independent clinical social worker, a licensed advanced social worker, a licensed mental health counselor, or a licensed marriage and family therapist.

(4) "Committee" means the Washington state mental health counselors, marriage and family therapists, and social workers advisory committee.

((~~(4)~~)) (5) "Department" means the department of health.

((~~(5)~~)) (6) "Disciplining authority" means the department.

((~~(6)~~)) (7) "Independent clinical social work" means the diagnosis and treatment of emotional and mental disorders based on knowledge of human development, the causation and treatment of psychopathology, psychotherapeutic treatment practices, and social work practice as defined in advanced social work. Treatment modalities include but are not limited to diagnosis and treatment of individuals, couples, families, groups, or organizations.

((~~(7)~~)) (8) "Marriage and family therapy" means the diagnosis and treatment of mental and emotional disorders, whether cognitive, affective, or behavioral, within the context of relationships, including marriage and family systems. Marriage and family therapy involves the professional application of psychotherapeutic and family systems theories and techniques in the delivery of services to individuals, couples, and families for the purpose of treating such diagnosed nervous and mental disorders. The practice of marriage and family therapy means the rendering of professional marriage and family therapy services to individuals, couples, and families, singly or in groups, whether such services are offered directly to the general public or through organizations, either public or private, for a fee, monetary or otherwise.

((~~(8)~~)) (9) "Mental health counseling" means the application of principles of human development, learning theory, psychotherapy, group dynamics, and etiology of mental illness and dysfunctional behavior to individuals, couples, families, groups, and organizations, for the purpose of treatment of mental disorders and promoting optimal mental health and functionality. Mental health counseling also includes, but is not limited to, the assessment, diagnosis, and treatment of mental and emotional disorders, as well as the application of a wellness model of mental health.

((~~(9)~~)) (10) "Secretary" means the secretary of health or the secretary's designee.

Sec. 11. RCW 18.225.020 and 2001 c 251 s 2 are each amended to read as follows:

A person must not represent himself or herself as a licensed advanced social worker, a licensed independent clinical social worker, a licensed mental health counselor, ((~~or~~)) a licensed marriage and family therapist, a licensed social work associate--advanced, a licensed social work associate--independent clinical, a licensed mental health counselor associate, or a licensed marriage and family therapist associate, without being licensed by the department.

NEW SECTION. **Sec. 12.** A new section is added to chapter 18.225 RCW to read as follows:

(1) The secretary shall issue an associate license to any applicant who demonstrates to the satisfaction of the secretary that the applicant meets the following requirements for the applicant's practice area and submits a declaration that the applicant is working toward full licensure in that category:

(a) Licensed social worker associate--advanced or licensed social worker associate--independent clinical: Graduation from a master's degree or doctoral degree educational program in social work accredited by the council on social work education and approved by the secretary based upon nationally recognized standards.

(b) Licensed mental health counselor associate: Graduation from a master's degree or doctoral degree educational program in mental health counseling or a related discipline from a college or university approved by the secretary based upon nationally recognized standards.

(c) Licensed marriage and family therapist associate: Graduation from a master's degree or doctoral degree educational program in marriage and family therapy or graduation from an educational program in an allied field equivalent to a master's degree or doctoral degree in marriage and family therapy approved by the secretary based upon nationally recognized standards.

(2) Associates may not provide independent social work, mental health counseling, or marriage and family therapy for a fee, monetary or otherwise. Associates must work under the supervision of an approved supervisor.

(3) Associates shall provide each client or patient, during the first professional contact, with a disclosure form according to RCW 18.225.100, disclosing that he or she is an associate under the supervision of an approved supervisor.

(4) The department shall adopt by rule what constitutes adequate proof of compliance with the requirements of this section.

(5) Applicants are subject to the denial of a license or issuance of a conditional license for the reasons set forth in chapter 18.130 RCW.

(6) An associate license may be renewed no more than four times.

Sec. 13. RCW 18.225.150 and 2001 c 251 s 15 are each amended to read as follows:

The secretary shall establish by rule the procedural requirements and fees for renewal of a license or associate license. Failure to renew shall invalidate the license or associate license and all privileges granted by the license. If an associate license has lapsed, the person shall submit an updated declaration, in accordance with rules adopted by the department, that the person is working toward full licensure. If a license has lapsed for a period longer than three years, the person shall demonstrate competence to the satisfaction of the secretary by taking continuing education courses, or meeting other standards determined by the secretary. If an associate license has lapsed, the person shall submit an updated declaration, in accordance with rules adopted by the department, that the person is working toward full licensure.

Sec. 14. RCW 18.205.020 and 1998 c 243 s 2 are each amended to read as follows:

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

(1) "Certification" means a voluntary process recognizing an individual who qualifies by examination and meets established

educational prerequisites, and which protects the title of practice.

(2) "Certified chemical dependency professional" means an individual certified in chemical dependency counseling, under this chapter.

(3) "Certified chemical dependency professional trainee" means an individual working toward the education and experience requirements for certification as a chemical dependency professional.

(4) "Chemical dependency counseling" means employing the core competencies of chemical dependency counseling to assist or attempt to assist an alcohol or drug addicted person to develop and maintain abstinence from alcohol and other mood-altering drugs.

((~~(4)~~)) (5) "Committee" means the chemical dependency certification advisory committee established under this chapter.

((~~(5)~~)) (6) "Core competencies of chemical dependency counseling" means competency in the nationally recognized knowledge, skills, and attitudes of professional practice, including assessment and diagnosis of chemical dependency, chemical dependency treatment planning and referral, patient and family education in the disease of chemical dependency, individual and group counseling with alcoholic and drug addicted individuals, relapse prevention counseling, and case management, all oriented to assist alcoholic and drug addicted patients to achieve and maintain abstinence from mood-altering substances and develop independent support systems.

((~~(6)~~)) (7) "Department" means the department of health.

((~~(7)~~)) (8) "Health profession" means a profession providing health services regulated under the laws of this state.

((~~(8)~~)) (9) "Secretary" means the secretary of health or the secretary's designee.

Sec. 15. RCW 18.205.030 and 2000 c 171 s 41 are each amended to read as follows:

No person may represent oneself as a certified chemical dependency professional or certified chemical dependency professional trainee or use any title or description of services of a certified chemical dependency professional or certified chemical dependency professional trainee without applying for certification, meeting the required qualifications, and being certified by the department of health, unless otherwise exempted by this chapter.

Sec. 16. RCW 18.205.040 and 1998 c 243 s 4 are each amended to read as follows:

Nothing in this chapter shall be construed to authorize the use of the title "certified chemical dependency professional" or "certified chemical dependency professional trainee" when treating patients in settings other than programs approved under chapter 70.96A RCW.

NEW SECTION. **Sec. 17.** A new section is added to chapter 18.205 RCW to read as follows:

(1) The secretary shall issue a trainee certificate to any applicant who demonstrates to the satisfaction of the secretary that he or she is working toward the education and experience requirements in RCW 18.205.090.

(2) A trainee certified under this section shall submit to the secretary for approval a declaration, in accordance with rules adopted by the department, that he or she is enrolled in an approved education program and actively pursuing the experience requirements in RCW 18.205.090. This declaration must be updated with the trainee's annual renewal.

(3) A trainee certified under this section may practice only under the supervision of a certified chemical dependency professional. The first fifty hours of any face-to-face client contact must be under direct observation. All remaining experience must be under supervision in accordance with rules adopted by the department.

(4) A certified chemical dependency professional trainee provides chemical dependency assessments, counseling, and case management with a state regulated agency and can provide clinical services to patients consistent with his or her education, training, and experience as approved by his or her supervisor.

(5) A trainee certification may only be renewed four times.

(6) Applicants are subject to denial of a certificate or issuance of a conditional certificate for the reasons set forth in chapter 18.130 RCW.

NEW SECTION. **Sec. 18.** A new section is added to chapter 18.19 RCW to read as follows:

The Washington state certified counselors and hypnotherapist advisory committee is established.

(1) The committee is comprised of seven members. Two committee members must be certified counselors. Two committee members must be hypnotherapists. Three committee members must be consumers and represent the public at large and may not hold any mental health care provider license, certification, or registration.

(2) Two committee members must be appointed for a term of one year, two committee members must be appointed for a term of two years, and three committee members must be appointed for a term of three years. Subsequent committee members must be appointed for terms of three years. A person may not serve as a committee member for more than two consecutive terms.

(3)(a) Each committee member must be a resident of the state of Washington.

(b) A committee member may not hold an office in a professional association for their profession.

(c) Advisory committee members may not be employed by the state of Washington.

(d) Each professional committee member must have been actively engaged in their profession for five years immediately preceding appointment.

(e) The consumer committee members must represent the general public and be unaffiliated directly or indirectly with the professions credentialed under this chapter.

(4) The secretary shall appoint the committee members.

(5) Committee members are immune from suit in an action, civil or criminal, based on the department's disciplinary proceedings or other official acts performed in good faith.

(6) Committee members must be compensated in accordance with RCW 43.03.240, including travel expenses in carrying out his or her authorized duties in accordance with RCW 43.03.050 and 43.03.060.

(7) The committee shall elect a chair and vice-chair.

NEW SECTION. **Sec. 19.** To practice counseling, all registered counselors must obtain another health profession credential by July 1, 2010. The registered counselor credential is abolished July 1, 2010.

NEW SECTION. **Sec. 20.** Sections 1, 2, 6 through 8, and 10 through 18 of this act take effect July 1, 2009.

NEW SECTION. **Sec. 21.** The department of health may not issue any new registered counselor credentials after July 1, 2009.

NEW SECTION. **Sec. 22.** (1) The department of health shall report to the legislature and the governor by December 15, 2011, on:

(a) The number of registered counselors who become certified counselors;

(b) The number, status, type, and outcome of disciplinary actions involving certified counselors beginning on the effective date of this act; and

(c) The state of education equivalency, examination, supervisory, consultation, and continuing education requirements established under this act.

(2) The department shall also report on cost savings or expenditures to administer the provisions of this act and make recommendations regarding future reports or evaluations."

On page 1, line 2 of the title, after "counselors;" strike the remainder of the title and insert "amending RCW 18.19.020, 18.19.030, 18.19.040, 18.19.050, 18.19.060, 18.19.090, 18.19.100, 18.225.010, 18.225.020, 18.225.150, 18.205.020, 18.205.030, and 18.205.040; adding new sections to chapter 18.19 RCW; adding a new section to chapter 18.225 RCW; adding a new section to chapter 18.205 RCW; creating new sections; and providing an effective date."

The President declared the question before the Senate to be the motion by Senator Keiser to not adopt the committee

striking amendment by the Committee on Health & Long-Term Care to Second Substitute House Bill No. 2674.

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

MOTION

Senator Keiser moved that the following striking amendment by Senators Keiser and Pflug be adopted:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 18.19.020 and 2001 c 251 s 18 are each amended to read as follows:

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

(1) "Agency" means an agency or facility operated, licensed, or certified by the state of Washington.

(2) "Agency affiliated counselor" means a person registered under this chapter who is engaged in counseling and employed by an agency.

(3) "Certified adviser" means a person certified under this chapter who is engaged in private practice counseling to the extent authorized in section 4 of this act.

(4) "Certified counselor" means a person certified under this chapter who is engaged in private practice counseling to the extent authorized in section 4 of this act.

(5) "Client" means an individual who receives or participates in counseling or group counseling.

((~~(2)~~)) (6) "Counseling" means employing any therapeutic techniques, including but not limited to social work, mental health counseling, marriage and family therapy, and hypnotherapy, for a fee that offer, assist or attempt to assist an individual or individuals in the amelioration or adjustment of mental, emotional, or behavioral problems, and includes therapeutic techniques to achieve sensitivity and awareness of self and others and the development of human potential. For the purposes of this chapter, nothing may be construed to imply that the practice of hypnotherapy is necessarily limited to counseling.

((~~(3)~~)) (7) "Counselor" means an individual, practitioner, therapist, or analyst who engages in the practice of counseling to the public for a fee, including for the purposes of this chapter, hypnotherapists.

((~~(4)~~)) (8) "Department" means the department of health.

((~~(5)~~)) (9) "Hypnotherapist" means a person registered under this chapter who is practicing hypnosis as a modality.

(10) "Private practice counseling" means the practice of counseling by a certified counselor or certified adviser as specified in section 4 of this act.

(11) "Psychotherapy" means the practice of counseling using diagnosis of mental disorders according to the fourth edition of the diagnostic and statistical manual of mental disorders, published in 1994, and the development of treatment plans for counseling based on diagnosis of mental disorders in accordance with established practice standards.

(12) "Secretary" means the secretary of the department or the secretary's designee.

Sec. 2. RCW 18.19.030 and 2001 c 251 s 19 are each amended to read as follows:

((~~No~~)) A person may not, ((~~for a fee or~~)) as a part of his or her position as an employee of a state agency, practice counseling without being registered to practice as an agency affiliated counselor by the department under this chapter unless exempt under RCW 18.19.040.

NEW SECTION. **Sec. 3.** A new section is added to chapter 18.19 RCW to read as follows:

A person may not, for a fee or as a part of his or her position as an employee of a state agency, practice hypnotherapy without being registered to practice as a hypnotherapist by the department under this chapter unless exempt under RCW 18.19.040.

NEW SECTION. **Sec. 4.** A new section is added to chapter 18.19 RCW to read as follows:

The scope of practice of certified counselors and certified advisers consists exclusively of the following:

(1) Appropriate screening of the client's level of functional impairment using the global assessment of functioning as described in the fourth edition of the diagnostic and statistical manual of mental disorders, published in 1994. Recognition of a mental or physical disorder or a global assessment of functioning score of sixty or less requires that the certified counselor or certified adviser refer the client to a physician, osteopathic physician, psychiatric registered nurse practitioner, or licensed mental health practitioner, as defined by the secretary, for diagnosis and treatment;

(2) Certified counselors and certified advisers may counsel and guide a client in adjusting to life situations, developing new skills, and making desired changes, in accordance with the theories and techniques of a specific counseling method and established practice standards, if the client has a global assessment of functioning score greater than sixty;

(3) Certified counselors may counsel and guide a client in adjusting to life situations, developing new skills, and making desired changes if the client has a global assessment of functioning score of sixty or less if:

(a) The client has been referred to the certified counselor by a physician, osteopathic physician, psychiatric registered nurse practitioner, or licensed mental health practitioner, as defined by the secretary, and care is provided as part of a plan of treatment developed by the referring practitioner who is actively treating the client. The certified counselor must adhere to any conditions related to the certified counselor's role as specified in the plan of care; or

(b) The certified counselor referred the client to seek diagnosis and treatment from a physician, osteopathic physician, psychiatric registered nurse practitioner, or licensed mental health practitioner, as defined by the secretary, and the client refused, in writing, to seek treatment from the other provider. The certified counselor may provide services to the client consistent with a treatment plan developed by the certified counselor and the consultant or supervisor with whom the certified counselor has a written consultation or supervisory agreement. A certified counselor shall not be a sole treatment provider for a client with a global assessment of functioning score of less than fifty.

Sec. 5. RCW 18.19.040 and 2001 c 251 s 20 are each amended to read as follows:

Nothing in this chapter may be construed to prohibit or restrict:

(1) The practice of a profession by a person who is either registered, certified, licensed, or similarly regulated under the laws of this state and who is performing services within the person's authorized scope of practice, including any attorney admitted to practice law in this state when providing counseling incidental to and in the course of providing legal counsel;

(2) The practice of counseling by an employee or trainee of any federal agency, or the practice of counseling by a student of a college or university, if the employee, trainee, or student is practicing solely under the supervision of and accountable to the agency, college, or university, through which he or she performs such functions as part of his or her position for no additional fee other than ordinary compensation;

(3) The practice of counseling by a person ((~~without a mandatory charge~~)) for no compensation;

(4) The practice of counseling by persons offering services for public and private nonprofit organizations or charities not primarily engaged in counseling for a fee when approved by the organizations or agencies for whom they render their services;

(5) Evaluation, consultation, planning, policy-making, research, or related services conducted by social scientists for private corporations or public agencies;

(6) The practice of counseling by a person under the auspices of a religious denomination, church, or organization, or the practice of religion itself;

(7) The practice of counseling by peer counselors who use their own experience to encourage and support people with similar conditions or activities related to the training of peer counselors; and

(8) Counselors ((~~whose residency is not~~)) who reside outside Washington state from providing up to ten days per quarter of training or workshops in the state, as long as they ((~~don't~~)) do not hold themselves out to be registered or certified in Washington state.

Sec. 6. RCW 18.19.050 and 2001 c 251 s 21 are each amended to read as follows:

(1) In addition to any other authority provided by law, the secretary has the following authority:

(a) To adopt rules, in accordance with chapter 34.05 RCW, necessary to implement this chapter;

(b) To set all registration, certification, and renewal fees in accordance with RCW 43.70.250 and to collect and deposit all such fees in the health professions account established under RCW 43.70.320;

(c) To establish forms and procedures necessary to administer this chapter;

(d) To hire clerical, administrative, and investigative staff as needed to implement this chapter;

(e) To issue a registration or certification to any applicant who has met the requirements for registration or certification; and

(f) To ((~~develop a dictionary of recognized professions and occupations providing counseling services to the public included under this chapter~~)) establish education equivalency, examination, supervisory, consultation, and continuing education requirements for certified counselors and certified advisers.

(2) The uniform disciplinary act, chapter 18.130 RCW, governs the issuance and denial of registrations and certifications and the discipline of registrants under this chapter. The secretary shall be the disciplining authority under this chapter. ((~~The absence of educational or training requirements for counselors registered under this chapter or the counselor's use of nontraditional nonabusive therapeutic techniques shall not, in and of itself, give the secretary authority to unilaterally determine the training and competence or to define or restrict the scope of practice of such individuals.~~))

(3) The department shall publish and disseminate information ((~~in order~~)) to educate the public about the responsibilities of counselors, the types of counselors, and the rights and responsibilities of clients established under this chapter. ((~~Solely for the purposes of administering this education requirement,~~)) The secretary ((~~shall~~)) may assess an additional fee for each application and renewal((~~, equal to five percent of the fee. The revenue collected from the assessment fee may be appropriated by the legislature for the department's use in educating consumers pursuant to this section. The authority to charge the assessment fee shall terminate on June 30, 1994~~)) to fund public education efforts under this section.

Sec. 7. RCW 18.19.060 and 2001 c 251 s 22 are each amended to read as follows:

((~~Persons registered under this chapter~~)) Certified counselors and certified advisers shall provide clients at the commencement of any program of treatment with accurate disclosure information concerning their practice, in accordance with guidelines developed by the department, that will inform clients of the purposes of and resources available under this chapter, including the right of clients to refuse treatment, the responsibility of clients for choosing the provider and treatment modality which best suits their needs, and the extent of confidentiality provided by this chapter, the department, another agency, or other jurisdiction. The disclosure statement must inform the client of the certified counselor's or certified adviser's consultation arrangement or supervisory agreement as defined in rules adopted by the secretary. The disclosure information provided by the certified counselor or certified adviser, the receipt of which shall be acknowledged in writing by the certified counselor or certified adviser and the client, shall include any relevant education and training, the therapeutic orientation of the practice, the proposed course of treatment where known, any financial requirements, referral resources, and such other information as the department may require by rule. The disclosure information shall also include a statement that ((~~registration~~)) the certification of an individual under this chapter does not include a recognition of any practice standards, nor necessarily imply the effectiveness of any treatment. Certified counselors and certified advisers must also disclose that they are not credentialed to diagnose mental disorders or to conduct psychotherapy as defined by the secretary by rule. The client is not liable for any fees or charges for services rendered prior to receipt of the disclosure statement.

Sec. 8. RCW 18.19.090 and 1991 c 3 s 24 are each amended to read as follows:

((~~The secretary shall issue a registration to any applicant who submits, on forms provided by the secretary, the applicant's name, address, occupational title, name and location of business, and other information as determined by the secretary, including information necessary to determine whether there are grounds for denial of registration or issuance of a conditional registration under this chapter or chapter 18.130 RCW. Applicants for registration shall register as counselors or may register as hypnotherapists if employing hypnosis as a modality. Applicants shall, in addition, provide in their titles a description of their therapeutic orientation, discipline, theory, or technique.~~)) (1) Application for agency affiliated counselor, certified counselor, certified adviser, or hypnotherapist must be made on forms approved by the secretary. The secretary may require information necessary to determine whether applicants meet the qualifications for the credential and whether there are any grounds for denial of the credential, or for issuance of a conditional credential, under this chapter or chapter 18.130 RCW. The application for agency affiliated counselor, certified counselor, or certified adviser must include a description of the applicant's orientation, discipline, theory, or technique. Each applicant shall pay a fee determined by the secretary as provided in RCW 43.70.250, which shall accompany the application.

(2) Applicants for agency affiliated counselor must provide satisfactory documentation that they are employed by an agency or have an offer of employment from an agency.

(3) At the time of application for initial certification, applicants for certified counselor prior to July 1, 2010, are required to:

(a) Have been registered for no less than five years at the time of application for an initial certification;

(b) Have held a valid, active registration that is in good standing and be in compliance with any disciplinary process and orders at the time of application for an initial certification;

(c) Show evidence of having completed course work in risk assessment, ethics, appropriate screening and referral, and Washington state law and other subjects identified by the secretary;

(d) Pass an examination in risk assessment, ethics, appropriate screening and referral, and Washington state law, and other subjects as determined by the secretary; and

(e) Have a written consultation agreement with a credential holder who meets the qualifications established by the secretary.

(4) Unless eligible for certification under subsection (3) of this section, applicants for certified counselor or certified adviser are required to:

(a)(i) Have a bachelor's degree in a counseling-related field, if applying for certified counselor; or

(ii) Have an associate degree in a counseling-related field and a supervised internship, if applying for certified adviser;

(b) Pass an examination in risk assessment, ethics, appropriate screening and referral, and Washington state law, and other subjects as determined by the secretary; and

(c) Have a written supervisory agreement with a supervisor who meets the qualifications established by the secretary.

(5) Each applicant shall include payment of the fee determined by the secretary as provided in RCW 43.70.250.

NEW SECTION. **Sec. 9.** A new section is added to chapter 18.19 RCW to read as follows:

Agency affiliated counselors shall notify the department if they are either no longer employed by the agency identified on their application or are now employed with another agency, or both. Agency affiliated counselors may not engage in the practice of counseling unless they are currently affiliated with an agency.

Sec. 10. RCW 18.19.100 and 1996 c 191 s 5 are each amended to read as follows:

The secretary shall establish administrative procedures, administrative requirements, continuing education, and fees for renewal of ((~~registrations~~)) credentials as provided in RCW 43.70.250 and 43.70.280. When establishing continuing education requirements for agency affiliated counselors, the secretary shall consult with the appropriate state agency director responsible for licensing, certifying, or operating the relevant agency practice setting.

Sec. 11. RCW 18.225.010 and 2001 c 251 s 1 are each amended to read as follows:

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

(1) "Advanced social work" means the application of social work theory and methods including emotional and biopsychosocial assessment, psychotherapy under the supervision of a licensed independent clinical social worker, case management, consultation, advocacy, counseling, and community organization.

(2) "Applicant" means a person who completes the required application, pays the required fee, is at least eighteen years of age, and meets any background check requirements and uniform disciplinary act requirements.

(3) "Associate" means a prelicensure candidate who has a graduate degree in a mental health field under RCW 18.225.090 and is gaining the supervision and supervised experience necessary to become a licensed independent clinical social worker, a licensed advanced social worker, a licensed mental health counselor, or a licensed marriage and family therapist.

(4) "Committee" means the Washington state mental health counselors, marriage and family therapists, and social workers advisory committee.

((~~(4)~~)) (5) "Department" means the department of health.

((~~(5)~~)) (6) "Disciplining authority" means the department.

((~~(6)~~)) (7) "Independent clinical social work" means the diagnosis and treatment of emotional and mental disorders based on knowledge of human development, the causation and treatment of psychopathology, psychotherapeutic treatment practices, and social work practice as defined in advanced social work. Treatment modalities include but are not limited to diagnosis and treatment of individuals, couples, families, groups, or organizations.

((~~(7)~~)) (8) "Marriage and family therapy" means the diagnosis and treatment of mental and emotional disorders, whether cognitive, affective, or behavioral, within the context of relationships, including marriage and family systems. Marriage and family therapy involves the professional application of psychotherapeutic and family systems theories and techniques in the delivery of services to individuals, couples, and families for the purpose of treating such diagnosed nervous and mental disorders. The practice of marriage and family therapy means the rendering of professional marriage and family therapy services to individuals, couples, and families, singly or in groups, whether such services are offered directly to the general public or through organizations, either public or private, for a fee, monetary or otherwise.

((~~(8)~~)) (9) "Mental health counseling" means the application of principles of human development, learning theory, psychotherapy, group dynamics, and etiology of mental illness and dysfunctional behavior to individuals, couples, families, groups, and organizations, for the purpose of treatment of mental disorders and promoting optimal mental health and functionality. Mental health counseling also includes, but is not limited to, the assessment, diagnosis, and treatment of mental and emotional disorders, as well as the application of a wellness model of mental health.

((~~(9)~~)) (10) "Secretary" means the secretary of health or the secretary's designee.

Sec. 12. RCW 18.225.020 and 2001 c 251 s 2 are each amended to read as follows:

A person must not represent himself or herself as a licensed advanced social worker, a licensed independent clinical social worker, a licensed mental health counselor, ((~~or~~)) a licensed marriage and family therapist, a licensed social work associate--advanced, a licensed social work associate--independent clinical, a licensed mental health counselor associate, or a licensed marriage and family therapist associate, without being licensed by the department.

NEW SECTION. **Sec. 13.** A new section is added to chapter 18.225 RCW to read as follows:

(1) The secretary shall issue an associate license to any applicant who demonstrates to the satisfaction of the secretary that the applicant meets the following requirements for the applicant's practice area and submits a declaration that the applicant is working toward full licensure in that category:

(a) Licensed social worker associate--advanced or licensed social worker associate--independent clinical: Graduation from a master's degree or doctoral degree educational program in social work accredited by the council on social work education and approved by the secretary based upon nationally recognized standards.

(b) Licensed mental health counselor associate: Graduation from a master's degree or doctoral degree educational program in mental health counseling or a related discipline from a college or university approved by the secretary based upon nationally recognized standards.

(c) Licensed marriage and family therapist associate: Graduation from a master's degree or doctoral degree educational program in marriage and family therapy or graduation from an educational program in an allied field equivalent to a master's degree or doctoral degree in marriage and family therapy approved by the secretary based upon nationally recognized standards.

(2) Associates may not provide independent social work, mental health counseling, or marriage and family therapy for a fee, monetary or otherwise. Associates must work under the supervision of an approved supervisor.

(3) Associates shall provide each client or patient, during the first professional contact, with a disclosure form according to RCW 18.225.100, disclosing that he or she is an associate under the supervision of an approved supervisor.

(4) The department shall adopt by rule what constitutes adequate proof of compliance with the requirements of this section.

(5) Applicants are subject to the denial of a license or issuance of a conditional license for the reasons set forth in chapter 18.130 RCW.

(6) An associate license may be renewed no more than four times.

Sec. 14. RCW 18.225.150 and 2001 c 251 s 15 are each amended to read as follows:

The secretary shall establish by rule the procedural requirements and fees for renewal of a license or associate license. Failure to renew shall invalidate the license or associate license and all privileges granted by the license. If an associate license has lapsed, the person shall submit an updated declaration, in accordance with rules adopted by the department, that the person is working toward full licensure. If a license has lapsed for a period longer than three years, the person shall demonstrate competence to the satisfaction of the secretary by taking continuing education courses, or meeting other standards determined by the secretary. If an associate license has lapsed, the person shall submit an updated declaration, in accordance with rules adopted by the department, that the person is working toward full licensure.

Sec. 15. RCW 18.205.020 and 1998 c 243 s 2 are each amended to read as follows:

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

(1) "Certification" means a voluntary process recognizing an individual who qualifies by examination and meets established educational prerequisites, and which protects the title of practice.

(2) "Certified chemical dependency professional" means an individual certified in chemical dependency counseling, under this chapter.

(3) "Certified chemical dependency professional trainee" means an individual working toward the education and experience requirements for certification as a chemical dependency professional.

(4) "Chemical dependency counseling" means employing the core competencies of chemical dependency counseling to assist or attempt to assist an alcohol or drug addicted person to develop and maintain abstinence from alcohol and other mood-altering drugs.

(((~~(4)~~))) (5) "Committee" means the chemical dependency certification advisory committee established under this chapter.

(((~~(5)~~))) (6) "Core competencies of chemical dependency counseling" means competency in the nationally recognized knowledge, skills, and attitudes of professional practice, including assessment and diagnosis of chemical dependency, chemical dependency treatment planning and referral, patient and family education in the disease of chemical dependency, individual and group counseling with alcoholic and drug addicted individuals, relapse prevention counseling, and case management, all oriented to assist alcoholic and drug addicted patients to achieve and maintain abstinence from mood-altering substances and develop independent support systems.

(((~~(6)~~))) (7) "Department" means the department of health.

(((~~(7)~~))) (8) "Health profession" means a profession providing health services regulated under the laws of this state.

(((~~(8)~~))) (9) "Secretary" means the secretary of health or the secretary's designee.

Sec. 16. RCW 18.205.030 and 2000 c 171 s 41 are each amended to read as follows:

No person may represent oneself as a certified chemical dependency professional or certified chemical dependency professional trainee or use any title or description of services of a certified chemical dependency professional or certified chemical dependency professional trainee without applying for certification, meeting the required qualifications, and being certified by the department of health, unless otherwise exempted by this chapter.

Sec. 17. RCW 18.205.040 and 1998 c 243 s 4 are each amended to read as follows:

Nothing in this chapter shall be construed to authorize the use of the title "certified chemical dependency professional" or "certified chemical dependency professional trainee" when treating patients in settings other than programs approved under chapter 70.96A RCW.

NEW SECTION. **Sec. 18.** A new section is added to chapter 18.205 RCW to read as follows:

(1) The secretary shall issue a trainee certificate to any applicant who demonstrates to the satisfaction of the secretary that he or she is working toward the education and experience requirements in RCW 18.205.090.

(2) A trainee certified under this section shall submit to the secretary for approval a declaration, in accordance with rules adopted by the department, that he or she is enrolled in an approved education program and actively pursuing the experience requirements in RCW 18.205.090. This declaration must be updated with the trainee's annual renewal.

(3) A trainee certified under this section may practice only under the supervision of a certified chemical dependency professional. The first fifty hours of any face-to-face client contact must be under direct observation. All remaining experience must be under supervision in accordance with rules adopted by the department.

(4) A certified chemical dependency professional trainee provides chemical dependency assessments, counseling, and case management with a state regulated agency and can provide clinical services to patients consistent with his or her education, training, and experience as approved by his or her supervisor.

(5) A trainee certification may only be renewed four times.

(6) Applicants are subject to denial of a certificate or issuance of a conditional certificate for the reasons set forth in chapter 18.130 RCW.

NEW SECTION. **Sec. 19.** A new section is added to chapter 18.19 RCW to read as follows:

The Washington state certified counselors and hypnotherapist advisory committee is established.

(1) The committee is comprised of seven members. Two committee members must be certified counselors or certified advisers. Two committee members must be hypnotherapists. Three committee members must be consumers and represent the public at large and may not hold any mental health care provider license, certification, or registration.

(2) Two committee members must be appointed for a term of one year, two committee members must be appointed for a term of two years, and three committee members must be appointed for a term of three years. Subsequent committee members must be appointed for terms of three years. A person may not serve as a committee member for more than two consecutive terms.

(3)(a) Each committee member must be a resident of the state of Washington.

(b) A committee member may not hold an office in a professional association for their profession.

(c) Advisory committee members may not be employed by the state of Washington.

(d) Each professional committee member must have been actively engaged in their profession for five years immediately preceding appointment.

(e) The consumer committee members must represent the general public and be unaffiliated directly or indirectly with the professions credentialed under this chapter.

(4) The secretary shall appoint the committee members.

(5) Committee members are immune from suit in an action, civil or criminal, based on the department's disciplinary proceedings or other official acts performed in good faith.

(6) Committee members must be compensated in accordance with RCW 43.03.240, including travel expenses in carrying out his or her authorized duties in accordance with RCW 43.03.050 and 43.03.060.

(7) The committee shall elect a chair and vice-chair.

NEW SECTION. **Sec. 20.** To practice counseling, all registered counselors must obtain another health profession credential by July 1, 2010. The registered counselor credential is abolished July 1, 2010.

NEW SECTION. **Sec. 21.** Sections 1, 2, 7 through 9, and 11 through 19 of this act take effect July 1, 2009.

NEW SECTION. **Sec. 22.** The department of health may not issue any new registered counselor credentials after July 1, 2009.

NEW SECTION. **Sec. 23.** (1) The department of health shall report to the legislature and the governor by December 15, 2011, on:

(a) The number of registered counselors who become certified counselors or certified advisers;

(b) The number, status, type, and outcome of disciplinary actions involving certified counselors and certified advisers beginning on the effective date of this section; and

(c) The state of education equivalency, examination, supervisory, consultation, and continuing education requirements established under this act.

(2) The department of health shall also report on cost savings or expenditures to administer the provisions of this act and make recommendations regarding future reports or evaluations.

NEW SECTION. **Sec. 24.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2008, in the omnibus appropriations act, this act is null and void."

Senators Keiser and Pflug spoke in favor of adoption of the striking amendment.

The President declared the question before the Senate to be the adoption of the striking amendment by Senators Keiser and Pflug to Second Substitute House Bill No. 2674.

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

MOTION

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

On page 1, line 2 of the title, after "counselors;" strike the remainder of the title and insert "amending RCW 18.19.020, 18.19.030, 18.19.040, 18.19.050, 18.19.060, 18.19.090, 18.19.100, 18.225.010, 18.225.020, 18.225.150, 18.205.020, 18.205.030, and 18.205.040; adding new sections to chapter 18.19 RCW; adding a new section to chapter 18.225 RCW; adding a new section to chapter 18.205 RCW; creating new sections; and providing an effective date."

MOTION

On motion of Senator Keiser, the rules were suspended, Second Substitute House Bill No. 2674 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

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

POINT OF INQUIRY

Senator Fairley: "Would Senator Keiser yield to a question? Senator Keiser, as you know you and I have been on separate sides of this debate. It's kind of been an unusual alliance on my side. How are my folks? Are they okay with this striker? I have not read all the way through it."

Senator Keiser: "Yes, it is agreed to by the registered counselors who you've been working with and we have also received at least if not enthusiastic agreement but tacit agreement from the mental health counselors and others in the field. So, both sides have come to agreement on this issue."

Senator Fairley spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Second Substitute House Bill No. 2674 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Second Substitute House Bill No. 2674 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 44; Nays, 3; Absent, 1; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 44

Voting nay: Senators Holmquist, Honeyford and Schoesler - 3

Absent: Senator Brown - 1

Excused: Senator Murray - 1

SECOND SUBSTITUTE HOUSE BILL NO. 2674 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SECOND SUBSTITUTE HOUSE BILL NO. 2722, by House Committee on Appropriations (originally sponsored by Representatives Pettigrew, Kenney, Morris, Sullivan, Hasegawa, Upthegrove, Loomis, Pedersen, Darneille, Conway, Hudgins, Quall, Ericks, Kagi and Ormsby)

Creating an advisory committee to address the achievement gap for African-American students.

The measure was read the second time.

MOTION

On motion of Senator McAuliffe, the rules were suspended, Second Substitute House Bill No. 2722 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator McAuliffe spoke in favor of passage of the bill.

MOTION

On motion of Senator Hobbs, Senator Brown was excused.

The President declared the question before the Senate to be the final passage of Second Substitute House Bill No. 2722.

ROLL CALL

The Secretary called the roll on the final passage of Second Substitute House Bill No. 2722 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Benton, Berkey, Brandland, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 47

Excused: Senators Brown and Murray - 2

SECOND SUBSTITUTE HOUSE BILL NO. 2722, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 3212, by House Committee on Education (originally sponsored by Representatives Santos and Hudgins)

Monitoring and addressing achievement of groups of students.

The measure was read the second time.

MOTION

Senator McAuliffe moved that the following committee striking amendment by the Committee on Early Learning & K-12 Education be adopted.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 28A.300.130 and 2006 c 116 s 2 are each amended to read as follows:

(1) To facilitate access to information and materials on educational improvement and research, the superintendent of public instruction, to the extent funds are appropriated, shall establish the center for the improvement of student learning. The center shall work in conjunction with parents, educational service districts, institutions of higher education, and education, parent, community, and business organizations.

(2) The center, in conjunction with other staff in the office of the superintendent of public instruction, shall:

(a) Serve as a clearinghouse for information regarding successful educational improvement and parental involvement programs in schools and districts, and information about efforts within institutions of higher education in the state to support

educational improvement initiatives in Washington schools and districts;

(b) Provide best practices research that can be used to help schools develop and implement: Programs and practices to improve instruction; systems to analyze student assessment data, with an emphasis on systems that will combine the use of state and local data to monitor the academic progress of each and every student in the school district; comprehensive, school-wide improvement plans; school-based shared decision-making models; programs to promote lifelong learning and community involvement in education; school-to-work transition programs; programs to meet the needs of highly capable students; programs and practices to meet the needs of students with disabilities; programs and practices to meet the diverse needs of students based on gender, racial, ethnic, economic, and special needs status; research, information, and technology systems; and other programs and practices that will assist educators in helping students learn the essential academic learning requirements;

(c) Develop and maintain an internet web site to increase the availability of information, research, and other materials;

(d) Work with appropriate organizations to inform teachers, district and school administrators, and school directors about the waivers available and the broadened school board powers under RCW 28A.320.015;

(e) Provide training and consultation services, including conducting regional summer institutes;

(f) Identify strategies for improving the success rates of ethnic and racial student groups and students with disabilities, with disproportionate academic achievement;

(g) Work with parents, teachers, and school districts in establishing a model absentee notification procedure that will properly notify parents when their student has not attended a class or has missed a school day. The office of the superintendent of public instruction shall consider various types of communication with parents including, but not limited to, electronic mail, phone, and postal mail; and

(h) Perform other functions consistent with the purpose of the center as prescribed in subsection (1) of this section.

(3) The superintendent of public instruction shall select and employ a director for the center.

(4) The superintendent may enter into contracts with individuals or organizations including but not limited to: School districts; educational service districts; educational organizations; teachers; higher education faculty; institutions of higher education; state agencies; business or community-based organizations; and other individuals and organizations to accomplish the duties and responsibilities of the center. In carrying out the duties and responsibilities of the center, the superintendent, whenever possible, shall use practitioners to assist agency staff as well as assist educators and others in schools and districts.

(5) The office of the superintendent of public instruction shall report to the legislature by September 1, 2007, and thereafter biennially, regarding the effectiveness of the center for ((~~[the]~~)) the improvement of student learning, how the services provided by the center for ((~~[the]~~)) the improvement of student learning have been used and by whom, and recommendations to improve the accessibility and application of knowledge and information that leads to improved student learning and greater family and community involvement in the public education system.

Sec. 2. RCW 43.06B.020 and 2006 c 116 s 4 are each amended to read as follows:

The education ombudsman shall have the following powers and duties:

(1) To develop parental involvement materials, including instructional guides developed to inform parents of the essential academic learning requirements required by the superintendent of public instruction. The instructional guides also shall contain actions parents may take to assist their children in meeting the requirements, and should focus on reaching parents who have not previously been involved with their children's education;

(2) To provide information to students, parents, and interested members of the public regarding this state's public elementary and secondary education system;

(3) To identify obstacles to greater parent and community involvement in school shared decision-making processes and recommend strategies for helping parents and community members to participate effectively in school shared decision-making processes, including understanding and respecting the roles of school building administrators and staff;

(4) To identify and recommend strategies for improving the success rates of ethnic and racial student groups and students with disabilities, with disproportionate academic achievement;

(5) To refer complainants and others to appropriate resources, agencies, or departments;

(6) To facilitate the resolution of complaints made by parents and students with regard to the state's public elementary and secondary education system;

(7) To perform such other functions consistent with the purpose of the education ombudsman; and

(8) To consult with representatives of the following organizations and groups regarding the work of the office of the education ombudsman, including but not limited to:

(a) The state parent teacher association;

(b) Certificated and classified school employees;

(c) School and school district administrators;

(d) Parents of special education students;

(e) Parents of English language learners;

(f) The Washington state commission on Hispanic affairs;

(g) The Washington state commission on African-American affairs;

(h) The Washington state commission on Asian Pacific American affairs; and

(i) The governor's office of Indian affairs.

Sec. 3. RCW 28A.655.090 and 1999 c 388 s 301 are each amended to read as follows:

(1) By September 10, 1998, and by September 10th each year thereafter, the superintendent of public instruction shall report to schools, school districts, and the legislature on the results of the Washington assessment of student learning and state-mandated norm-referenced standardized tests.

(2) The reports shall include the assessment results by school and school district, and include changes over time. For the Washington assessment of student learning, results shall be reported as follows:

(a) The percentage of students meeting the standards;

(b) The percentage of students performing at each level of the assessment; ((~~and~~))

(c) Disaggregation of results by at least the following subgroups of students: White, Black, Hispanic, American Indian/Alaskan Native, Asian, Pacific Islander/Hawaiian Native, low income, transitional bilingual, migrant, special education, students in the foster care system, and, beginning with the 2009-10 school year, students covered by section 504 of the federal rehabilitation act of 1973, as amended (29 U.S.C. Sec. 794); and

(d) A learning improvement index that shows changes in student performance within the different levels of student learning reported on the Washington assessment of student learning.

(3) The reports shall contain data regarding the different characteristics of schools, such as poverty levels, percent of English as a second language students, dropout rates, attendance, percent of students in special education, and student mobility so that districts and schools can learn from the improvement efforts of other schools and districts with similar characteristics.

(4) The reports shall contain student scores on mandated tests by comparable Washington schools of similar characteristics.

(5) The reports shall contain information on public school choice options available to students, including vocational education.

(6) The reports shall be posted on the superintendent of public instruction's internet web site.

(7) To protect the privacy of students, the results of schools and districts that test fewer than ten students in a grade level shall not be reported. In addition, in order to ensure that results are reported accurately, the superintendent of public instruction

shall maintain the confidentiality of statewide data files until the superintendent determines that the data are complete and accurate.

(8) The superintendent of public instruction shall monitor the percentage and number of special education and limited English-proficient students exempted from taking the assessments by schools and school districts to ensure the exemptions are in compliance with exemption guidelines."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Early Learning & K-12 Education to Substitute House Bill No. 3212.

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

MOTION

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

On page 1, line 2 of the title, after "students;" strike the remainder of the title and insert "and amending RCW 28A.300.130, 43.06B.020, and 28A.655.090."

MOTION

On motion of Senator McAuliffe, the rules were suspended, Substitute House Bill No. 3212 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator McAuliffe spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 3212 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 3212 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Benton, Berkey, Brandland, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 47

Excused: Senators Brown and Murray - 2

SUBSTITUTE HOUSE BILL NO. 3212 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

INTRODUCTION OF SPECIAL GUESTS

The President welcomed and introduced former Senator Albert Bauer of the 49th Legislative District who was seated at the rostrum.

MOTION

On motion of Senator Brandland, Senator Zarelli was excused.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2639, by House Committee on Local Government (originally sponsored by Representatives Takko, Kretz, Blake, Condotta, VanDeWege and Haler)

Regarding the procurement of renewable resources.

The measure was read the second time.

MOTION

Senator Rockefeller moved that the following committee striking amendment by the Committee on Water, Energy & Telecommunications be adopted.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** The legislature finds that it is in the public interest for public utility districts to develop renewable energy projects to meet requirements enacted by the people in Initiative Measure No. 937 and goals of diversifying energy resource portfolios. By developing more efficient and cost-effective renewable energy projects, public utility districts will keep power costs as low as possible for their customers. Consolidating and clarifying statutory provisions governing various aspects of public utility district renewable energy project development will reduce planning time and expense to meet these objectives.

Sec. 2. RCW 39.34.030 and 2004 c 190 s 1 are each amended to read as follows:

(1) Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state having the power or powers, privilege or authority, and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of the state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges and authority conferred by this chapter upon a public agency.

(2) Any two or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the provisions of this chapter((: ~~PROVIDED~~)), except that any such joint or cooperative action by public agencies which are educational service districts and/or school districts shall comply with the provisions of RCW 28A.320.080. Appropriate action by ordinance, resolution or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.

(3) Any such agreement shall specify the following:

(a) Its duration;

(b) The precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided such entity may be legally created. Such entity may include a nonprofit corporation organized pursuant to chapter 24.03 or 24.06 RCW whose membership is limited solely to the participating public agencies or a partnership organized pursuant to chapter 25.04 or 25.05 RCW whose partners are limited solely to participating public agencies, or a limited liability company organized under chapter 25.15 RCW whose membership is limited solely to participating public agencies, and the funds of any such corporation ((~~or~~)), partnership, or limited liability company shall be subject to audit in the manner provided by law for the auditing of public funds;

(c) Its purpose or purposes;

(d) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor;

(e) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination; and

(f) Any other necessary and proper matters.

(4) In the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall contain, in addition to ((~~items~~)) provisions specified in subsection (3)(a), (c), (d), (e), and (f)

((~~enumerated in subdivision (3) hereof~~)) of this section, ((~~contain~~)) the following:

(a) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, public agencies that are party to the agreement shall be represented; and

(b) The manner of acquiring, holding and disposing of real and personal property used in the joint or cooperative undertaking. Any joint board is authorized to establish a special fund with a state, county, city, or district treasurer servicing an involved public agency designated "Operating fund of . . . . . joint board".

(5) No agreement made pursuant to this chapter relieves any public agency of any obligation or responsibility imposed upon it by law except that:

(a) To the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made ((~~hereunder~~)) pursuant to this chapter, the performance may be offered in satisfaction of the obligation or responsibility; and

(b) With respect to one or more public agencies purchasing or otherwise contracting through a bid, proposal, or contract awarded by another public agency or by a group of public agencies, any statutory obligation to provide notice for bids or proposals that applies to the public agencies involved is satisfied if the public agency or group of public agencies that awarded the bid, proposal, or contract complied with its own statutory requirements and either (i) posted the bid or solicitation notice on a web site established and maintained by a public agency, purchasing cooperative, or similar service provider, for purposes of posting public notice of bid or proposal solicitations, or (ii) provided an access link on the state's web portal to the notice.

(6) Financing of joint projects by agreement shall be as provided by law.

Sec. 3. RCW 54.44.020 and 1997 c 230 s 2 are each amended to read as follows:

(1) Except as provided in subsections (2) and (3) of this section, cities of the first class, public utility districts organized under chapter 54.08 RCW, and joint operating agencies organized under chapter 43.52 RCW, any such cities and public utility districts which operate electric generating facilities or distribution systems and any joint operating agency shall have power and authority to participate and enter into agreements with each other and with electrical companies which are subject to the jurisdiction of the Washington utilities and transportation commission or the public utility commissioner of Oregon, hereinafter called "regulated utilities", and with rural electric cooperatives, including generation and transmission cooperatives for the undivided ownership of any type of electric generating plants and facilities, including, but not limited to, nuclear and other thermal power generating plants and facilities and transmission facilities including, but not limited to, related transmission facilities, hereinafter called "common facilities", and for the planning, financing, acquisition, construction, operation and maintenance thereof. It shall be provided in such agreements that each city, public utility district, or joint operating agency shall own a percentage of any common facility equal to the percentage of the money furnished or the value of property supplied by it for the acquisition and construction thereof and shall own and control a like percentage of the electrical output thereof.

(2) Cities of the first class, public utility districts organized under chapter 54.08 RCW, and joint operating agencies organized under chapter 43.52 RCW, shall have the power and authority to participate and enter into agreements for the undivided ownership of a coal-fired thermal electric generating plant and facility placed in operation before July 1, 1975, including related common facilities, and for the planning, financing, acquisition, construction, operation, and maintenance of the plant and facility. It shall be provided in such agreements that each city, public utility district, or joint operating agency shall own a percentage of any common facility equal to the percentage of the money furnished or the value of property supplied by the city, district, or agency, for the acquisition and construction of the facility, and shall own and control a like percentage of the electrical output thereof. Cities of the first class, public utility districts, and joint operating agencies may enter into agreements under this subsection with each other, with regulated utilities, with rural electric cooperatives, with electric companies subject to the jurisdiction of the regulatory commission of any other state, and with any power marketer subject to the jurisdiction of the federal energy regulatory commission.

(3)(a) Except as provided in subsections (1) and (2) of this section, cities of the first class, public utility districts organized under chapter 54.08 RCW, any cities that operate electric generating facilities or distribution systems, any joint operating agency organized under chapter 43.52 RCW, or any separate legal entity comprising two or more thereof organized under chapter 39.34 RCW shall, either directly or as co-owners of a separate legal entity, have power and authority to participate and enter into agreements described in (b) and (c) of this subsection with each other, and with any of the following, either directly or as co-owners of a separate legal entity:

(i) Any public agency, as that term is defined in RCW 39.34.020;

(ii) Electrical companies that are subject to the jurisdiction of the Washington utilities and transportation commission or the regulatory commission of any state; and

(iii) Rural electric cooperatives and generation and transmission cooperatives or any wholly owned subsidiaries of either rural electric cooperatives or generation and transmission cooperatives.

(b) Agreements may provide for:

(i) The undivided ownership, or indirect ownership in the case of a separate legal entity, of common facilities that include any type of electric generating plant powered by an eligible renewable resource, as defined in RCW 19.285.030, and transmission facilities including, but not limited to, related transmission facilities, and for the planning, financing, acquisition, construction, operation, and maintenance thereof; and

(ii) The formation, operation, and ownership of a separate legal entity that may own the common facilities.

(c) Agreements must provide that each city, public utility district, or joint operating agency:

(i) Owns a percentage of any common facility or a percentage of any separate legal entity equal to the percentage of the money furnished or the value of property supplied by it for the acquisition and construction thereof; and

(ii) Owns and controls, or has a right to own and control in the case of a separate legal entity, a like percentage of the electrical output thereof.

(d) Any entity in which a public utility district participates, either directly or as co-owner of a separate legal entity, in constructing or developing a common facility pursuant to this subsection shall comply with the provisions of chapter 39.12 RCW.

(4) Each participant shall defray its own interest and other payments required to be made or deposited in connection with any financing undertaken by it to pay its percentage of the money furnished or value of property supplied by it for the planning, acquisition and construction of any common facility, or any additions or betterments thereto. The agreement shall provide a uniform method of determining and allocating operation and maintenance expenses of the common facility.

((~~(4)~~)) (5) Each city, public utility district, joint operating agency, regulated utility, and cooperatives participating in the direct or indirect ownership or operation of a common facility described in subsections (1) through (3) of this section shall pay all taxes chargeable to its share of the common facility and the electric energy generated thereby under applicable statutes as now or hereafter in effect, and may make payments during preliminary work and construction for any increased financial burden suffered by any county or other existing taxing district in the county in which the common facility is located, pursuant to agreement with such county or taxing district.

Sec. 4. RCW 25.15.005 and 2002 c 296 s 3 are each amended to read as follows:

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

(1) "Certificate of formation" means the certificate referred to in RCW 25.15.070, and the certificate as amended.

(2) "Event of dissociation" means an event that causes a person to cease to be a member as provided in RCW 25.15.130.

(3) "Foreign limited liability company" means an entity that is formed under:

(a) The limited liability company laws of any state other than this state; or

(b) The laws of any foreign country that is: (i) An unincorporated association, (ii) formed under a statute pursuant to which an association may be formed that affords to each of its members limited liability with respect to the liabilities of the entity, and (iii) not required, in order to transact business or conduct affairs in this state, to be registered or qualified under Title 23B or 24 RCW, or any other chapter of the Revised Code of Washington authorizing the formation of a domestic entity and the registration or qualification in this state of similar entities formed under the laws of a jurisdiction other than this state.

(4) "Limited liability company" and "domestic limited liability company" means a limited liability company having one or more members that is organized and existing under this chapter.

(5) "Limited liability company agreement" means any written agreement of the members, or any written statement of the sole member, as to the affairs of a limited liability company and the conduct of its business which is binding upon the member or members.

(6) "Limited liability company interest" means a member's share of the profits and losses of a limited liability company and a member's right to receive distributions of the limited liability company's assets.

(7) "Manager" or "managers" means, with respect to a limited liability company that has set forth in its certificate of formation that it is to be managed by managers, the person, or persons designated in accordance with RCW 25.15.150(2).

(8) "Member" means a person who has been admitted to a limited liability company as a member as provided in RCW 25.15.115 and who has not been dissociated from the limited liability company.

(9) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or a separate legal entity comprised of two or more of these entities, or any other legal or commercial entity.

(10) "Professional limited liability company" means a limited liability company which is organized for the purpose of rendering professional service and whose certificate of formation sets forth that it is a professional limited liability company subject to RCW 25.15.045.

(11) "Professional service" means the same as defined under RCW 18.100.030.

(12) "State" means the District of Columbia or the Commonwealth of Puerto Rico or any state, territory, possession, or other jurisdiction of the United States other than the state of Washington.

Sec. 5. RCW 54.16.180 and 1999 c 69 s 1 are each amended to read as follows:

(1) A district may sell and convey, lease, or otherwise dispose of all or any part of its works, plants, systems, utilities and properties, after proceedings and approval by the voters of the district, as provided for the lease or disposition of like properties and facilities owned by cities and towns((~~: PROVIDED, That~~)). The affirmative vote of three-fifths of the voters voting at an election on the question of approval of a proposed sale, shall be necessary to authorize such a sale((~~: PROVIDED FURTHER, That~~)).

(2) A district may, without the approval of the voters, sell, convey, lease, or otherwise dispose of all or any part of the property owned by it((~~,~~)) that is located:

(a) Outside its boundaries, to another public utility district, city, town or other municipal corporation ((~~without the approval of the voters~~)); or ((~~may sell, convey, lease, or otherwise dispose of to any person or public body, any part, either~~))

(b) Within or without its boundaries, which has become unserviceable, inadequate, obsolete, worn out or unfit to be used in the operations of the system and which is no longer necessary, material to, and useful in such operations, ((~~without the approval of the voters: PROVIDED FURTHER, That~~)) to any person or public body.

(3) A district may sell, convey, lease or otherwise dispose of items of equipment or materials to any other district, to any cooperative, mutual, consumer-owned or investor-owned utility, to any federal, state, or local government agency, to any contractor employed by the district or any other district, utility, or agency, or any customer of the district or of any other district or utility, from the district's stores without voter approval or resolution of the district's board, if such items of equipment or materials cannot practicably be obtained on a timely basis from any other source, and the amount received by the district in consideration for any such sale, conveyance, lease, or other disposal of such items of equipment or materials is not less than the district's cost to purchase such items or the reasonable market value of equipment or materials((~~: PROVIDED FURTHER, That a public utility~~)).

(4) A district located within a county with a population of from one hundred twenty-five thousand to less than two hundred ten thousand may sell and convey to a city of the first class, which owns its own water system, all or any part of a water system owned by ((~~said public utility~~)) the district where a portion of it is located within the boundaries of ((~~such~~)) the city, without approval of the voters, upon such terms and conditions as the district shall determine((~~: PROVIDED FURTHER, That~~)).

(5) A ((~~public utility~~)) district located in a county with a population of from twelve thousand to less than eighteen thousand and bordered by the Columbia river may, separately or in connection with the operation of a water system, or as part of a plan for acquiring or constructing and operating a water system, or in connection with the creation of another or subsidiary local utility district, ((~~may~~)) provide for the acquisition or construction, additions or improvements to, or extensions of, and operation of, a sewage system within the same service area as in the judgment of the district commission is necessary or advisable ((~~in order~~)) to eliminate or avoid any existing or potential danger to ((~~the~~)) public health ((~~by reason of the~~)) due to lack of sewerage facilities or ((~~by reason of the~~)) inadequacy of existing facilities((~~: AND PROVIDED FURTHER, That a public utility~~)).

(6) A district located within a county with a population of from one hundred twenty-five thousand to less than two hundred ten thousand bordering on Puget Sound may sell and convey to any city or town with a population of less than ten thousand all or any part of a water system owned by ((~~said public utility~~)) the district without approval of the voters upon such terms and conditions as the district shall determine.

(7) A district may sell and convey, lease, or otherwise dispose of, to any person or entity without approval of the voters and upon such terms and conditions as it determines, all or any part of an electric generating project owned directly or indirectly by the district, regardless of whether the project is completed, operable, or operating, as long as:

(a) The project is or would be powered by an eligible renewable resource as defined in RCW 19.285.030; and

(b) The district, or the separate legal entity in which the district has an interest in the case of indirect ownership, has:

(i) The right to lease the project or to purchase all or any part of the energy from the project during the period in which it does not have a direct or indirect ownership interest in the project; and

(ii) An option to repurchase the project or part thereof sold, conveyed, leased, or otherwise disposed of at or below fair market value upon termination of the lease of the project or termination of the right to purchase energy from the project. ((~~Public utility~~))

(8) Districts are municipal corporations for the purposes of this section ((~~and the~~)). A commission shall be held to be the legislative body ((~~and the~~)), a president and secretary shall have the same powers and perform the same duties as ((~~the~~)) a mayor and city clerk, and the district resolutions ((~~of the districts~~)) shall be held to be ordinances within the meaning of ((~~the~~)) statutes governing the sale, lease, or other disposal of public utilities owned by cities and towns.

Sec. 6. RCW 42.24.080 and 1995 c 301 s 72 are each amended to read as follows:

(1) All claims presented against any county, city, district or other municipal corporation or political subdivision by persons furnishing materials, rendering services or performing labor, or for any other contractual purpose, shall be audited, before payment, by an auditing officer elected or appointed pursuant to statute or, in the absence of statute, an appropriate charter provision, ordinance or resolution of the municipal corporation or political subdivision. Such claims shall be prepared for audit and payment on a form and in the manner prescribed by the state auditor. The form shall provide for the authentication and certification by such auditing officer that the materials have been furnished, the services rendered ((~~or~~)), the labor performed as described, or that any advance payment is due and payable pursuant to a contract or is available as an option for full or partial fulfillment of a contractual obligation, and that the claim is a just, due and unpaid obligation against the municipal corporation or political subdivision((~~, and~~)). No claim shall be paid without such authentication and certification((~~: PROVIDED, That the certificates~~)).

(2) Certification as to claims of officers and employees of a county, city, district or other municipal corporation or political subdivision, for services rendered, shall be made by the person charged with ((~~the duty of~~)) preparing and submitting vouchers for ((~~the~~)) payment of services((~~, and~~)). He or she shall certify that the claim is just, true and unpaid, ((~~which certificate~~)) and that certification shall be part of the voucher."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Water, Energy & Telecommunications to Substitute House Bill No. 2639.

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

REMARKS BY THE PRESIDENT

President Owen: “Senator Rockefeller we have an error here on the President’s part. He moved the adoption of the amendment and we have an amendment to the amendment. Senator Rockefeller, if you would move for reconsideration of the committee amendment, I would appreciate it.”

MOTION FOR IMMEDIATE RECONSIDERATION

Senator Rockefeller moved to immediately reconsider the vote by which the committee striking amendment by the Committee on Water, Energy & Telecommunications to Substitute House Bill No. 2639 was adopted.

MOTION

Senator Honeyford moved that the following amendment by Senator Honeyford to the committee striking amendment be adopted.

On page 5, after line 30, strike all of section (d).

Senator Honeyford spoke in favor of adoption of the amendment to the committee striking amendment.

Senator Rockefeller spoke against adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Honeyford on page 5, after line 30 to the committee striking amendment to Substitute House Bill No. 2639.

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

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Water, Energy & Telecommunications to Substitute House Bill No. 2639.

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

MOTION

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

On page 1, line 2 of the title, after "agencies;" strike the remainder of the title and insert "amending RCW 39.34.030, 54.44.020, 25.15.005, 54.16.180, and 42.24.080; and creating a new section."

MOTION

On motion of Senator Rockefeller, the rules were suspended, Substitute House Bill No. 2639 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Rockefeller spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2639 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2639 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 46; Nays, 2; Absent, 0; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 46

Voting nay: Senators Honeyford and Schoesler - 2

Excused: Senator Murray - 1

SUBSTITUTE HOUSE BILL NO. 2639 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 2137, by Representatives Wallace, Skinner, Kagi, Hankins, Roberts, Chase, Kenney, Moeller, Simpson and Santos

Allowing school employees' children with disabilities to enroll in special services programs in the district where the employee is assigned.

The measure was read the second time.

MOTION

On motion of Senator McAuliffe, the rules were suspended, House Bill No. 2137 was advanced to third reading, the second

reading considered the third and the bill was placed on final passage.

Senators McAuliffe and King spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 2137.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2137 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 48

Excused: Senator Murray - 1

HOUSE BILL NO. 2137, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SECOND SUBSTITUTE HOUSE BILL NO. 1273, by House Committee on Insurance, Financial Services & Consumer Protection (originally sponsored by Representatives Roach, Ericks, Hurst, Kirby, Strow, Newhouse, Simpson, Williams, Haler, O'Brien, Moeller, Pearson, VanDeWege, McCune, Kenney, Rolfes and Morrell)

Authorizing fraud alert networks.

The measure was read the second time.

MOTION

Senator Berkey moved that the following committee striking amendment by the Committee on Financial Institutions & Insurance be adopted.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** A new section is added to chapter 43.330 RCW to read as follows:

(1) The financial fraud and identity theft crimes investigation and prosecution program is created in the department of community, trade, and economic development. The department shall:

(a) Appoint members of the financial fraud task forces created in subsection (2) of this section;

(b) Administer the account created in subsection (3) of this section; and

(c) By December 31st of each year submit a report to the appropriate committees of the legislature and the governor regarding the progress of the program and task forces. The report must include recommendations on changes to the program, including expansion.

(2)(a) The department shall establish two regional financial fraud and identity theft crime task forces that include a central Puget Sound task force that includes King and Pierce counties, and a Spokane county task force. Each task force must be comprised of local law enforcement, county prosecutors, representatives of the office of the attorney general, financial institutions, and other state and local law enforcement.

(b) The department shall appoint: (i) Representatives of local law enforcement from a list provided by the Washington association of sheriffs and police chiefs; (ii) representatives of county prosecutors from a list provided by the Washington association of prosecuting attorneys; and (iii) representatives of financial institutions.

(c) Each task force shall:

(i) Hold regular meetings to discuss emerging trends and threats of local financial fraud and identity theft crimes;

(ii) Set priorities for the activities for the task force;

(iii) Apply to the department for funding to (A) hire prosecutors and/or law enforcement personnel dedicated to investigating and prosecuting financial fraud and identity theft crimes; and (B) acquire other needed resources to conduct the work of the task force;

(iv) Establish outcome-based performance measures; and

(v) Twice annually report to the department regarding the activities and performance of the task force.

(3) The financial fraud and identity theft crimes investigation and prosecution account is created in the state treasury. Moneys in the account may be spent only after appropriation. Revenue to the account may include appropriations, federal funds, and any other gifts or grants. Expenditures from the account may be used only to support the activities of the financial fraud and identity theft crime investigation and prosecution task forces and the program administrative expenses of the department, which may not exceed ten percent of the amount appropriated.

(4) For purposes of this section, "financial fraud and identity theft crimes" includes those that involve: Check fraud, chronic unlawful issuance of bank checks, embezzlement, credit/debit card fraud, identity theft, forgery, counterfeit instruments such as checks or documents, organized counterfeit check rings, and organized identification theft rings.

NEW SECTION. **Sec. 2.** This act expires July 1, 2015."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Financial Institutions & Insurance to Second Substitute House Bill No. 1273.

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

MOTION

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

On page 1, line 1 of the title, after "fraud;" strike the remainder of the title and insert "adding a new section to chapter 43.330 RCW; and providing an expiration date."

MOTION

On motion of Senator Berkey, the rules were suspended, Second Substitute House Bill No. 1273 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Berkey spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Second Substitute House Bill No. 1273 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Second Substitute House Bill No. 1273 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 48

Excused: Senator Murray - 1

SECOND SUBSTITUTE HOUSE BILL NO. 1273 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2472, by House Committee on Ecology & Parks (originally sponsored by Representatives Blake, Warnick, Condotta, Sells, Linville, Hinkle, VanDeWege, McCoy, Lantz, Morrell, Loomis, Kretz, Chase, Kristiansen and McDonald)

Seeking to improve recreational opportunities on state-owned lands managed by the department of natural resources.

The measure was read the second time.

MOTION

Senator Jacobsen moved that the following committee striking amendment by the Committee on Natural Resources, Ocean & Recreation be adopted.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** (1) The legislature finds that recreational opportunities are instrumental in promoting human health and well-being and are part of the heritage of Washington state. State trust lands, aquatic lands, and other state-owned lands managed by the department of natural resources provide significant recreational opportunities, along with other social, economic, and environmental benefits. Lands managed by the department of natural resources provide, among other values:

(a) Renewable energy resources;

(b) Sustainable revenue for school construction, local governments, and other state institutions;

(c) Recreational and educational opportunities;

(d) Habitat for fish and wildlife;

(e) Clean air and water; and

(f) Funding for restoration and public access to state-owned aquatic lands.

(2) The legislature further finds that the state's population has nearly doubled from three million four hundred thousand to six million five hundred thousand since the multiple use concept was adopted under chapter 79.10 RCW, and is projected to increase by another two million two hundred thousand by 2030. Population growth has increased demand for recreational access and presents current and future challenges that must be addressed, such as: Increasing potential for conflict with adjacent and nearby land uses, including residential land uses; new forms of trail-based recreation that compete with traditional uses; the rapid increase of motorized and mechanized recreation; changes in ownership patterns of large land holdings across the state; the incompatibility of certain human activities with environmental protections for endangered species, clean water, clean air, climate impacting emissions, and habitat; and increased competition for funding.

(3) The legislature further finds that efforts by the department of natural resources to consolidate state trust lands will provide more opportunities for citizens to access larger blocks of state-owned lands. Therefore, it is prudent to reexamine the policies for recreational access on state-owned lands and establish a vision for the future with recommended policy improvements that are:

(a) Environmentally responsible;

(b) Sustainably funded; and

(c) Compatible with trust land and state land management obligations.

NEW SECTION. **Sec. 2.** (1) A work group is established to make recommendations to improve recreation on state trust lands, aquatic lands, and other state-owned lands managed by the department of natural resources.

(2) The work group's recommendations to improve recreation on state-owned lands must be compatible with adjacent and nearby land uses, including residential land uses. The work group shall examine relevant existing laws and rules and recommend policy changes and funding alternatives for consideration by the legislature to ensure safe, sustainable, and enjoyable recreational access. In conducting this work, the work group must consider: The legal obligations for trusts, aquatic lands, and natural areas; consistency with environmental standards needed to protect lands and natural systems; and related work group recommendations such as the Puget Sound action agenda defined in chapter 90.71 RCW, the Washington biodiversity strategy created in executive order 04-02, and the invasive species council recommendations defined in chapter 79A.25 RCW. The work group must provide recommendations on ways to coordinate trail maintenance work with volunteer organizations on state-owned lands.

(3) The work group is comprised of a balanced representation of individuals with recreational interests and knowledge regarding specific regions of the state. The work group must consist of no more than twenty-eight members appointed by the commissioner of public lands in consultation with the following entities:

(a) Recreational associations and organizations;

(b) Environmental protection associations and organizations;

(c) Corporate and community leaders;

(d) Major landowners;

(e) Local governments;

(f) Tribal governments;

(g) The United States forest service;

(h) The parks and recreation commission;

(i) The recreation and conservation office;

(j) The department of fish and wildlife;

(k) State trust land beneficiaries;

(l) State land leaseholders and contractors;

(m) A representative of the governor, appointed by the governor; and

(n) Members of the senate appointed by the president of the senate and members of the house of representatives appointed by the speaker of the house of representatives.

(4) The commissioner of public lands, or the commissioner's designee, shall serve as chair, and the department of natural resources shall provide technical and staff support for the work group created by this section.

(5) Work group members that are not employees of state or federal agencies shall be compensated as provided in RCW 43.03.250 and shall receive reimbursement for travel expenses as provided by RCW 43.03.050 and 43.03.060. Costs associated with the work group must be paid by the department of natural resources from the appropriation made available to the department of natural resources for the purpose of this study.

(6) The work group shall conduct a minimum of two open public workshops to solicit input from key stakeholders, citizens, and local jurisdictions, at least one of which must be conducted in a location east of the crest of the Cascade mountain range.

(7) The work group shall hold meetings, at diverse locations throughout the state, to gather input from key stakeholders, citizens, and local jurisdictions regarding the group's proposed recommendations.

(8) The work group shall coordinate with the stakeholder recreational advisory committees appointed or established by the commissioner of public lands.

(9) The commissioner of public lands shall submit to the appropriate standing committees of the legislature, no later than December 1, 2008, a progress report with preliminary findings and recommendations. The commissioner of public lands must submit a final report by December 1, 2009, with findings and recommendations for legislation that is necessary to implement the work group's findings.

(a) The reports must include an assessment of how various kinds of recreation affect the costs and risks to:

(i) The interests of beneficiaries of state lands;

(ii) Private landowners, federal landowners, and state government due to increased wildfire risks;

(iii) Local and state government due to personal injury and property damage;

(iv) Natural habitat, water quality, and air quality; and

(v) The land uses and management plans of adjacent landowners.

(b) The reports must include recommendations for appropriate fund sources to mitigate these identified risks."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Natural Resources, Ocean & Recreation to Substitute House Bill No. 2472.

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

MOTION

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

On page 1, line 4 of the title, after "resources;" strike the remainder of the title and insert "and creating new sections."

MOTION

On motion of Senator Jacobsen, the rules were suspended, Substitute House Bill No. 2472 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Jacobsen, Morton and Honeyford spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2472 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2472 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

SUBSTITUTE HOUSE BILL NO. 2472 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2431, by House Committee on Health Care & Wellness (originally sponsored by Representatives Morris, Hudgins, Santos and Chase)

Regarding cord blood banking.

The measure was read the second time.

MOTION

On motion of Senator Keiser, the rules were suspended, Substitute House Bill No. 2431 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

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

MOTION

On motion of Senator Regala, Senator Prentice was excused.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2431.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2431 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 48

Excused: Senator Prentice - 1

SUBSTITUTE HOUSE BILL NO. 2431, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 2791, by Representatives Lantz, Rodne and Kelley

Concerning distressed property conveyances.

The measure was read the second time.

MOTION

Senator Weinstein moved that the following committee striking amendment by the Committee on Consumer Protection & Housing be not adopted.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 61.34.020 and 1988 c 33 s 4 are each amended to read as follows:

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

(1) ((~~"Pattern of equity skimming" means engaging in a least three acts of equity skimming within any three-year period, with at least one of the acts occurring after June 9, 1988.~~

~~(2) "Dwelling" means a single, duplex, triplex, or four-unit family residential building.~~

~~(3) "Person" includes any natural person, corporation, joint stock association, or unincorporated association.~~

~~(4)~~)) An "act of equity skimming" occurs when:

(a)(i) A person purchases a dwelling with the representation that the purchaser will pay for the dwelling by assuming the obligation to make payments on existing mortgages, deeds of trust, or real estate contracts secured by and pertaining to the dwelling, or by representing that such obligation will be assumed; and

(ii) The person fails to make payments on such mortgages, deeds of trust, or real estate contracts as the payments become due, within two years subsequent to the purchase; and

(iii) The person diverts value from the dwelling by either (A) applying or authorizing the application of rents from the dwelling for the person's own benefit or use, or (B) obtaining anything of value from the sale or lease with option to purchase of the dwelling for the person's own benefit or use, or (C) removing or obtaining appliances, fixtures, furnishings, or parts of such dwellings or appurtenances for the person's own benefit

or use without replacing the removed items with items of equal or greater value; or

(b)(i) The person purchases a dwelling in a transaction in which all or part of the purchase price is financed by the seller and is (A) secured by a lien which is inferior in priority or subordinated to a lien placed on the dwelling by the purchaser, or (B) secured by a lien on other real or personal property, or (C) without any security; and

(ii) The person obtains a superior priority loan which either (A) is secured by a lien on the dwelling which is superior in priority to the lien of the seller, but not including a bona fide assumption by the purchaser of a loan existing prior to the time of purchase, or (B) creating any lien or encumbrance on the dwelling when the seller does not hold a lien on the dwelling; and

(iii) The person fails to make payments or defaults on the superior priority loan within two years subsequent to the purchase; and

(iv) The person diverts value from the dwelling by applying or authorizing any part of the proceeds from such superior priority loan for the person's own benefit or use.

(2) "Distressed home" means either:

(a) A dwelling that is in danger of foreclosure or at risk of loss due to nonpayment of taxes; or

(b) A dwelling that is in danger of foreclosure or that is in the process of being foreclosed due to a default under the terms of a mortgage.

(3) "Distressed home consultant" means a person who:

(a) Solicits or contacts a distressed homeowner in writing, in person, or through any electronic or telecommunications medium and makes a representation or offer to perform any service that the person represents will:

(i) Stop, enjoin, delay, void, set aside, annul, stay, or postpone a foreclosure sale;

(ii) Obtain forbearance from any servicer, beneficiary, or mortgagee;

(iii) Assist the distressed homeowner to exercise a right of reinstatement provided in the loan documents or to refinance a loan that is in foreclosure or is in danger of foreclosure;

(iv) Obtain an extension of the period within which the distressed homeowner may reinstate the distressed homeowner's obligation or extend the deadline to object to a ratification;

(v) Obtain a waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a distressed home or contained in the mortgage;

(vi) Assist the distressed homeowner to obtain a loan or advance of funds;

(vii) Save the distressed homeowner's residence from foreclosure;

(viii) Avoid or ameliorate the impairment of the distressed homeowner's credit resulting from the recording of a notice of trustee sale, the filing of a petition to foreclose, or the conduct of a foreclosure sale;

(ix) Purchase or obtain an option to purchase the distressed homeowner's residence within twenty days of an advertised or docketed foreclosure sale;

(x) Arrange for the distressed homeowner to become a lessee or tenant entitled to continue to reside in the distressed homeowner's residence;

(xi) Arrange for the distressed homeowner to have an option to repurchase the distressed homeowner's residence; or

(xii) Engage in any documentation, grant, conveyance, sale, lease, trust, or gift by which the distressed homeowner clogs the distressed homeowner's equity of redemption in the distressed homeowner's residence; or

(b) Systematically contacts owners of property that court records, newspaper advertisements, or any other source demonstrate are in foreclosure or are in danger of foreclosure.

"Distressed home consultant" does not mean a financial institution that the distressed homeowner is a customer of, a nonprofit credit counseling service, or a licensed attorney.

(4) "Distressed home consulting transaction" means an agreement between a distressed homeowner and a distressed home consultant in which the distressed home consultant represents or offers to perform any of the services enumerated in subsection (3)(a) of this section.

(5) "Distressed home conveyance" means a transaction in which:

(a) A distressed homeowner transfers an interest in the distressed home to a distressed home purchaser;

(b) The distressed home purchaser allows the distressed homeowner to occupy the distressed home; and

(c) The distressed home purchaser or a person acting in participation with the distressed home purchaser conveys or promises to convey the distressed home to the distressed homeowner, provides the distressed homeowner with an option to purchase the distressed home at a later date, or promises the distressed homeowner an interest in, or portion of, the proceeds of any resale of the distressed home.

(6) "Distressed home purchaser" means any person who acquires an interest in a distressed home under a distressed home conveyance. "Distressed home purchaser" includes a person who acts in joint venture or joint enterprise with one or more distressed home purchasers in a distressed home conveyance. A financial institution is not a distressed home purchaser.

(7) "Distressed homeowner" means an owner of a distressed home.

(8) "Dwelling" means a single, duplex, triplex, or four-unit family residential building.

(9) "Financial institution" means any federally or state chartered bank or trust company, savings bank or savings and loan association, or credit union.

(10) "Homeowner" means a person who owns and occupies a dwelling as his or her primary residence, whether or not his or her ownership interest is encumbered by a mortgage, deed of trust, or other lien.

(11) "In danger of foreclosure" means any of the following:

(a) The homeowner has defaulted on the mortgage and, under the terms of the mortgage, the mortgagee has the right to accelerate full payment of the mortgage and repossess, sell, or cause to be sold, the property;

(b) The homeowner is at least thirty days delinquent on any loan that is secured by the property; or

(c) The homeowner has a good faith belief that he or she is likely to default on the mortgage within the upcoming four months due to a lack of funds, and the homeowner has reported this belief to:

(i) The mortgagee;

(ii) A person licensed or required to be licensed under chapter 19.134 RCW;

(iii) A person licensed or required to be licensed under chapter 19.146 RCW;

(iv) A person licensed or required to be licensed under chapter 18.85 RCW;

(v) An attorney-at-law;

(vi) A mortgage counselor or other credit counselor licensed or certified by any federal, state, or local agency; or

(vii) Any other party to a distressed home consulting transaction.

(12) "Mortgage" means a mortgage, mortgage deed, deed of trust, security agreement, or other instrument securing a mortgage loan and constituting a lien on or security interest in housing.

(13) "Nonprofit credit counseling service" means a nonprofit organization described under section 501(c)(3) of the internal revenue code, or similar successor provisions, that is licensed or certified by any federal, state, or local agency.

(14) "Pattern of equity skimming" means engaging in at least three acts of equity skimming within any three-year period, with at least one of the acts occurring after June 9, 1988.

(15) "Person" includes any natural person, corporation, joint stock association, or unincorporated association.

(16) "Resale" means a bona fide market sale of the distressed home subject to the distressed home conveyance by the distressed home purchaser to an unaffiliated third party.

(17) "Resale price" means the gross sale price of the distressed home on resale.

NEW SECTION. **Sec. 2.** (1) A distressed home consulting transaction must:

(a) Be in writing in at least twelve-point font;

(b) Be in the same language as principally used by the distressed home consultant to describe his or her services to the distressed homeowner. If the agreement is written in a language other than English, the distressed home consultant shall cause the agreement to be translated into English and shall deliver copies of both the original and English language versions to the distressed homeowner at the time of execution and shall keep copies of both versions on file in accordance with subsection (2) of this section. Any ambiguities or inconsistencies between the English language and the original language versions of the written agreement must be strictly construed in favor of the distressed homeowner;

(c) Fully disclose the exact nature of the distressed home consulting services to be provided, including any distressed home conveyance that may be involved and the total amount and terms of any compensation to be received by the distressed home consultant or anyone working in association with the distressed home consultant;

(d) Be dated and signed by the distressed homeowner and the distressed home consultant;

(e) Contain the complete legal name, address, telephone number, fax number, e-mail address, and internet address if any, of the distressed home consultant, and if the distressed home consultant is serving as an agent for any other person, the complete legal name, address, telephone number, fax number, e-mail address, and internet address if any, of the principal; and

(f) Contain the following notice, which must be initialed by the distressed homeowner, in bold face type and in at least fourteen-point font:

"NOTICE REQUIRED BY WASHINGTON LAW

THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME.

. . . Name of distressed home consultant . . . or anyone working for him or her CANNOT guarantee you that he or she will be able to refinance your home or arrange for you to keep your home. Continue making mortgage payments until refinancing, if applicable, is approved. You should consult with an attorney before signing this contract.

If you sign a promissory note, lien, mortgage, deed of trust, or deed, you could lose your home and be unable to get it back."

(2) At the time of execution, the distressed home consultant shall provide the distressed homeowner with a copy of the written agreement, and the distressed home consultant shall keep a separate copy of the written agreement on file for at least five years following the completion or other termination of the agreement.

(3) This section does not relieve any duty or obligation imposed upon a distressed home consultant by any other law including, but not limited to, the duties of a credit service organization under chapter 19.134 RCW or a person required to be licensed under chapter 19.146 RCW.

NEW SECTION. **Sec. 3.** A distressed home consultant has a fiduciary relationship with the distressed homeowner, and each distressed home consultant is subject to all requirements for fiduciaries otherwise applicable under state law. A distressed home consultant's fiduciary duties include, but are not limited to, the following:

(1) To act in the distressed homeowner's best interest and in utmost good faith toward the distressed homeowner, and not compromise a distressed homeowner's right or interest in favor of another's right or interest, including a right or interest of the distressed home consultant;

(2) To disclose to the distressed homeowner all material facts of which the distressed home consultant has knowledge that might reasonably affect the distressed homeowner's rights, interests, or ability to receive the distressed homeowner's intended benefit from the residential mortgage loan;

(3) To use reasonable care in performing his or her duties; and

(4) To provide an accounting to the distressed homeowner for all money and property received from the distressed homeowner.

NEW SECTION. **Sec. 4.** (1) A person may not induce or attempt to induce a distressed homeowner to waive his or her rights under this chapter, except that a distressed homeowner may waive the five-business-day right to cancel as provided in section 7 of this act if the distressed home is subject to a foreclosure sale within the five business days and the distressed homeowner agrees to waive his or her right to cancel in a handwritten statement signed by all parties holding title to the distressed home.

(2) Any waiver by a homeowner of the provisions of this chapter is void and unenforceable as contrary to public policy.

NEW SECTION. **Sec. 5.** A distressed home purchaser shall enter into a distressed home reconveyance in the form of a written contract. The contract must be written in at least twelve-point boldface type in the same language principally used by the distressed home purchaser and distressed homeowner to negotiate the sale of the distressed home, and must be fully completed, signed, and dated by the distressed homeowner and distressed home purchaser before the execution of any instrument of conveyance of the distressed home.

NEW SECTION. **Sec. 6.** The contract required in section 5 of this act must contain the entire agreement of the parties and must include the following:

(1) The name, business address, and telephone number of the distressed home purchaser;

(2) The address of the distressed home;

(3) The total consideration to be provided by the distressed home purchaser in connection with or incident to the sale;

(4) A complete description of the terms of payment or other consideration including, but not limited to, any services of any nature that the distressed home purchaser represents that he or she will perform for the distressed homeowner before or after the sale;

(5) The time at which possession is to be transferred to the distressed home purchaser;

(6) A complete description of the terms of any related agreement designed to allow the distressed homeowner to remain in the home, such as a rental agreement, repurchase agreement, or lease with option to buy;

(7) A complete description of the interest, if any, the distressed homeowner maintains in the proceeds of, or consideration to be paid upon, the resale of the distressed home;

(8) A notice of cancellation as provided in section 8 of this act; and

(9) The following notice in at least fourteen-point boldface type if the contract is printed, or in capital letters if the contract is typed, and completed with the name of the distressed home purchaser, immediately above the statement required in section 8 of this act;

"NOTICE REQUIRED BY WASHINGTON LAW

Until your right to cancel this contract has ended, ... (Name) or anyone working for . . . . . (Name) CANNOT ask you to sign or have you sign any deed or any other document."

The contract required by this section survives delivery of any instrument of conveyance of the distressed home and has no effect on persons other than the parties to the contract.

NEW SECTION. **Sec. 7.** (1) In addition to any other right of rescission, a distressed homeowner has the right to cancel any contract with a distressed home purchaser until midnight of the fifth business day following the day on which the distressed homeowner signs a contract that complies with this chapter or until 8:00 a.m. on the last day of the period during which the distressed homeowner has a right of redemption, whichever occurs first.

(2) Cancellation occurs when the distressed homeowner delivers to the distressed home purchaser, by any means, a written notice of cancellation to the address specified in the contract.

(3) A notice of cancellation provided by the distressed homeowner is not required to take the particular form as provided with the contract.

(4) Within ten days following the receipt of a notice of cancellation under this section, the distressed home purchaser shall return without condition any original contract and any other documents signed by the distressed homeowner.

NEW SECTION. **Sec. 8.** (1) The contract required in section 5 of this act must contain, in immediate proximity to the space reserved for the distressed homeowner's signature, the following conspicuous statement in at least fourteen-point boldface type if the contract is printed, or in capital letters if the contract is typed:

"You may cancel this contract for the sale of your house without any penalty or obligation at any time before

. . . . . .

(Date and time of day)

See the attached notice of cancellation form for an explanation of this right."

The distressed home purchaser shall accurately enter the date and time of day on which the cancellation right ends.

(2) The contract must be accompanied by a completed form in duplicate, captioned "NOTICE OF CANCELLATION" in twelve-point boldface type if the contract is printed, or in capital letters if the contract is typed, followed by a space in which the distressed home purchaser shall enter the date on which the distressed homeowner executes any contract. This form must be attached to the contract, must be easily detachable, and must contain in at least twelve-point type if the contract is printed, or in capital letters if the contract is typed, the following statement written in the same language as used in the contract:

"NOTICE OF CANCELLATION

. . . . . .

(Enter date contract signed)

You may cancel this contract for the sale of your house, without any penalty or obligation, at any time before

. . . .

(Enter date and time of day)

To cancel this transaction, personally deliver a signed and dated copy of this cancellation notice to

. . . . . .

(Name of purchaser)

at

. . . . . .

(Street address of purchaser's place of business)

NOT LATER THAN

. . . .

(Enter date and time of day)

I hereby cancel this transaction.

. . . . . .

(Date)

. . . . . .

(Seller's signature)"

(3) The distressed home purchaser shall provide the distressed homeowner with a copy of the contract and the attached notice of cancellation at the time the contract is executed by all parties.

(4) The five-business-day period during which the distressed homeowner may cancel the contract must not begin to run until all parties to the contract have executed the contract and the distressed home purchaser has complied with this section.

NEW SECTION. **Sec. 9.** (1) Any provision in a contract that attempts or purports to require arbitration of any dispute arising under this chapter is void at the option of the distressed homeowner.

(2) This section applies to any contract entered into on or after the effective date of this act.

NEW SECTION. **Sec. 10.** A distressed home purchaser shall not:

(1) Enter into, or attempt to enter into, a distressed home conveyance with a distressed homeowner unless the distressed home purchaser verifies and can demonstrate that the distressed homeowner has a reasonable ability to pay for the subsequent conveyance of an interest back to the distressed homeowner. In the case of a lease with an option to purchase, payment ability also includes the reasonable ability to make the lease payments and purchase the property within the term of the option to purchase. An evaluation of a distressed homeowner's reasonable ability to pay includes debt to income ratios, fair market value of the distressed home, and the distressed homeowner's payment and credit history. There is a rebuttable presumption that the distressed home purchaser has not verified a distressed homeowner's reasonable ability to pay if the distressed home purchaser has not obtained documentation of assets, liabilities, and income, other than an undocumented statement, of the distressed homeowner;

(2) Fail to either:

(a) Ensure that title to the distressed home has been reconveyed to the distressed homeowner; or

(b) Make payment to the distressed homeowner so that the distressed homeowner has received consideration in an amount of at least eighty-two percent of the fair market value of the property as of the date of the eviction or voluntary relinquishment of possession of the distressed home by the distressed homeowner. For the purposes of this subsection (2)(b), the following applies:

(i) There is a rebuttable presumption that an appraisal by a person licensed or certified by an agency of the federal government or this state to appraise real estate constitutes the fair market value of the distressed home;

(ii) "Consideration" means any payment or thing of value provided to the distressed homeowner, including unpaid rent owed by the distressed homeowner before the date of eviction or voluntary relinquishment of the distressed home, reasonable costs paid to independent third parties necessary to complete the distressed home conveyance transaction, the payment of money to satisfy a debt or legal obligation of the distressed homeowner, or the reasonable cost of repairs for damage to the distressed home caused by the distressed homeowner. "Consideration" does not include amounts imputed as a down payment or fee to the distressed home purchaser or a person acting in participation with the distressed home purchaser;

(3) Enter into repurchase or lease terms as part of the distressed home conveyance that are unfair or commercially unreasonable, or engage in any other unfair or deceptive acts or practices;

(4) Represent, directly or indirectly, that (a) the distressed home purchaser is acting as an advisor or consultant, (b) the distressed home purchaser is acting on behalf of or in the interests of the distressed homeowner, or (c) the distressed home purchaser is assisting the distressed homeowner to save the distressed home, buy time, or use other substantially similar language;

(5) Misrepresent the distressed home purchaser's status as to licensure or certification;

(6) Perform any of the following until after the time during which the distressed homeowner may cancel the transaction has expired:

(a) Accept from any distressed homeowner an execution of, or induce any distressed homeowner to execute, any instrument of conveyance of any interest in the distressed home;

(b) Record with the county auditor any document, including any instrument of conveyance, signed by the distressed homeowner; or

(c) Transfer or encumber or purport to transfer or encumber any interest in the distressed home;

(7) Fail to reconvey title to the distressed home when the terms of the distressed home conveyance contract have been fulfilled;

(8) Enter into a distressed home conveyance where any party to the transaction is represented by a power of attorney;

(9) Fail to extinguish or assume all liens encumbering the distressed home immediately following the conveyance of the distressed home;

(10) Fail to close a distressed home conveyance in person before an independent third party who is authorized to conduct real estate closings within the state.

Sec. 11. RCW 61.34.040 and 1988 c 33 s 3 are each amended to read as follows:

(1) In addition to the criminal penalties provided in RCW 61.34.030, the legislature finds ((~~and declares~~)) that ((~~equity skimming substantially affects~~)) the practices covered by this

chapter are matters vitally affecting the public interest((. ~~The commission by any person of an act of equity skimming or a pattern of equity skimming is an unfair or deceptive act or practice and unfair method of competition in the conduct of trade or commerce in violation of RCW 19.86.020~~)) for the purpose of applying chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair method of competition for the purpose of applying chapter 19.86 RCW.

(2) In a private right of action under chapter 19.86 RCW for a violation of this chapter, the court may double or triple the award of damages pursuant to RCW 19.86.090, subject to the statutory limit. If, however, the court determines that the defendant acted in bad faith, the limit for doubling or tripling the award of damages may be increased, but shall not exceed one hundred thousand dollars. Any claim for damages brought under this chapter must be commenced within four years after the date of the alleged violation.

(3) The remedies provided in this chapter are cumulative and do not restrict any remedy that is otherwise available. The provisions of this chapter are not exclusive and are in addition to any other requirements, rights, remedies, and penalties provided by law. An action under this chapter shall not affect the rights in the distressed home held by a distressed home purchaser for value under this chapter or other applicable law.

Sec. 12. RCW 59.18.030 and 1998 c 276 s 1 are each amended to read as follows:

As used in this chapter:

(1) "Distressed home" has the same meaning as in RCW 61.34.020.

(2) "Distressed home conveyance" has the same meaning as in RCW 61.34.020.

(3) "Distressed home purchaser" has the same meaning as in RCW 61.34.020.

(4) "Dwelling unit" is a structure or that part of a structure which is used as a home, residence, or sleeping place by one person or by two or more persons maintaining a common household, including but not limited to single family residences and units of multiplexes, apartment buildings, and mobile homes.

(((~~(2)~~))) (5) "In danger of foreclosure" means any of the following:

(a) The homeowner has defaulted on the mortgage and, under the terms of the mortgage, the mortgagee has the right to accelerate full payment of the mortgage and repossess, sell, or cause to be sold the property;

(b) The homeowner is at least thirty days delinquent on any loan that is secured by the property; or

(c) The homeowner has a good faith belief that he or she is likely to default on the mortgage within the upcoming four months due to a lack of funds, and the homeowner has reported this belief to:

(i) The mortgagee;

(ii) A person licensed or required to be licensed under chapter 19.134 RCW;

(iii) A person licensed or required to be licensed under chapter 19.146 RCW;

(iv) A person licensed or required to be licensed under chapter 18.85 RCW;

(v) An attorney-at-law;

(vi) A mortgage counselor or other credit counselor licensed or certified by any federal, state, or local agency; or

(vii) Any other party to a distressed property conveyance.

(6) "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the property of which it is a part, and in addition means any person designated as representative of the landlord.

(((~~(3)~~))) (7) "Mortgage" is used in the general sense and includes all instruments, including deeds of trust, that are used to secure an obligation by an interest in real property.

(8) "Person" means an individual, group of individuals, corporation, government, or governmental agency, business trust, estate, trust, partnership, or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(((~~(4)~~))) (9) "Owner" means one or more persons, jointly or severally, in whom is vested:

(a) All or any part of the legal title to property; or

(b) All or part of the beneficial ownership, and a right to present use and enjoyment of the property.

(((~~(5)~~))) (10) "Premises" means a dwelling unit, appurtenances thereto, grounds, and facilities held out for the use of tenants generally and any other area or facility which is held out for use by the tenant.

(((~~(6)~~))) (11) "Rental agreement" means all agreements which establish or modify the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy of a dwelling unit.

(((~~(7)~~))) (12) A "single family residence" is a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it shall be deemed a single family residence if it has direct access to a street and shares neither heating facilities nor hot water equipment, nor any other essential facility or service, with any other dwelling unit.

(((~~(8)~~))) (13) A "tenant" is any person who is entitled to occupy a dwelling unit primarily for living or dwelling purposes under a rental agreement.

(((~~(9)~~))) (14) "Reasonable attorney's fees", where authorized in this chapter, means an amount to be determined including the following factors: The time and labor required, the novelty and difficulty of the questions involved, the skill requisite to perform the legal service properly, the fee customarily charged in the locality for similar legal services, the amount involved and the results obtained, and the experience, reputation and ability of the lawyer or lawyers performing the services.

(((~~(10)~~))) (15) "Gang" means a group that: (a) Consists of three or more persons; (b) has identifiable leadership or an identifiable name, sign, or symbol; and (c) on an ongoing basis, regularly conspires and acts in concert mainly for criminal purposes.

(((~~(11)~~))) (16) "Gang-related activity" means any activity that occurs within the gang or advances a gang purpose.

NEW SECTION. **Sec. 13.** A new section is added to chapter 59.18 RCW to read as follows:

In an unlawful detainer action involving a distressed home:

(1) The plaintiff shall disclose to the court whether the defendant previously held title to the distressed home, and explain how the plaintiff came to acquire title;

(2) A defendant who previously held title to the distressed home shall not be required to escrow any money pending trial when a material question of fact exists as to whether the plaintiff acquired title from the defendant directly or indirectly through a distressed home conveyance;

(3) There must be both an automatic stay of the action and a consolidation of the action with a pending or subsequent quiet title action when a defendant claims that the plaintiff acquired title to the distressed home through a distressed home conveyance.

NEW SECTION. **Sec. 14.** Sections 2 through 10 of this act are each added to chapter 61.34 RCW."

On page 1, line 1 of the title, after "conveyances;" strike the remainder of the title and insert "amending RCW 61.34.020, 61.34.040, and 59.18.030; adding new sections to chapter 61.34 RCW; adding a new section to chapter 59.18 RCW; and prescribing penalties."

The President declared the question before the Senate to be the motion by Senator Weinstein to not adopt the committee striking amendment by the Committee on Consumer Protection & Housing to House Bill No. 2791.

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

MOTION

Senator Weinstein moved that the following striking amendment by Senator Weinstein be adopted:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 61.34.020 and 1988 c 33 s 4 are each amended to read as follows:

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

(1) ((~~"Pattern of equity skimming" means engaging in a least three acts of equity skimming within any three-year period, with at least one of the acts occurring after June 9, 1988.~~

~~(2) "Dwelling" means a single, duplex, triplex, or four-unit family residential building.~~

~~(3) "Person" includes any natural person, corporation, joint stock association, or unincorporated association.~~

~~(4)~~)) An "act of equity skimming" occurs when:

(a)(i) A person purchases a dwelling with the representation that the purchaser will pay for the dwelling by assuming the obligation to make payments on existing mortgages, deeds of trust, or real estate contracts secured by and pertaining to the dwelling, or by representing that such obligation will be assumed; and

(ii) The person fails to make payments on such mortgages, deeds of trust, or real estate contracts as the payments become due, within two years subsequent to the purchase; and

(iii) The person diverts value from the dwelling by either (A) applying or authorizing the application of rents from the dwelling for the person's own benefit or use, or (B) obtaining anything of value from the sale or lease with option to purchase of the dwelling for the person's own benefit or use, or (C) removing or obtaining appliances, fixtures, furnishings, or parts of such dwellings or appurtenances for the person's own benefit or use without replacing the removed items with items of equal or greater value; or

(b)(i) The person purchases a dwelling in a transaction in which all or part of the purchase price is financed by the seller and is (A) secured by a lien which is inferior in priority or subordinated to a lien placed on the dwelling by the purchaser, or (B) secured by a lien on other real or personal property, or (C) without any security; and

(ii) The person obtains a superior priority loan which either (A) is secured by a lien on the dwelling which is superior in priority to the lien of the seller, but not including a bona fide assumption by the purchaser of a loan existing prior to the time of purchase, or (B) creating any lien or encumbrance on the dwelling when the seller does not hold a lien on the dwelling; and

(iii) The person fails to make payments or defaults on the superior priority loan within two years subsequent to the purchase; and

(iv) The person diverts value from the dwelling by applying or authorizing any part of the proceeds from such superior priority loan for the person's own benefit or use.

(2) "Distressed home" means either:

(a) A dwelling that is in danger of foreclosure or at risk of loss due to nonpayment of taxes; or

(b) A dwelling that is in danger of foreclosure or that is in the process of being foreclosed due to a default under the terms of a mortgage.

(3) "Distressed home consultant" means a person who:

(a) Solicits or contacts a distressed homeowner in writing, in person, or through any electronic or telecommunications medium and makes a representation or offer to perform any service that the person represents will:

(i) Stop, enjoin, delay, void, set aside, annul, stay, or postpone a foreclosure sale;

(ii) Obtain forbearance from any servicer, beneficiary, or mortgagee;

(iii) Assist the distressed homeowner to exercise a right of reinstatement provided in the loan documents or to refinance a loan that is in foreclosure or is in danger of foreclosure;

(iv) Obtain an extension of the period within which the distressed homeowner may reinstate the distressed homeowner's obligation or extend the deadline to object to a ratification;

(v) Obtain a waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a distressed home or contained in the mortgage;

(vi) Assist the distressed homeowner to obtain a loan or advance of funds;

(vii) Save the distressed homeowner's residence from foreclosure;

(viii) Avoid or ameliorate the impairment of the distressed homeowner's credit resulting from the recording of a notice of trustee sale, the filing of a petition to foreclose, or the conduct of a foreclosure sale;

(ix) Purchase or obtain an option to purchase the distressed homeowner's residence within twenty days of an advertised or docketed foreclosure sale;

(x) Arrange for the distressed homeowner to become a lessee or tenant entitled to continue to reside in the distressed homeowner's residence;

(xi) Arrange for the distressed homeowner to have an option to repurchase the distressed homeowner's residence; or

(xii) Engage in any documentation, grant, conveyance, sale, lease, trust, or gift by which the distressed homeowner clogs the distressed homeowner's equity of redemption in the distressed homeowner's residence; or

(b) Systematically contacts owners of property that court records, newspaper advertisements, or any other source demonstrate are in foreclosure or are in danger of foreclosure.

"Distressed home consultant" does not mean a financial institution that the distressed homeowner is a customer of, a nonprofit credit counseling service, or a licensed attorney.

(4) "Distressed home consulting transaction" means an agreement between a distressed homeowner and a distressed home consultant in which the distressed home consultant represents or offers to perform any of the services enumerated in subsection (3)(a) of this section.

(5) "Distressed home conveyance" means a transaction in which:

(a) A distressed homeowner transfers an interest in the distressed home to a distressed home purchaser;

(b) The distressed home purchaser allows the distressed homeowner to occupy the distressed home; and

(c) The distressed home purchaser or a person acting in participation with the distressed home purchaser conveys or promises to convey the distressed home to the distressed homeowner, provides the distressed homeowner with an option to purchase the distressed home at a later date, or promises the distressed homeowner an interest in, or portion of, the proceeds of any resale of the distressed home.

(6) "Distressed home purchaser" means any person who acquires an interest in a distressed home under a distressed home conveyance. "Distressed home purchaser" includes a person who acts in joint venture or joint enterprise with one or more distressed home purchasers in a distressed home conveyance. A financial institution is not a distressed home purchaser.

(7) "Distressed homeowner" means an owner of a distressed home.

(8) "Dwelling" means a single, duplex, triplex, or four-unit family residential building.

(9) "Financial institution" means any federally or state chartered bank or trust company, savings bank or savings and loan association, or credit union.

(10) "Homeowner" means a person who owns and occupies a dwelling as his or her primary residence, whether or not his or her ownership interest is encumbered by a mortgage, deed of trust, or other lien.

(11) "In danger of foreclosure" means any of the following:

(a) The homeowner has defaulted on the mortgage and, under the terms of the mortgage, the mortgagee has the right to accelerate full payment of the mortgage and repossess, sell, or cause to be sold, the property;

(b) The homeowner is at least thirty days delinquent on any loan that is secured by the property; or

(c) The homeowner has a good faith belief that he or she is likely to default on the mortgage within the upcoming four months due to a lack of funds, and the homeowner has reported this belief to:

(i) The mortgagee;

(ii) A person licensed or required to be licensed under chapter 19.134 RCW;

(iii) A person licensed or required to be licensed under chapter 19.146 RCW;

(iv) A person licensed or required to be licensed under chapter 18.85 RCW;

(v) An attorney-at-law;

(vi) A mortgage counselor or other credit counselor licensed or certified by any federal, state, or local agency; or

(vii) Any other party to a distressed home consulting transaction.

(12) "Mortgage" means a mortgage, mortgage deed, deed of trust, security agreement, or other instrument securing a mortgage loan and constituting a lien on or security interest in housing.

(13) "Nonprofit credit counseling service" means a nonprofit organization described under section 501(c)(3) of the internal revenue code, or similar successor provisions, that is licensed or certified by any federal, state, or local agency.

(14) "Pattern of equity skimming" means engaging in at least three acts of equity skimming within any three-year period, with at least one of the acts occurring after June 9, 1988.

(15) "Person" includes any natural person, corporation, joint stock association, or unincorporated association.

(16) "Resale" means a bona fide market sale of the distressed home subject to the distressed home conveyance by the distressed home purchaser to an unaffiliated third party.

(17) "Resale price" means the gross sale price of the distressed home on resale.

NEW SECTION. **Sec. 2.** (1) A distressed home consulting transaction must:

(a) Be in writing in at least twelve-point font;

(b) Be in the same language as principally used by the distressed home consultant to describe his or her services to the distressed homeowner. If the agreement is written in a language other than English, the distressed home consultant shall cause the agreement to be translated into English and shall deliver copies of both the original and English language versions to the distressed homeowner at the time of execution and shall keep copies of both versions on file in accordance with subsection (2) of this section. Any ambiguities or inconsistencies between the English language and the original language versions of the written agreement must be strictly construed in favor of the distressed homeowner;

(c) Fully disclose the exact nature of the distressed home consulting services to be provided, including any distressed home conveyance that may be involved and the total amount and terms of any compensation to be received by the distressed home consultant or anyone working in association with the distressed home consultant;

(d) Be dated and signed by the distressed homeowner and the distressed home consultant;

(e) Contain the complete legal name, address, telephone number, fax number, e-mail address, and internet address if any, of the distressed home consultant, and if the distressed home consultant is serving as an agent for any other person, the complete legal name, address, telephone number, fax number, e-mail address, and internet address if any, of the principal; and

(f) Contain the following notice, which must be initialed by the distressed homeowner, in bold face type and in at least fourteen-point font:

"NOTICE REQUIRED BY WASHINGTON LAW

THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME.

. . . Name of distressed home consultant . . . or anyone working for him or her CANNOT guarantee you that he or she will be able to refinance your home or arrange for you to keep your home. Continue making mortgage payments until refinancing, if applicable, is approved. You should consult with an attorney before signing this contract.

If you sign a promissory note, lien, mortgage, deed of trust, or deed, you could lose your home and be unable to get it back."

(2) At the time of execution, the distressed home consultant shall provide the distressed homeowner with a copy of the written agreement, and the distressed home consultant shall keep a separate copy of the written agreement on file for at least five years following the completion or other termination of the agreement.

(3) This section does not relieve any duty or obligation imposed upon a distressed home consultant by any other law including, but not limited to, the duties of a credit service organization under chapter 19.134 RCW or a person required to be licensed under chapter 19.146 RCW.

NEW SECTION. **Sec. 3.** A distressed home consultant has a fiduciary relationship with the distressed homeowner, and each distressed home consultant is subject to all requirements for fiduciaries otherwise applicable under state law. A distressed home consultant's fiduciary duties include, but are not limited to, the following:

(1) To act in the distressed homeowner's best interest and in utmost good faith toward the distressed homeowner, and not compromise a distressed homeowner's right or interest in favor of another's right or interest, including a right or interest of the distressed home consultant;

(2) To disclose to the distressed homeowner all material facts of which the distressed home consultant has knowledge that might reasonably affect the distressed homeowner's rights, interests, or ability to receive the distressed homeowner's intended benefit from the residential mortgage loan;

(3) To use reasonable care in performing his or her duties; and

(4) To provide an accounting to the distressed homeowner for all money and property received from the distressed homeowner.

NEW SECTION. **Sec. 4.** (1) A person may not induce or attempt to induce a distressed homeowner to waive his or her rights under this chapter.

(2) Any waiver by a homeowner of the provisions of this chapter is void and unenforceable as contrary to public policy.

NEW SECTION. **Sec. 5.** A distressed home purchaser shall enter into a distressed home reconveyance in the form of a written contract. The contract must be written in at least twelve-point boldface type in the same language principally used by the distressed home purchaser and distressed homeowner to negotiate the sale of the distressed home, and must be fully completed, signed, and dated by the distressed homeowner and distressed home purchaser before the execution of any instrument of conveyance of the distressed home.

NEW SECTION. **Sec. 6.** The contract required in section 5 of this act must contain the entire agreement of the parties and must include the following:

(1) The name, business address, and telephone number of the distressed home purchaser;

(2) The address of the distressed home;

(3) The total consideration to be provided by the distressed home purchaser in connection with or incident to the sale;

(4) A complete description of the terms of payment or other consideration including, but not limited to, any services of any nature that the distressed home purchaser represents that he or she will perform for the distressed homeowner before or after the sale;

(5) The time at which possession is to be transferred to the distressed home purchaser;

(6) A complete description of the terms of any related agreement designed to allow the distressed homeowner to remain in the home, such as a rental agreement, repurchase agreement, or lease with option to buy;

(7) A complete description of the interest, if any, the distressed homeowner maintains in the proceeds of, or consideration to be paid upon, the resale of the distressed home;

(8) A notice of cancellation as provided in section 8 of this act; and

(9) The following notice in at least fourteen-point boldface type if the contract is printed, or in capital letters if the contract is typed, and completed with the name of the distressed home purchaser, immediately above the statement required in section 8 of this act;

"NOTICE REQUIRED BY WASHINGTON LAW

Until your right to cancel this contract has ended, ... (Name) or anyone working for . . . . . (Name) CANNOT ask you to sign or have you sign any deed or any other document."

The contract required by this section survives delivery of any instrument of conveyance of the distressed home and has no effect on persons other than the parties to the contract.

NEW SECTION. **Sec. 7.** (1) In addition to any other right of rescission, a distressed homeowner has the right to cancel any contract with a distressed home purchaser until midnight of the fifth business day following the day on which the distressed homeowner signs a contract that complies with this chapter or until 8:00 a.m. on the last day of the period during which the distressed homeowner has a right of redemption, whichever occurs first.

(2) Cancellation occurs when the distressed homeowner delivers to the distressed home purchaser, by any means, a written notice of cancellation to the address specified in the contract.

(3) A notice of cancellation provided by the distressed homeowner is not required to take the particular form as provided with the contract.

(4) Within ten days following the receipt of a notice of cancellation under this section, the distressed home purchaser shall return without condition any original contract and any other documents signed by the distressed homeowner.

NEW SECTION. **Sec. 8.** (1) The contract required in section 5 of this act must contain, in immediate proximity to the space reserved for the distressed homeowner's signature, the following conspicuous statement in at least fourteen-point boldface type if the contract is printed, or in capital letters if the contract is typed:

"You may cancel this contract for the sale of your house without any penalty or obligation at any time before

. . . . . .

(Date and time of day)

See the attached notice of cancellation form for an explanation of this right."

The distressed home purchaser shall accurately enter the date and time of day on which the cancellation right ends.

(2) The contract must be accompanied by a completed form in duplicate, captioned "NOTICE OF CANCELLATION" in twelve-point boldface type if the contract is printed, or in capital letters if the contract is typed, followed by a space in which the distressed home purchaser shall enter the date on which the distressed homeowner executes any contract. This form must be attached to the contract, must be easily detachable, and must contain in at least twelve-point type if the contract is printed, or in capital letters if the contract is typed, the following statement written in the same language as used in the contract:

"NOTICE OF CANCELLATION

. . . . . .

(Enter date contract signed)

You may cancel this contract for the sale of your house, without any penalty or obligation, at any time before

. . . .

(Enter date and time of day)

To cancel this transaction, personally deliver a signed and dated copy of this cancellation notice to

. . . . . .

(Name of purchaser)

at

. . . . . .

(Street address of purchaser's place of business)

NOT LATER THAN

. . . .

(Enter date and time of day)

I hereby cancel this transaction.

. . . . . .

(Date)

. . . . . .

(Seller's signature)"

(3) The distressed home purchaser shall provide the distressed homeowner with a copy of the contract and the attached notice of cancellation at the time the contract is executed by all parties.

(4) The five-business-day period during which the distressed homeowner may cancel the contract must not begin to run until all parties to the contract have executed the contract and the distressed home purchaser has complied with this section.

NEW SECTION. **Sec. 9.** (1) Any provision in a contract that attempts or purports to require arbitration of any dispute arising under this chapter is void at the option of the distressed homeowner.

(2) This section applies to any contract entered into on or after the effective date of this act.

NEW SECTION. **Sec. 10.** A distressed home purchaser shall not:

(1) Enter into, or attempt to enter into, a distressed home conveyance with a distressed homeowner unless the distressed home purchaser verifies and can demonstrate that the distressed homeowner has a reasonable ability to pay for the subsequent conveyance of an interest back to the distressed homeowner. In the case of a lease with an option to purchase, payment ability also includes the reasonable ability to make the lease payments and purchase the property within the term of the option to purchase. An evaluation of a distressed homeowner's reasonable ability to pay includes debt to income ratios, fair market value of the distressed home, and the distressed homeowner's payment and credit history. There is a rebuttable presumption that the distressed home purchaser has not verified a distressed homeowner's reasonable ability to pay if the distressed home purchaser has not obtained documentation of assets, liabilities, and income, other than an undocumented statement, of the distressed homeowner;

(2) Fail to either:

(a) Ensure that title to the distressed home has been reconveyed to the distressed homeowner; or

(b) Make payment to the distressed homeowner so that the distressed homeowner has received consideration in an amount of at least eighty-two percent of the fair market value of the property as of the date of the eviction or voluntary relinquishment of possession of the distressed home by the distressed homeowner. For the purposes of this subsection (2)(b), the following applies:

(i) There is a rebuttable presumption that an appraisal by a person licensed or certified by an agency of the federal government or this state to appraise real estate constitutes the fair market value of the distressed home;

(ii) "Consideration" means any payment or thing of value provided to the distressed homeowner, including unpaid rent owed by the distressed homeowner before the date of eviction or voluntary relinquishment of the distressed home, reasonable costs paid to independent third parties necessary to complete the distressed home conveyance transaction, the payment of money to satisfy a debt or legal obligation of the distressed homeowner, or the reasonable cost of repairs for damage to the distressed home caused by the distressed homeowner. "Consideration" does not include amounts imputed as a down payment or fee to the distressed home purchaser or a person acting in participation with the distressed home purchaser;

(3) Enter into repurchase or lease terms as part of the distressed home conveyance that are unfair or commercially unreasonable, or engage in any other unfair or deceptive acts or practices;

(4) Represent, directly or indirectly, that (a) the distressed home purchaser is acting as an advisor or consultant, (b) the distressed home purchaser is acting on behalf of or in the interests of the distressed homeowner, or (c) the distressed home purchaser is assisting the distressed homeowner to save the distressed home, buy time, or use other substantially similar language;

(5) Misrepresent the distressed home purchaser's status as to licensure or certification;

(6) Perform any of the following until after the time during which the distressed homeowner may cancel the transaction has expired:

(a) Accept from any distressed homeowner an execution of, or induce any distressed homeowner to execute, any instrument of conveyance of any interest in the distressed home;

(b) Record with the county auditor any document, including any instrument of conveyance, signed by the distressed homeowner; or

(c) Transfer or encumber or purport to transfer or encumber any interest in the distressed home;

(7) Fail to reconvey title to the distressed home when the terms of the distressed home conveyance contract have been fulfilled;

(8) Enter into a distressed home conveyance where any party to the transaction is represented by a power of attorney;

(9) Fail to extinguish or assume all liens encumbering the distressed home immediately following the conveyance of the distressed home;

(10) Fail to close a distressed home conveyance in person before an independent third party who is authorized to conduct real estate closings within the state.

Sec. 11. RCW 61.34.040 and 1988 c 33 s 3 are each amended to read as follows:

(1) In addition to the criminal penalties provided in RCW 61.34.030, the legislature finds ((~~and declares~~)) that ((~~equity skimming substantially affects~~)) the practices covered by this chapter are matters vitally affecting the public interest((~~. The commission by any person of an act of equity skimming or a pattern of equity skimming is an unfair or deceptive act or practice and unfair method of competition in the conduct of trade or commerce in violation of RCW 19.86.020~~)) for the purpose of applying chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair method of competition for the purpose of applying chapter 19.86 RCW.

(2) In a private right of action under chapter 19.86 RCW for a violation of this chapter, the court may double or triple the award of damages pursuant to RCW 19.86.090, subject to the statutory limit. If, however, the court determines that the defendant acted in bad faith, the limit for doubling or tripling the award of damages may be increased, but shall not exceed one hundred thousand dollars. Any claim for damages brought under this chapter must be commenced within four years after the date of the alleged violation.

(3) The remedies provided in this chapter are cumulative and do not restrict any remedy that is otherwise available. The provisions of this chapter are not exclusive and are in addition to any other requirements, rights, remedies, and penalties provided by law. An action under this chapter shall not affect the rights in the distressed home held by a distressed home purchaser for value under this chapter or other applicable law.

Sec. 12. RCW 59.18.030 and 1998 c 276 s 1 are each amended to read as follows:

As used in this chapter:

(1) "Distressed home" has the same meaning as in RCW 61.34.020.

(2) "Distressed home conveyance" has the same meaning as in RCW 61.34.020.

(3) "Distressed home purchaser" has the same meaning as in RCW 61.34.020.

(4) "Dwelling unit" is a structure or that part of a structure which is used as a home, residence, or sleeping place by one person or by two or more persons maintaining a common household, including but not limited to single family residences and units of multiplexes, apartment buildings, and mobile homes.

((~~(2)~~)) (5) "In danger of foreclosure" means any of the following:

(a) The homeowner has defaulted on the mortgage and, under the terms of the mortgage, the mortgagee has the right to accelerate full payment of the mortgage and repossess, sell, or cause to be sold the property;

(b) The homeowner is at least thirty days delinquent on any loan that is secured by the property; or

(c) The homeowner has a good faith belief that he or she is likely to default on the mortgage within the upcoming four months due to a lack of funds, and the homeowner has reported this belief to:

(i) The mortgagee;

(ii) A person licensed or required to be licensed under chapter 19.134 RCW;

(iii) A person licensed or required to be licensed under chapter 19.146 RCW;

(iv) A person licensed or required to be licensed under chapter 18.85 RCW;

(v) An attorney-at-law;

(vi) A mortgage counselor or other credit counselor licensed or certified by any federal, state, or local agency; or

(vii) Any other party to a distressed property conveyance.

(6) "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the property of which it is a part, and in addition means any person designated as representative of the landlord.

((~~(3)~~)) (7) "Mortgage" is used in the general sense and includes all instruments, including deeds of trust, that are used to secure an obligation by an interest in real property.

(8) "Person" means an individual, group of individuals, corporation, government, or governmental agency, business trust, estate, trust, partnership, or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

((~~(4)~~)) (9) "Owner" means one or more persons, jointly or severally, in whom is vested:

(a) All or any part of the legal title to property; or

(b) All or part of the beneficial ownership, and a right to present use and enjoyment of the property.

((~~(5)~~)) (10) "Premises" means a dwelling unit, appurtenances thereto, grounds, and facilities held out for the use of tenants generally and any other area or facility which is held out for use by the tenant.

((~~(6)~~)) (11) "Rental agreement" means all agreements which establish or modify the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy of a dwelling unit.

((~~(7)~~)) (12) A "single family residence" is a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it shall be deemed a single family residence if it has direct access to a street and shares neither heating facilities nor hot water equipment, nor any other essential facility or service, with any other dwelling unit.

((~~(8)~~)) (13) A "tenant" is any person who is entitled to occupy a dwelling unit primarily for living or dwelling purposes under a rental agreement.

((~~(9)~~)) (14) "Reasonable attorney's fees", where authorized in this chapter, means an amount to be determined including the following factors: The time and labor required, the novelty and difficulty of the questions involved, the skill requisite to perform the legal service properly, the fee customarily charged in the locality for similar legal services, the amount involved and the results obtained, and the experience, reputation and ability of the lawyer or lawyers performing the services.

((~~(10)~~)) (15) "Gang" means a group that: (a) Consists of three or more persons; (b) has identifiable leadership or an identifiable name, sign, or symbol; and (c) on an ongoing basis, regularly conspires and acts in concert mainly for criminal purposes.

((~~(11)~~)) (16) "Gang-related activity" means any activity that occurs within the gang or advances a gang purpose.

NEW SECTION. **Sec. 13.** A new section is added to chapter 59.18 RCW to read as follows:

In an unlawful detainer action involving property that was a distressed home:

(1) The plaintiff shall disclose to the court whether the defendant previously held title to the property that was a distressed home, and explain how the plaintiff came to acquire title;

(2) A defendant who previously held title to the property that was a distressed home shall not be required to escrow any money pending trial when a material question of fact exists as to

whether the plaintiff acquired title from the defendant directly or indirectly through a distressed home conveyance;

(3) There must be both an automatic stay of the action and a consolidation of the action with a pending or subsequent quiet title action when a defendant claims that the plaintiff acquired title to the property through a distressed home conveyance.

NEW SECTION. **Sec. 14.** Sections 2 through 10 of this act are each added to chapter 61.34 RCW."

The President declared the question before the Senate to be the adoption of the striking amendment by Senator Weinstein to House Bill No. 2791.

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

MOTION

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

On page 1, line 1 of the title, after "conveyances;" strike the remainder of the title and insert "amending RCW 61.34.020, 61.34.040, and 59.18.030; adding new sections to chapter 61.34 RCW; adding a new section to chapter 59.18 RCW; and prescribing penalties."

MOTION

On motion of Senator Weinstein, the rules were suspended, House Bill No. 2791 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Weinstein spoke in favor of passage of the bill.

MOTION

On motion of Senator Hobbs, Senators McAuliffe and Tom were excused.

The President declared the question before the Senate to be the final passage of House Bill No. 2791 as amended by the Senate

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2791 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 39; Nays, 6; Absent, 1; Excused, 3.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Delvin, Eide, Fairley, Franklin, Fraser, Hatfield, Haugen, Hewitt, Hobbs, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McDermott, Murray, Oemig, Parlette, Pflug, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Swecker, Weinstein and Zarelli - 39

Voting nay: Senators Carrell, Holmquist, Honeyford, McCaslin, Morton and Stevens - 6

Absent: Senator Hargrove - 1

Excused: Senators McAuliffe, Prentice and Tom - 3

HOUSE BILL NO. 2791 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2475, by House Committee on Health Care & Wellness (originally sponsored by Representatives Cody, Morrell and Green)

Regarding the scope of practice of health care assistants.

The measure was read the second time.

MOTION

On motion of Senator Keiser, the rules were suspended, Substitute House Bill No. 2475 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

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

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2475.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2475 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 47

Excused: Senators McAuliffe and Prentice - 2

SUBSTITUTE HOUSE BILL NO. 2475, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 3122, by House Committee on Commerce & Labor (originally sponsored by Representatives Conway, Green, Hunt, Kenney, Roberts, Haler, Morrell, Ericks, Hankins, Eddy, Wood, Sells, Chase, Ormsby, Hasegawa, Appleton, Williams, Moeller, Simpson, Sullivan and McIntire)

Consolidating, aligning, and clarifying exception tests for determination of independent contractor status under unemployment compensation and workers' compensation laws.

The measure was read the second time.

MOTION

On motion of Senator Kohl-Welles, the rules were suspended, Engrossed Substitute House Bill No. 3122 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

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

Senator Holmquist spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 3122.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 3122 and the bill passed the Senate by the following vote: Yeas, 33; Nays, 16; Absent, 0; Excused, 0.

Voting yea: Senators Berkey, Brown, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hobbs, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Sheldon, Shin, Spanel, Tom and Weinstein - 33

Voting nay: Senators Benton, Brandland, Carrell, Delvin, Hewitt, Holmquist, Honeyford, King, McCaslin, Morton, Parlette, Pflug, Schoesler, Stevens, Swecker and Zarelli - 16

ENGROSSED SUBSTITUTE HOUSE BILL NO. 3122, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 3011, by Representatives Loomis, Rodne and Kelley

Safeguarding securities owned by insurers.

The measure was read the second time.

MOTION

On motion of Senator Berkey, the rules were suspended, House Bill No. 3011 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Berkey spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 3011.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 3011 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

HOUSE BILL NO. 3011, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2533, by House Committee on Appropriations (originally sponsored by Representatives McCoy, Chase and Quall)

Concerning attachments to utility poles of locally regulated utilities.

The measure was read the second time.

MOTION

Senator Rockefeller moved that the following committee striking amendment by the Committee on Water, Energy & Telecommunications be adopted.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** It is the policy of the state to encourage the joint use of utility poles, to promote competition for the provision of telecommunications and information services, and to recognize the value of the infrastructure of locally regulated utilities. To achieve these objectives, the legislature intends to establish a consistent cost-based formula for calculating pole attachment rates, which will ensure greater predictability and consistency in pole attachment rates statewide, as well as ensure that locally regulated utility customers do not subsidize licensees. The legislature further intends to continue working through issues related to pole attachments with interested parties in an open and collaborative process in order to minimize the potential for disputes going forward.

Sec. 2. RCW 54.04.045 and 1996 c 32 s 5 are each amended to read as follows:

(1) As used in this section:

(a) "Attachment" means the affixation or installation of any wire, cable, or other physical material capable of carrying electronic impulses or light waves for the carrying of intelligence for telecommunications or television, including, but not limited to cable, and any related device, apparatus, or auxiliary equipment upon any pole owned or controlled in whole or in part by one or more locally regulated utilities where the installation has been made with the necessary consent.

(b) "Licensee" means any person, firm, corporation, partnership, company, association, joint stock association, or cooperatively organized association, which is authorized to construct attachments upon, along, under, or across public ways.

(c) "Locally regulated utility" means a public utility district not subject to rate or service regulation by the utilities and transportation commission.

((~~(c)~~)) (d) "Nondiscriminatory" means that pole owners may not arbitrarily differentiate among or between similar classes of ((~~persons~~)) licensees approved for attachments.

(2) All rates, terms, and conditions made, demanded, or received by a locally regulated utility for attachments to its poles must be just, reasonable, nondiscriminatory, and sufficient. A locally regulated utility shall levy attachment space rental rates that are uniform for the same class of service within the locally regulated utility service area.

(3) A just and reasonable rate must be calculated as follows:

(a) One component of the rate shall consist of the additional costs of procuring and maintaining pole attachments, but may not exceed the actual capital and operating expenses of the locally regulated utility attributable to that portion of the pole, duct, or conduit used for the pole attachment, including a share of the required support and clearance space, in proportion to the space used for the pole attachment, as compared to all other uses made of the subject facilities and uses that remain available to the owner or owners of the subject facilities;

(b) The other component of the rate shall consist of the additional costs of procuring and maintaining pole attachments, but may not exceed the actual capital and operating expenses of the locally regulated utility attributable to the share, expressed in feet, of the required support and clearance space, divided equally among the locally regulated utility and all attaching licensees, in addition to the space used for the pole attachment, which sum is divided by the height of the pole; and

(c) The just and reasonable rate shall be computed by adding one-half of the rate component resulting from (a) of this subsection to one-half of the rate component resulting from (b) of this subsection.

(4) For the purpose of establishing a rate under subsection (3)(a) of this section, the locally regulated utility may establish a rate according to the calculation set forth in subsection (3)(a) of this section or it may establish a rate according to the cable formula set forth by the federal communications commission by rule as it existed on the effective date of this section, or such subsequent date as may be provided by the federal communications commission by rule, consistent with the purposes of this section.

(5) Except in extraordinary circumstances, a locally regulated utility must respond to a licensee's application to enter into a new pole attachment contract or renew an existing pole attachment contract within forty-five days of receipt, stating either:

(a) The application is complete; or

(b) The application is incomplete, including a statement of what information is needed to make the application complete.

(6) Within sixty days of an application being deemed complete, the locally regulated utility shall notify the applicant as to whether the application has been accepted for licensing or rejected. In extraordinary circumstances, and with the approval

of the applicant, the locally regulated utility may extend the sixty-day timeline under this subsection. If the application is rejected, the locally regulated utility must provide reasons for the rejection. A request to attach may only be denied on a nondiscriminatory basis (a) where there is insufficient capacity; or (b) for reasons of safety, reliability, or the inability to meet generally applicable engineering standards and practices.

(7) Nothing in this section shall be construed or is intended to confer upon the utilities and transportation commission any authority to exercise jurisdiction over locally regulated utilities."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Water, Energy & Telecommunications to Engrossed Second Substitute House Bill No. 2533.

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

MOTION

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

On page 1, line 2 of the title, after "utilities;" strike the remainder of the title and insert "amending RCW 54.04.045; and creating a new section."

MOTION

On motion of Senator Rockefeller, the rules were suspended, Engrossed Second Substitute House Bill No. 2533 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

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

POINT OF INQUIRY

Senator Rasmussen: "Would Senator Rockefeller yield to a question? Is there anything in this legislation that would in anyway regulate or influence the rates or conditions that rural electric cooperatives mutual electric companies or municipality own utilities set or require for attachments to their poles?"

Senator Rockefeller: "Thank you for asking that question Senator Rasmussen. The answer is no. This legislation only amends statutes that apply to public utility districts; rural electric cooperatives, mutual electric companies and municipally owned utilities are governed by different statutes entirely. Nothing in this legislation will affect in any way the rates or conditions that such cooperatives set for attachments to their poles."

Senator Oemig spoke against passage of the bill.

Senator Hatfield spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Second Substitute House Bill No. 2533 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute House Bill No. 2533 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 46; Nays, 3; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Parlette, Pflug, Prentice, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Weinstein and Zarelli - 46

Voting nay: Senators Oemig, Pridemore and Tom - 3

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2533 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 1391, by Representatives Eddy, Ross, Curtis, Jarrett, Morrell and B. Sullivan

Clarifying that councilmembers are eligible to be appointed to the office of mayor.

The measure was read the second time.

MOTION

On motion of Senator Fairley, the rules were suspended, House Bill No. 1391 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Fairley spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 1391.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 1391 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

HOUSE BILL NO. 1391, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2661, by House Committee on Commerce & Labor (originally sponsored by Representatives Green and Morrell)

Providing for self-service storage facility late fees to be reasonable and stated in the rental contract. Revised for 1st Substitute: Allowing for reasonable self-storage facility late fees.

The measure was read the second time.

MOTION

On motion of Senator Kohl-Welles, the rules were suspended, Substitute House Bill No. 2661 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Kohl-Welles and Holmquist spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2661.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2661 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

SUBSTITUTE HOUSE BILL NO. 2661, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

On motion of Senator Weinstein, Senator McAuliffe was excused.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2582, by House Committee on Higher Education (originally sponsored by Representatives Roberts, Hasegawa, Ormsby, Jarrett, Sells, Williams, Appleton, McIntire, Goodman, Green and Quall)

Regarding child care at institutions of higher education.

The measure was read the second time.

MOTION

Senator Shin moved that the following committee striking amendment by the Committee on Higher Education be adopted.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** It is the intent of the legislature to improve access to higher education for all residents and ensure that students have the necessary resources and support services to attain their educational goals while keeping families strong. For many students, the lack of affordable, accessible, quality child care on or in close proximity to colleges and universities is a barrier to completion of their higher education goals. Further, it is the intent of the legislature to adopt policies that, to the extent possible, leverage existing resources and maximize educational outcomes by supporting affordable, accessible, and quality child care programs.

Sec. 2. RCW 28B.135.010 and 1999 c 375 s 1 are each amended to read as follows:

Two Washington accounts for student child care in higher education are established. The higher education coordinating board shall administer the program for the four-year institutions of higher education and the state board for community and technical colleges shall administer the program for the two-year institutions of higher education. Through these programs the boards ((~~may~~)) shall award ((~~on a competitive basis~~)) either competitive or matching child care grants to state institutions of higher education to encourage programs to address the need for high quality, accessible, and affordable child care for students at higher education institutions. The grants shall be used exclusively for the provision of quality child care services for students at institutions of higher education. The university or college administration and student government association, or its equivalent, of each institution receiving the award ((~~shall~~)) may contribute financial support in an amount equal to or greater than the child care grant received by the institution.

Sec. 3. RCW 28B.135.030 and 2005 c 490 s 8 are each amended to read as follows:

The higher education coordinating board ((~~shall administer the program for four-year institutions of higher education. The state board for community and technical colleges shall administer the program for community and technical colleges. The higher education coordinating board and the state board for community and technical colleges~~)) shall have the following powers and duties in administering ((~~each~~)) the program for the four-year institutions of higher education:

(1) To adopt rules necessary to carry out the program;

(2) To establish one or more review committees to assist in the evaluation of proposals for funding. The review committees ((~~shall include but not be limited to individuals from the Washington association for the education of young children and the child care resource and referral network~~)) may receive input from parents, educators, and other experts in the field of early childhood education for this purpose;

(3) To establish each biennium specific guidelines for submitting grant proposals consistent with the overall goals of the program. ((~~During the 1999-2001 biennium~~)) The guidelines shall be consistent with the following desired outcomes of increasing access to quality child care for students, ((~~addressing the demand for infant and toddler care,~~)) providing affordable child care alternatives((~~, creating more cooperative preschool programs, creating models that can be replicated at other institutions~~)) for students, creating a partnership between university or college administrations, university or college foundations, and student government associations, or ((~~its~~)) their equivalents ((~~and increasing efficiency and innovation at campus child care centers~~));

(4) To ((~~establish guidelines for an allocation system based on factors that include but are not limited to:~~)) proportionally distribute the amount of money available in the trust fund((~~, characteristics of the institutions including the size of the faculty and student body; and the number of child care grants received~~)) based on the financial support for child care received by the student government associations or their equivalents. Student government associations may solicit funds from private organizations and targeted fund-raising campaigns as part of their financial support for child care;

(5) To solicit grant proposals and provide information to the institutions of higher education about the program; ((~~and~~))

(6) To establish reporting, evaluation, accountability, monitoring, and dissemination requirements for the recipients of the grants; and

(7) To report to the appropriate committees of the legislature by December 15, 2008, and every two years thereafter, on the status of program design and implementation at the four-year institutions of higher education. The report shall include but not be limited to summary information on the institutions receiving child care grant allocations, the amount contributed by each university or college administration and student government association for the purposes of child care including expenditures and reports for the previous biennium, services provided by each institutional child care center, the number of students using such services, and identifiable unmet need.

NEW SECTION. **Sec. 4.** A new section is added to chapter 28B.135 RCW to read as follows:

The state board for community and technical colleges shall have the following powers and duties in administering the program established in RCW 28B.135.010 for the two-year institutions of higher education:

(1) To adopt rules necessary to carry out the program;

(2) To establish, if deemed necessary, one or more review committees to assist in the evaluation of proposals for funding. The review committees may receive input from parents, educators, and other experts in the field of early childhood education for this purpose;

(3) To establish each biennium specific guidelines for submitting grant proposals consistent with the overall goals of the program. The guidelines shall be consistent with the following desired outcomes of increasing access to quality child care for students, providing affordable child care alternatives for students, creating more cooperative preschool programs or other alternative parent education models, creating models that can be replicated at other institutions, creating a partnership between

college administrations, college foundations, and student government associations, or their equivalents, and increasing innovation at campus child care centers;

(4) To establish guidelines for an allocation system based on factors that include but are not limited to: The amount of money available in the trust fund and the financial support for child care received by the student government associations or their equivalents. Student government associations may solicit funds from private organizations and targeted fund-raising campaigns as part of their financial support for child care;

(5) To solicit grant proposals and provide information to the institutions of higher education about the program;

(6) To establish reporting, evaluation, accountability, monitoring, and dissemination requirements for the recipients of the grants; and

(7) To report to the appropriate committees of the legislature by December 15, 2008, and every two years thereafter, on the status of program design and implementation within the community and technical college system. The report shall include but not be limited to summary information on the institutions receiving child grant allocations, the amount contributed by each college administration and student government association for the purposes of child care, including expenditures and reports for the previous biennium, services provided by each institutional child care center, the number of students using such services, and identifiable unmet need."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Higher Education to Substitute House Bill No. 2582.

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

MOTION

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

On page 1, line 1 of the title, after "education;" strike the remainder of the title and insert "amending RCW 28B.135.010 and 28B.135.030; adding a new section to chapter 28B.135 RCW; and creating a new section."

MOTION

On motion of Senator Shin, the rules were suspended, Substitute House Bill No. 2582 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Shin spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2582 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2582 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 1; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom and Zarelli - 47

Absent: Senator Weinstein - 1

Excused: Senator McAuliffe - 1

SUBSTITUTE HOUSE BILL NO. 2582 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 2719, by Representatives Priest, Hurst, Loomis and VanDeWege

Ensuring that offenders receive accurate sentences.

The measure was read the second time.

MOTION

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

On page 2, beginning on line 7, strike all of section 2

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

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

The President declared the question before the Senate to be the adoption of the committee amendment by the Committee on Judiciary to House Bill No. 2719.

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

MOTION

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

On page 1, line 2 of the title, after "sentences;" strike the remainder of the title and insert "amending RCW 9.94A.500 and 9.94A.530; reenacting and amending RCW 9.94A.525; and creating new sections."

MOTION

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

On page 8, line 33, after "community" strike "placement" and insert "((~~placement~~)) custody"

On page 8, line 33, after "point." insert "For purposes of this subsection, community custody includes community placement or postrelease supervision, as defined in chapter 9.-- RCW (the new chapter created in section 57 of this act)."

On page 10, line 14, after "of" strike "this section" and insert "sections 1 through 5 of this act"

On page 10, after line 14, insert the following:

"NEW SECTION. **Sec. 7.** The existing sentencing reform act contains numerous provisions for supervision of different types of offenders. This duplication has caused great confusion for judges, lawyers, offenders, and the department of corrections, and often results in inaccurate sentences. The clarifications in this act are intended to support continued discussions by the sentencing guidelines commission with the courts and the criminal justice community to identify and propose policy changes that will further simplify and improve the sentencing reform act relating to the supervision of offenders. The sentencing guidelines commission shall submit policy change proposals to the legislature on or before December 1, 2008.

Sections 8 through 59 of this act are intended to simplify the supervision provisions of the sentencing reform act and increase the uniformity of its application. These sections are not intended to either increase or decrease the authority of sentencing courts or the department relating to supervision, except for those provisions instructing the court to apply the provisions of the current community custody law to offenders sentenced after July 1, 2009, but who committed their crime prior to the effective date of this section to the extent that such application is constitutionally permissible.

This will effect a change for offenders who committed their crimes prior to the offender accountability act, chapter 196, Laws of 1999. These offenders will be ordered to a term of community custody rather than community placement or community supervision. To the extent constitutionally permissible, the terms of the offender's supervision will be as provided in current law. With the exception of this change, the legislature does not intend to make, and no provision of sections 8 through 59 of this act may be construed as making, a substantive change to the supervision provisions of the sentencing reform act.

It is the intent of the legislature to reaffirm that section 3, chapter 379, Laws of 2003, expires July 1, 2010.

NEW SECTION. **Sec. 8.** A new section is added to chapter 9.94A RCW to read as follows:

(1) If an offender is sentenced to the custody of the department for one of the following crimes, the court shall impose a term of community custody for the community custody range established under RCW 9.94A.850 or up to the period of earned release awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer:

(a) A sex offense not sentenced under RCW 9.94A.712;

(b) A violent offense;

(c) A crime against persons under RCW 9.94A.411(2);

(d) A felony offender under chapter 69.50 or 69.52 RCW.

(2) If an offender is sentenced to a term of confinement of one year or less for a violation of RCW 9A.44.130(11)(a), the court shall impose a term of community custody for the community custody range established under RCW 9.94A.850 or up to the period of earned release awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer.

(3) If an offender is sentenced under the drug offender sentencing alternative, the court shall impose community custody as provided in RCW 9.94A.660.

(4) If an offender is sentenced under the special sexual offender sentencing alternative, the court shall impose community custody as provided in RCW 9.94A.670.

(5) If an offender is sentenced to a work ethic camp, the court shall impose community custody as provided in RCW 9.94A.690.

(6) If a sex offender is sentenced as a nonpersistent offender pursuant to RCW 9.94A.712, the court shall impose community custody as provided in that section.

NEW SECTION. **Sec. 9.** A new section is added to chapter 9.94A RCW to read as follows:

(1) If an offender is sentenced to a term of confinement for one year or less for one of the following offenses, the court may impose up to one year of community custody:

(a) A sex offense, other than failure to register under RCW 9A.44.130(1);

(b) A violent offense;

(c) A crime against a person under RCW 9.94A.411; or

(d) A felony violation of chapter 69.50 or 69.52 RCW, or an attempt, conspiracy, or solicitation to commit such a crime.

(2) If an offender is sentenced to a first-time offender waiver, the court may impose community custody as provided in RCW 9.94A.650.

NEW SECTION. **Sec. 10.** A new section is added to chapter 9.94A RCW to read as follows:

When a court sentences a person to a term of community custody, the court shall impose conditions of community custody as provided in this section.

(1) **Mandatory conditions.** As part of any term of community custody, the court shall:

(a) Require the offender to inform the department of court-ordered treatment upon request by the department;

(b) Require the offender to comply with any conditions imposed by the department under section 11 of this act;

(c) If the offender was sentenced under RCW 9.94A.712 for an offense listed in RCW 9.94A.712(1)(a), and the victim of the offense was under eighteen years of age at the time of the offense, prohibit the offender from residing in a community protection zone.

(2) **Waivable conditions.** Unless waived by the court, as part of any term of community custody, the court shall order an offender to:

(a) Report to and be available for contact with the assigned community corrections officer as directed;

(b) Work at department-approved education, employment, or community restitution, or any combination thereof;

(c) Refrain from possessing or consuming controlled substances except pursuant to lawfully issued prescriptions;

(d) Pay supervision fees as determined by the department; and

(e) Obtain prior approval of the department for the offender's residence location and living arrangements.

(3) **Discretionary conditions.** As part of any term of community custody, the court may order an offender to:

(a) Remain within, or outside of, a specified geographical boundary;

(b) Refrain from direct or indirect contact with the victim of the crime or a specified class of individuals;

(c) Participate in crime-related treatment or counseling services;

(d) Participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community;

(e) Refrain from consuming alcohol; or

(f) Comply with any crime-related prohibitions.

(4) **Special conditions.**

(a) In sentencing an offender convicted of a crime of domestic violence, as defined in RCW 10.99.020, if the offender has a minor child, or if the victim of the offense for which the offender was convicted has a minor child, the court may order the offender to participate in a domestic violence perpetrator program approved under RCW 26.50.150.

(b)(i) In sentencing an offender convicted of an alcohol or drug related traffic offense, the court shall require the offender to complete a diagnostic evaluation by an alcohol or drug dependency agency approved by the department of social and health services or a qualified probation department, defined under RCW 46.61.516, that has been approved by the department of social and health services. If the offense was pursuant to chapter 46.61 RCW, the report shall be forwarded to the department of licensing. If the offender is found to have an alcohol or drug problem that requires treatment, the offender shall complete treatment in a program approved by the department of social and health services under chapter 70.96A RCW. If the offender is found not to have an alcohol or drug problem that requires treatment, the offender shall complete a course in an information school approved by the department of social and health services under chapter 70.96A RCW. The offender shall pay all costs for any evaluation, education, or treatment required by this section, unless the offender is eligible for an existing program offered or approved by the department of social and health services.

(ii) For purposes of this section, "alcohol or drug related traffic offense" means the following: Driving while under the influence as defined by RCW 46.61.502, actual physical control while under the influence as defined by RCW 46.61.504, vehicular homicide as defined by RCW 46.61.520(1)(a), vehicular assault as defined by RCW 46.61.522(1)(b), homicide by watercraft as defined by RCW 79A.60.050, or assault by watercraft as defined by RCW 79A.60.060.

(iii) This subsection (4)(b) does not require the department of social and health services to add new treatment or assessment facilities nor affect its use of existing programs and facilities authorized by law.

NEW SECTION. **Sec. 11.** A new section is added to chapter 9.94A RCW to read as follows:

(1) Every person who is sentenced to a period of community custody shall report to and be placed under the supervision of the department, subject to RCW 9.94A.501.

(2)(a) The department shall assess the offender's risk of reoffense and may establish and modify additional conditions of community custody based upon the risk to community safety.

(b) Within the funds available for community custody, the department shall determine conditions and duration of community custody on the basis of risk to community safety, and shall supervise offenders during community custody on the basis of risk to community safety and conditions imposed by the court. The secretary shall adopt rules to implement the provisions of this subsection (2)(b).

(3) If the offender is supervised by the department, the department shall at a minimum instruct the offender to:

(a) Report as directed to a community corrections officer;

(b) Remain within prescribed geographical boundaries;

(c) Notify the community corrections officer of any change in the offender's address or employment;

(d) Pay the supervision fee assessment; and

(e) Disclose the fact of supervision to any mental health or chemical dependency treatment provider, as required by RCW 9.94A.722.

(4) The department may require the offender to participate in rehabilitative programs, or otherwise perform affirmative conduct, and to obey all laws.

(5) If the offender was sentenced pursuant to a conviction for a sex offense, the department may impose electronic monitoring. Within the resources made available by the department for this purpose, the department shall carry out any electronic monitoring using the most appropriate technology given the individual circumstances of the offender. As used in this section, "electronic monitoring" means the monitoring of an offender using an electronic offender tracking system including, but not limited to, a system using radio frequency or active or passive global positioning system technology.

(6) The department may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court imposed conditions.

(7)(a) The department shall notify the offender in writing of any additional conditions or modifications.

(b) By the close of the next business day after receiving notice of a condition imposed or modified by the department, an offender may request an administrative review under rules adopted by the department. The condition shall remain in effect unless the reviewing officer finds that it is not reasonably related to the crime of conviction, the offender's risk of reoffending, or the safety of the community.

(8) The department may require offenders to pay for special services rendered including electronic monitoring, day reporting, and telephone reporting, dependent on the offender's ability to pay. The department may pay for these services for offenders who are not able to pay.

(9)(a) When a sex offender has been sentenced pursuant to RCW 9.94A.712, the board shall exercise the authority prescribed in RCW 9.95.420 through 9.95.435.

(b) The department shall assess the offender's risk of recidivism and shall recommend to the board any additional or modified conditions based upon the risk to community safety. The board must consider and may impose department-recommended conditions.

(c) If the department finds that an emergency exists requiring the immediate imposition of additional conditions in order to prevent the offender from committing a crime, the department may impose such conditions. The department may not impose conditions that are contrary to those set by the board or the court and may not contravene or decrease court-imposed or board-imposed conditions. Conditions imposed under this subsection shall take effect immediately after notice to the offender by personal service, but shall not remain in effect longer than seven working days unless approved by the board.

(10) In setting, modifying, and enforcing conditions of community custody, the department shall be deemed to be performing a quasi-judicial function.

NEW SECTION. **Sec. 12.** A new section is added to chapter 9.94A RCW to read as follows:

No offender sentenced to a term of community custody under the supervision of the department may own, use, or possess firearms or ammunition. Offenders who own, use, or are found to be in actual or constructive possession of firearms or ammunition shall be subject to the violation process and sanctions under sections 16 and 22 of this act and RCW 9.94A.737.

"Constructive possession" as used in this section means the power and intent to control the firearm or ammunition. "Firearm" as used in this section has the same definition as in RCW 9.41.010.

NEW SECTION. **Sec. 13.** A new section is added to chapter 9.94A RCW to read as follows:

(1) Community custody shall begin: (a) Upon completion of the term of confinement; (b) at such time as the offender is transferred to community custody in lieu of earned release in accordance with RCW 9.94A.728 (1) or (2); or (c) at the time of sentencing if no term of confinement is ordered.

(2) When an offender is sentenced to community custody, the offender is subject to the conditions of community custody as of the date of sentencing, unless otherwise ordered by the court.

(3) When an offender is sentenced to a community custody range pursuant to section 8 (1) or (2) of this act, the department shall discharge the offender from community custody on a date determined by the department, which the department may modify, based on risk and performance of the offender, within the range or at the end of the period of earned release, whichever is later.

NEW SECTION. **Sec. 14.** A new section is added to chapter 9.94A RCW to read as follows:

(1) When an offender is under community custody, the community corrections officer may obtain information from the offender's mental health treatment provider on the offender's status with respect to evaluation, application for services, registration for services, and compliance with the supervision plan, without the offender's consent, as described under RCW 71.05.630.

(2) An offender under community custody who is civilly detained under chapter 71.05 RCW, and subsequently discharged or conditionally released to the community, shall be under the supervision of the department for the duration of his or her period of community custody. During any period of inpatient mental health treatment that falls within the period of community custody, the inpatient treatment provider and the supervising community corrections officer shall notify each other about the offender's discharge, release, and legal status, and shall share other relevant information.

NEW SECTION. **Sec. 15.** A new section is added to chapter 9.94A RCW to read as follows:

(1) At any time prior to the completion or termination of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions of community custody for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody.

(2) If a violation of a condition extended under this section occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.631 and may be punishable as contempt of court as provided for in RCW 7.21.040.

(3) If the court extends a condition beyond the expiration of the term of community custody, the department is not responsible for supervision of the offender's compliance with the condition.

NEW SECTION. **Sec. 16.** A new section is added to chapter 9.94A RCW to read as follows:

(1)(a) An offender who violates any condition or requirement of a sentence may be sanctioned with up to sixty days' confinement for each violation.

(b) In lieu of confinement, an offender may be sanctioned with work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, or any other sanctions available in the community.

(2) If an offender was under community custody pursuant to one of the following statutes, the offender may be sanctioned as follows:

(a) If the offender was transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.728(2), the offender may be transferred to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation.

(b) If the offender was sentenced under the drug offender sentencing alternative set out in RCW 9.94A.660, the offender may be sanctioned in accordance with that section.

(c) If the offender was sentenced under the special sexual offender sentencing alternative set out in RCW 9.94A.670, the suspended sentence may be revoked and the offender committed to serve the original sentence of confinement.

(d) If the offender was sentenced to a work ethic camp pursuant to RCW 9.94A.690, the offender may be reclassified to serve the unexpired term of his or her sentence in total confinement.

(e) If a sex offender was sentenced pursuant to RCW 9.94A.712, the offender may be transferred to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation.

NEW SECTION. **Sec. 17.** A new section is added to chapter 9.94A RCW to read as follows:

(1) If an offender has not completed his or her maximum term of total confinement and is subject to a third violation hearing pursuant to RCW 9.94A.737 for any violation of community custody and is found to have committed the violation, the department shall return the offender to total confinement in a state correctional facility to serve up to the remaining portion of his or her sentence, unless it is determined that returning the offender to a state correctional facility would substantially interfere with the offender's ability to maintain necessary community supports or to participate in necessary treatment or programming and would substantially increase the offender's likelihood of reoffending.

(2) The department may work with the Washington association of sheriffs and police chiefs to establish and operate an electronic monitoring program for low-risk offenders who violate the terms of their community custody.

(3) Local governments, their subdivisions and employees, the department and its employees, and the Washington association of sheriffs and police chiefs and its employees are immune from civil liability for damages arising from incidents involving low-risk offenders who are placed on electronic monitoring unless it is shown that an employee acted with gross negligence or bad faith.

NEW SECTION. **Sec. 18.** A new section is added to chapter 9.94A RCW to read as follows:

(1) If a sanction of confinement is imposed by the court, the following applies:

(a) If the sanction was imposed pursuant to section 16(1) of this act, the sanction shall be served in a county facility.

(b) If the sanction was imposed pursuant to section 16(2) of this act, the sanction shall be served in a state facility.

(2) If a sanction of confinement is imposed by the department, and if the offender is an inmate as defined by RCW 72.09.015, no more than eight days of the sanction, including any credit for time served, may be served in a county facility. The balance of the sanction shall be served in a state facility. In computing the eight-day period, weekends and holidays shall be excluded. The department may negotiate with local correctional authorities for an additional period of detention.

(3) If a sanction of confinement is imposed by the board, it shall be served in a state facility.

(4) Sanctions imposed pursuant to RCW 9.94A.670(3) shall be served in a county facility.

(5) As used in this section, "county facility" means a facility operated, licensed, or utilized under contract by the county, and "state facility" means a facility operated, licensed, or utilized under contract by the state.

NEW SECTION. **Sec. 19.** A new section is added to chapter 9.94A RCW to read as follows:

The procedure for imposing sanctions for violations of sentence conditions or requirements is as follows:

(1) If the offender was sentenced under the drug offender sentencing alternative, any sanctions shall be imposed by the department or the court pursuant to RCW 9.94A.660.

(2) If the offender was sentenced under the special sexual offender sentencing alternative, any sanctions shall be imposed by the department or the court pursuant to RCW 9.94A.670.

(3) If a sex offender was sentenced pursuant to RCW 9.94A.712, any sanctions shall be imposed by the board pursuant to RCW 9.95.435.

(4) In any other case, if the offender is being supervised by the department, any sanctions shall be imposed by the department pursuant to RCW 9.94A.737.

(5) If the offender is not being supervised by the department, any sanctions shall be imposed by the court pursuant to section 20 of this act.

NEW SECTION. **Sec. 20.** A new section is added to chapter 9.94A RCW to read as follows:

(1) If an offender violates any condition or requirement of a sentence, and the offender is not being supervised by the department, the court may modify its order of judgment and sentence and impose further punishment in accordance with this section.

(2) If an offender fails to comply with any of the conditions or requirements of a sentence the following provisions apply:

(a) The court, upon the motion of the state, or upon its own motion, shall require the offender to show cause why the offender should not be punished for the noncompliance. The court may issue a summons or a warrant of arrest for the offender's appearance;

(b) The state has the burden of showing noncompliance by a preponderance of the evidence;

(c) If the court finds that a violation has been proved, it may impose the sanctions specified in section 16(1) of this act. Alternatively, the court may:

(i) Convert a term of partial confinement to total confinement;

(ii) Convert community restitution obligation to total or partial confinement; or

(iii) Convert monetary obligations, except restitution and the crime victim penalty assessment, to community restitution hours at the rate of the state minimum wage as established in RCW 49.46.020 for each hour of community restitution;

(d) If the court finds that the violation was not willful, the court may modify its previous order regarding payment of legal financial obligations and regarding community restitution obligations; and

(e) If the violation involves a failure to undergo or comply with a mental health status evaluation and/or outpatient mental health treatment, the court shall seek a recommendation from the treatment provider or proposed treatment provider. Enforcement of orders concerning outpatient mental health treatment must reflect the availability of treatment and must pursue the least restrictive means of promoting participation in treatment. If the offender's failure to receive care essential for health and safety presents a risk of serious physical harm or probable harmful consequences, the civil detention and commitment procedures of chapter 71.05 RCW shall be considered in preference to incarceration in a local or state correctional facility.

(3) Any time served in confinement awaiting a hearing on noncompliance shall be credited against any confinement ordered by the court.

(4) Nothing in this section prohibits the filing of escape charges if appropriate.

Sec. 21. RCW 9.94A.737 and 2007 c 483 s 305 are each amended to read as follows:

(1) ((~~If an offender violates any condition or requirement of community custody, the department may transfer the offender to a more restrictive confinement status to serve up to the~~

~~remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation and subject to the limitations of subsection (3) of this section.~~

~~(2) If an offender has not completed his or her maximum term of total confinement and is subject to a third violation hearing for any violation of community custody and is found to have committed the violation, the department shall return the offender to total confinement in a state correctional facility to serve up to the remaining portion of his or her sentence, unless it is determined that returning the offender to a state correctional facility would substantially interfere with the offender's ability to maintain necessary community supports or to participate in necessary treatment or programming and would substantially increase the offender's likelihood of reoffending.~~

~~(3)(a) For a sex offender sentenced to a term of community custody under RCW 9.94A.670 who violates any condition of community custody, the department may impose a sanction of up to sixty days' confinement in a local correctional facility for each violation. If the department imposes a sanction, the department shall submit within seventy-two hours a report to the court and the prosecuting attorney outlining the violation or violations and the sanctions imposed.~~

~~(b) For a sex offender sentenced to a term of community custody under RCW 9.94A.710 who violates any condition of community custody after having completed his or her maximum term of total confinement, including time served on community custody in lieu of earned release, the department may impose a sanction of up to sixty days in a local correctional facility for each violation.~~

~~(c) For an offender sentenced to a term of community custody under RCW 9.94A.505(2)(b), 9.94A.650, or 9.94A.715, or under RCW 9.94A.545, for a crime committed on or after July 1, 2000, who violates any condition of community custody after having completed his or her maximum term of total confinement, including time served on community custody in lieu of earned release, the department may impose a sanction of up to sixty days in total confinement for each violation. The department may impose sanctions such as work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, or any other sanctions available in the community.~~

~~(d) For an offender sentenced to a term of community placement under RCW 9.94A.705 who violates any condition of community placement after having completed his or her maximum term of total confinement, including time served on community custody in lieu of earned release, the department may impose a sanction of up to sixty days in total confinement for each violation. The department may impose sanctions such as work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, or any other sanctions available in the community.~~

~~(4) If an offender has been arrested for a new felony offense while under community supervision, community custody, or community placement, the department shall hold the offender in total confinement until a hearing before the department as provided in this section or until the offender has been formally charged for the new felony offense, whichever is earlier. Nothing in this subsection shall be construed as to permit the department to hold an offender past his or her maximum term of total confinement if the offender has not completed the maximum term of total confinement or to permit the department to hold an offender past the offender's term of community supervision, community custody, or community placement.~~

~~(5) The department shall be financially responsible for any portion of the sanctions authorized by this section that are served in a local correctional facility as the result of action by the department.~~

~~(6)~~)) If an offender is accused of violating any condition or requirement of community custody, he or she is entitled to a hearing before the department prior to the imposition of sanctions. The hearing shall be considered as offender disciplinary proceedings and shall not be subject to chapter 34.05 RCW. The department shall develop hearing procedures and a structure of graduated sanctions.

(((~~(7)~~))) (2) The hearing procedures required under subsection (((~~(6)~~))) (1) of this section shall be developed by rule and include the following:

(a) Hearing officers shall report through a chain of command separate from that of community corrections officers;

(b) The department shall provide the offender with written notice of the violation, the evidence relied upon, and the reasons the particular sanction was imposed. The notice shall include a statement of the rights specified in this subsection, and the offender's right to file a personal restraint petition under court rules after the final decision of the department;

(c) The hearing shall be held unless waived by the offender, and shall be electronically recorded. For offenders not in total confinement, the hearing shall be held within fifteen working days, but not less than twenty-four hours, after notice of the violation. For offenders in total confinement, the hearing shall be held within five working days, but not less than twenty-four hours, after notice of the violation;

(d) The offender shall have the right to: (i) Be present at the hearing; (ii) have the assistance of a person qualified to assist the offender in the hearing, appointed by the hearing officer if the offender has a language or communications barrier; (iii) testify or remain silent; (iv) call witnesses and present documentary evidence; and (v) question witnesses who appear and testify; and

(e) The sanction shall take effect if affirmed by the hearing officer. Within seven days after the hearing officer's decision, the offender may appeal the decision to a panel of three reviewing officers designated by the secretary or by the secretary's designee. The sanction shall be reversed or modified if a majority of the panel finds that the sanction was not reasonably related to any of the following: (i) The crime of conviction; (ii) the violation committed; (iii) the offender's risk of reoffending; or (iv) the safety of the community.

(((~~(8)~~))) (3) For purposes of this section, no finding of a violation of conditions may be based on unconfirmed or unconfirmable allegations.

~~(((9) The department shall work with the Washington association of sheriffs and police chiefs to establish and operate an electronic monitoring program for low-risk offenders who violate the terms of their community custody. Between January 1, 2006, and December 31, 2006, the department shall endeavor to place at least one hundred low-risk community custody violators on the electronic monitoring program per day if there are at least that many low-risk offenders who qualify for the electronic monitoring program.~~

~~(10) Local governments, their subdivisions and employees, the department and its employees, and the Washington association of sheriffs and police chiefs and its employees shall be immune from civil liability for damages arising from incidents involving low-risk offenders who are placed on electronic monitoring unless it is shown that an employee acted with gross negligence or bad faith.~~))

NEW SECTION. **Sec. 22.** (1) The secretary may issue warrants for the arrest of any offender who violates a condition of community custody. The arrest warrants shall authorize any law enforcement or peace officer or community corrections officer of this state or any other state where such offender may be located, to arrest the offender and place him or her in total confinement pending disposition of the alleged violation.

(2) A community corrections officer, if he or she has reasonable cause to believe an offender has violated a condition of community custody, may suspend the person's community custody status and arrest or cause the arrest and detention in total confinement of the offender, pending the determination of the secretary as to whether the violation has occurred. The community corrections officer shall report to the secretary all facts and circumstances and the reasons for the action of suspending community custody status.

(3) If an offender has been arrested for a new felony offense while under community custody the department shall hold the

offender in total confinement until a hearing before the department as provided in this section or until the offender has been formally charged for the new felony offense, whichever is earlier. Nothing in this subsection shall be construed as to permit the department to hold an offender past his or her maximum term of total confinement if the offender has not completed the maximum term of total confinement or to permit the department to hold an offender past the offender's term of community custody.

(4) A violation of a condition of community custody shall be deemed a violation of the sentence for purposes of RCW 9.94A.631. The authority granted to community corrections officers under this section shall be in addition to that set forth in RCW 9.94A.631.

Sec. 23. RCW 9.94A.740 and 1999 c 196 s 9 are each amended to read as follows:

(1) ((~~The secretary may issue warrants for the arrest of any offender who violates a condition of community placement or community custody. The arrest warrants shall authorize any law enforcement or peace officer or community corrections officer of this state or any other state where such offender may be located, to arrest the offender and place him or her in total confinement pending disposition of the alleged violation.~~)) When an offender is arrested pursuant to section 22 of this act, the department shall compensate the local jurisdiction at the office of financial management's adjudicated rate, in accordance with RCW 70.48.440. ((~~A community corrections officer, if he or she has reasonable cause to believe an offender in community placement or community custody has violated a condition of community placement or community custody, may suspend the person's community placement or community custody status and arrest or cause the arrest and detention in total confinement of the offender, pending the determination of the secretary as to whether the violation has occurred. The community corrections officer shall report to the secretary all facts and circumstances and the reasons for the action of suspending community placement or community custody status. A violation of a condition of community placement or community custody shall be deemed a violation of the sentence for purposes of RCW 9.94A.631. The authority granted to community corrections officers under this section shall be in addition to that set forth in RCW 9.94A.631.~~))

(2) Inmates, as defined in RCW 72.09.015, who have been transferred to community custody and who are detained in a local correctional facility are the financial responsibility of the department of corrections, except as provided in subsection (3) of this section. ((~~The community custody inmate shall be removed from the local correctional facility, except as provided in subsection (3) of this section, not later than eight days, excluding weekends and holidays, following admittance to the local correctional facility and notification that the inmate is available for movement to a state correctional institution.~~))

(3) ((~~The department may negotiate with local correctional authorities for an additional period of detention; however, sex offenders sanctioned for community custody violations under RCW 9.94A.737(2) to a term of confinement shall remain in the local correctional facility for the complete term of the sanction.~~)) For confinement sanctions imposed by the department under RCW ((~~9.94A.737(2)(a)~~)) 9.94A.670, the local correctional facility shall be financially responsible. ((~~For confinement sanctions imposed under RCW 9.94A.737(2)(b), the department of corrections shall be financially responsible for that portion of the sanction served during the time in which the sex offender is on community custody in lieu of earned release, and the local correctional facility shall be financially responsible for that portion of the sanction served by the sex offender after the time in which the sex offender is on community custody in lieu of earned release.~~))

(4) The department, in consultation with the Washington association of sheriffs and police chiefs and those counties in which the sheriff does not operate a correctional facility, shall establish a methodology for determining the department's local correctional facilities bed utilization rate, for each county in calendar year 1998, for offenders being held for violations of conditions of community custody((~~, community placement, or community supervision~~)). ((~~For confinement sanctions imposed under RCW 9.94A.737(2) (c) or (d)~~))

(5) Except as provided in subsections (1) and (2) of this section, the local correctional facility shall continue to be financially responsible to the extent of the calendar year 1998 bed utilization rate for confinement sanctions imposed by the department pursuant to RCW 9.94A.737. If the department's use of bed space in local correctional facilities of any county for such confinement sanctions ((~~imposed on offenders sentenced to a term of community custody under RCW 9.94A.737(2) (c) or (d)~~)) exceeds the 1998 bed utilization rate for the county, the department shall compensate the county for the excess use at the per diem rate equal to the lowest rate charged by the county under its contract with a municipal government during the year in which the use occurs.

Sec. 24. RCW 9.94A.030 and 2006 c 139 s 5, 2006 c 124 s 1, 2006 c 122 s 7, 2006 c 73 s 5, and 2005 c 436 s 1 are each reenacted and amended to read as follows:

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

(1) "Board" means the indeterminate sentence review board created under chapter 9.95 RCW.

(2) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department, means that the department, either directly or through a collection agreement authorized by RCW 9.94A.760, is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(3) "Commission" means the sentencing guidelines commission.

(4) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(5) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed ((~~pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670, 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545,~~)) as part of a sentence and served in the community subject to controls placed on the offender's movement and activities by the department. ((~~For offenders placed on community custody for crimes committed on or after July 1, 2000, the department shall assess the offender's risk of reoffense and may establish and modify conditions of community custody, in addition to those imposed by the court, based upon the risk to community safety.~~))

(6) "Community custody range" means the minimum and maximum period of community custody included as part of a sentence under RCW 9.94A.715, as established by the commission or the legislature under RCW 9.94A.850 ((~~for crimes committed on or after July 1, 2000~~)).

(7) ((~~"Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.~~

~~(8)~~)) "Community protection zone" means the area within eight hundred eighty feet of the facilities and grounds of a public or private school.

(((~~(9)~~))) (8) "Community restitution" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(((~~(10) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed by a court pursuant to this chapter or RCW 16.52.200(6) or 46.61.524. Where the court finds that any offender has a chemical dependency that has contributed to his or her offense, the conditions of supervision may, subject to available resources,~~

~~include treatment. For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.~~

~~((11))~~ (9) "Confinement" means total or partial confinement.

~~((12))~~ (10) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

~~((13))~~ (11) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

~~((14))~~ (12) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere.

(a) The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) A conviction may be removed from a defendant's criminal history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or a similar out-of-state statute, or if the conviction has been vacated pursuant to a governor's pardon.

(c) The determination of a defendant's criminal history is distinct from the determination of an offender score. A prior conviction that was not included in an offender score calculated pursuant to a former version of the sentencing reform act remains part of the defendant's criminal history.

~~((15))~~ (13) "Day fine" means a fine imposed by the sentencing court that equals the difference between the offender's net daily income and the reasonable obligations that the offender has for the support of the offender and any dependents.

~~((16))~~ (14) "Day reporting" means a program of enhanced supervision designed to monitor the offender's daily activities and compliance with sentence conditions, and in which the offender is required to report daily to a specific location designated by the department or the sentencing court.

~~((17))~~ (15) "Department" means the department of corrections.

~~((18))~~ (16) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community ~~(supervision)~~ custody, the number of actual hours or days of community restitution work, or dollars or terms of a legal financial obligation. The fact that an offender through earned release can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

~~((19))~~ (17) "Disposable earnings" means that part of the earnings of an offender remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

~~((20))~~ (18) "Drug offender sentencing alternative" is a sentencing option available to persons convicted of a felony offense other than a violent offense or a sex offense and who are eligible for the option under RCW 9.94A.660.

~~((21))~~ (19) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.4013) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

~~((22))~~ (20) "Earned release" means earned release from confinement as provided in RCW 9.94A.728.

~~((23))~~ (21) "Escape" means:

(a) Sexually violent predator escape (RCW 9A.76.115), escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

~~((24))~~ (22) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-run injury-accident (RCW 46.52.020(4)), felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

~~((25))~~ (23) "Fine" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specific period of time.

~~((26))~~ (24) "First-time offender" means any person who has no prior convictions for a felony and is eligible for the first-time offender waiver under RCW 9.94A.650.

~~((27))~~ (25) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance.

~~((28))~~ (26) "Legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction. Upon conviction for vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to RCW 38.52.430.

~~((29))~~ (27) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

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

(b) Assault in the second degree;

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

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

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

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Robbery in the second degree;

(p) Sexual exploitation;

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

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

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

(t) Any other felony with a deadly weapon verdict under RCW 9.94A.602;

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

(v)(i) A prior conviction for indecent liberties under RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997.

(((~~(30)~~))) (28) "Nonviolent offense" means an offense which is not a violent offense.

(((~~(31)~~))) (29) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(((~~(32)~~))) (30) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, and a combination of work crew and home detention.

(((~~(33)~~))) (31) "Persistent offender" is an offender who:

(a)(i) Has been convicted in this state of any felony considered a most serious offense; and

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.525; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or (C) an attempt to commit any crime listed in this subsection (((~~(33)~~))) (31)(b)(i); and

(ii) Has, before the commission of the offense under (b)(i) of this subsection, been convicted as an offender on at least one occasion, whether in this state or elsewhere, of an offense listed in (b)(i) of this subsection or any federal or out-of-state offense or offense under prior Washington law that is comparable to the offenses listed in (b)(i) of this subsection. A conviction for rape of a child in the first degree constitutes a conviction under (b)(i) of this subsection only when the offender was sixteen years of age or older when the offender committed the offense. A conviction for rape of a child in the second degree constitutes a conviction under (b)(i) of this subsection only when the offender was eighteen years of age or older when the offender committed the offense.

(((~~(34) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.~~

~~(35)~~))) (32) "Predatory" means: (a) The perpetrator of the crime was a stranger to the victim, as defined in this section; (b) the perpetrator established or promoted a relationship with the victim prior to the offense and the victimization of the victim was a significant reason the perpetrator established or promoted the relationship; or (c) the perpetrator was: (i) A teacher, counselor, volunteer, or other person in authority in any public or private school and the victim was a student of the school under his or her authority or supervision. For purposes of this subsection, "school" does not include home-based instruction as defined in RCW 28A.225.010; (ii) a coach, trainer, volunteer, or other person in authority in any recreational activity and the victim was a participant in the activity under his or her authority or supervision; or (iii) a pastor, elder, volunteer, or other person in authority in any church or religious organization, and the victim was a member or participant of the organization under his or her authority.

(((~~(36)~~))) (33) "Private school" means a school regulated under chapter 28A.195 or 28A.205 RCW.

(((~~(37)~~))) (34) "Public school" has the same meaning as in RCW 28A.150.010.

(((~~(38)~~))) (35) "Restitution" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specified period of time as payment of damages. The sum may include both public and private costs.

(((~~(39)~~))) (36) "Risk assessment" means the application of an objective instrument supported by research and adopted by the department for the purpose of assessing an offender's risk of reoffense, taking into consideration the nature of the harm done by the offender, place and circumstances of the offender related to risk, the offender's relationship to any victim, and any information provided to the department by victims. The results of a risk assessment shall not be based on unconfirmed or unconfirmable allegations.

(((~~(40)~~))) (37) "Serious traffic offense" means:

(a) Nonfelony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), nonfelony actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

(((~~(41)~~))) (38) "Serious violent offense" is a subcategory of violent offense and means:

(a)(i) Murder in the first degree;

(ii) Homicide by abuse;

(iii) Murder in the second degree;

(iv) Manslaughter in the first degree;

(v) Assault in the first degree;

(vi) Kidnapping in the first degree;

(vii) Rape in the first degree;

(viii) Assault of a child in the first degree; or

(ix) An attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.

(((~~(42)~~))) (39) "Sex offense" means:

(a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.130(((~~(11)~~))) (12);

(ii) A violation of RCW 9A.64.020;

(iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.080; or

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

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a sex offense in (a) of this subsection;

(c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or

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

(((~~(43)~~))) (40) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

(((~~(44)~~))) (41) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(((~~(45)~~))) (42) "Statutory maximum sentence" means the maximum length of time for which an offender may be confined as punishment for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the crime, or other statute defining the maximum penalty for a crime.

(((~~(46)~~))) (43) "Stranger" means that the victim did not know the offender twenty-four hours before the offense.

(((~~(47)~~))) (44) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

(((~~(48)~~))) (45) "Transition training" means written and verbal instructions and assistance provided by the department to the offender during the two weeks prior to the offender's successful completion of the work ethic camp program. The transition training shall include instructions in the offender's requirements and obligations during the offender's period of community custody.

(((~~(49)~~))) (46) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

(((~~(50)~~))) (47) "Violent offense" means:

(a) Any of the following felonies:

(i) Any felony defined under any law as a class A felony or an attempt to commit a class A felony;

(ii) Criminal solicitation of or criminal conspiracy to commit a class A felony;

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;

(v) Indecent liberties if committed by forcible compulsion;

(vi) Kidnapping in the second degree;

(vii) Arson in the second degree;

(viii) Assault in the second degree;

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

(x) Extortion in the first degree;

(xi) Robbery in the second degree;

(xii) Drive-by shooting;

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

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

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

(((~~(51)~~))) (48) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.725.

(((~~(52)~~))) (49) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.690 designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

(((~~(53)~~))) (50) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school.

Sec. 25. RCW 9.94A.501 and 2005 c 362 s 1 are each amended to read as follows:

(1) When the department performs a risk assessment pursuant to RCW 9.94A.500, or to determine a person's conditions of supervision, the risk assessment shall classify the offender or a probationer sentenced in superior court into one of at least four risk categories.

(2) The department shall supervise every offender sentenced to a term of community custody((~~, community placement, or community supervision~~)) and every misdemeanor and gross misdemeanor probationer ordered by a superior court to probation under the supervision of the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210:

(a) Whose risk assessment places that offender or probationer in one of the two highest risk categories; or

(b) Regardless of the offender's or probationer's risk category if:

(i) The offender's or probationer's current conviction is for:

(A) A sex offense;

(B) A violent offense;

(C) A crime against persons as defined in RCW 9.94A.411;

(D) A felony that is domestic violence as defined in RCW 10.99.020;

(E) A violation of RCW 9A.52.025 (residential burglary);

(F) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(G) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

(ii) The offender or probationer has a prior conviction for:

(A) A sex offense;

(B) A violent offense;

(C) A crime against persons as defined in RCW 9.94A.411;

(D) A felony that is domestic violence as defined in RCW 10.99.020;

(E) A violation of RCW 9A.52.025 (residential burglary);

(F) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(G) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

(iii) The conditions of the offender's community custody((~~, community placement, or community supervision~~)) or the probationer's supervision include chemical dependency treatment;

(iv) The offender was sentenced under RCW 9.94A.650 or 9.94A.670; or

(v) The offender is subject to supervision pursuant to RCW 9.94A.745.

(3) The department is not authorized to, and may not, supervise any offender sentenced to a term of community custody((~~, community placement, or community supervision~~)) or any probationer unless the offender or probationer is one for

whom supervision is required under subsection (2) of this section.

(4) This section expires July 1, 2010.

Sec. 26. RCW 9.94A.505 and 2006 c 73 s 6 are each amended to read as follows:

(1) When a person is convicted of a felony, the court shall impose punishment as provided in this chapter.

(2)(a) The court shall impose a sentence as provided in the following sections and as applicable in the case:

(i) Unless another term of confinement applies, ((~~the court shall impose~~)) a sentence within the standard sentence range established in RCW 9.94A.510 or 9.94A.517;

(ii) ((~~RCW 9.94A.700 and 9.94A.705, relating to community placement~~)) Sections 8 and 9 of this act, relating to community custody;

(iii) ((~~RCW 9.94A.710 and 9.94A.715, relating to community custody;~~

~~(iv) RCW 9.94A.545, relating to community custody for offenders whose term of confinement is one year or less;~~

~~(v)~~)) RCW 9.94A.570, relating to persistent offenders;

(((~~vi~~))) (iv) RCW 9.94A.540, relating to mandatory minimum terms;

(((~~vii~~))) (v) RCW 9.94A.650, relating to the first-time offender waiver;

(((~~viii~~))) (vi) RCW 9.94A.660, relating to the drug offender sentencing alternative;

(((~~ix~~))) (vii) RCW 9.94A.670, relating to the special sex offender sentencing alternative;

(((~~x~~))) (viii) RCW 9.94A.712, relating to certain sex offenses;

(((~~xi~~))) (ix) RCW 9.94A.535, relating to exceptional sentences;

(((~~xii~~))) (x) RCW 9.94A.589, relating to consecutive and concurrent sentences;

(((~~xiii~~))) (xi) RCW 9.94A.603, relating to felony driving while under the influence of intoxicating liquor or any drug and felony physical control of a vehicle while under the influence of intoxicating liquor or any drug.

(b) If a standard sentence range has not been established for the offender's crime, the court shall impose a determinate sentence which may include not more than one year of confinement; community restitution work; ((~~until July 1, 2000,~~)) a term of community ((~~supervision~~)) custody not to exceed one year ((~~and on and after July 1, 2000, a term of community custody not to exceed one year, subject to conditions and sanctions as authorized in RCW 9.94A.710 (2) and (3)~~)); and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement if the court finds reasons justifying an exceptional sentence as provided in RCW 9.94A.535.

(3) If the court imposes a sentence requiring confinement of thirty days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than thirty days of confinement shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.

(4) If a sentence imposed includes payment of a legal financial obligation, it shall be imposed as provided in RCW 9.94A.750, 9.94A.753, 9.94A.760, and 43.43.7541.

(5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a court may not impose a sentence providing for a term of confinement or ((~~community supervision, community placement, or~~)) community custody ((~~which~~)) that exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

(6) The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.

(7) The court shall order restitution as provided in RCW 9.94A.750 and 9.94A.753.

(8) As a part of any sentence, the court may impose and enforce crime-related prohibitions and affirmative conditions as provided in this chapter.

(9) ((~~The court may order an offender whose sentence includes community placement or community supervision to undergo a mental status evaluation and to participate in available outpatient mental health treatment, if the court finds that reasonable grounds exist to believe that the offender is a mentally ill person as defined in RCW 71.24.025, and that this condition is likely to have influenced the offense. An order requiring mental status evaluation or treatment must be based on a presentence report and, if applicable, mental status evaluations that have been filed with the court to determine the offender's competency or eligibility for a defense of insanity. The court may order additional evaluations at a later date if deemed appropriate.~~

~~(10)~~)) In any sentence of partial confinement, the court may require the offender to serve the partial confinement in work release, in a program of home detention, on work crew, or in a combined program of work crew and home detention.

(((~~(11) In sentencing an offender convicted of a crime of domestic violence, as defined in RCW 10.99.020, if the offender has a minor child, or if the victim of the offense for which the offender was convicted has a minor child, the court may, as part of any term of community supervision, community placement, or community custody, order the offender to participate in a domestic violence perpetrator program approved under RCW 26.50.150.~~))

Sec. 27. RCW 9.94A.610 and 2003 c 53 s 61 are each amended to read as follows:

(1) At the earliest possible date, and in no event later than ten days before release except in the event of escape or emergency furloughs as defined in RCW 72.66.010, the department of corrections shall send written notice of parole, community ((~~placement~~)) custody, work release placement, furlough, or escape about a specific inmate convicted of a serious drug offense to the following if such notice has been requested in writing about a specific inmate convicted of a serious drug offense:

(a) Any witnesses who testified against the inmate in any court proceedings involving the serious drug offense; and

(b) Any person specified in writing by the prosecuting attorney.

Information regarding witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the inmate.

(2) If an inmate convicted of a serious drug offense escapes from a correctional facility, the department of corrections shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the inmate resided immediately before the inmate's arrest and conviction. If previously requested, the department shall also notify the witnesses who are entitled to notice under this section. If the inmate is recaptured, the department shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(3) If any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(4) The department of corrections shall send the notices required by this section to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) For purposes of this section, "serious drug offense" means an offense under RCW 69.50.401(2) (a) or (b) or 69.50.4011(2) (a) or (b).

Sec. 28. RCW 9.94A.612 and 1996 c 215 s 4 are each amended to read as follows:

(1) At the earliest possible date, and in no event later than thirty days before release except in the event of escape or emergency furloughs as defined in RCW 72.66.010, the department of corrections shall send written notice of parole, release, community ((~~placement~~)) custody, work release placement, furlough, or escape about a specific inmate convicted of a violent offense, a sex offense as defined by RCW

9.94A.030, or a felony harassment offense as defined by RCW 9A.46.060 or 9A.46.110, to the following:

(a) The chief of police of the city, if any, in which the inmate will reside or in which placement will be made in a work release program; and

(b) The sheriff of the county in which the inmate will reside or in which placement will be made in a work release program.

The sheriff of the county where the offender was convicted shall be notified if the department does not know where the offender will reside. The department shall notify the state patrol of the release of all sex offenders, and that information shall be placed in the Washington crime information center for dissemination to all law enforcement.

(2) The same notice as required by subsection (1) of this section shall be sent to the following if such notice has been requested in writing about a specific inmate convicted of a violent offense, a sex offense as defined by RCW 9.94A.030, or a felony harassment offense as defined by RCW 9A.46.060 or 9A.46.110:

(a) The victim of the crime for which the inmate was convicted or the victim's next of kin if the crime was a homicide;

(b) Any witnesses who testified against the inmate in any court proceedings involving the violent offense;

(c) Any person specified in writing by the prosecuting attorney; and

(d) Any person who requests such notice about a specific inmate convicted of a sex offense as defined by RCW 9.94A.030 from the department of corrections at least sixty days prior to the expected release date of the offender.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the inmate. Whenever the department of corrections mails notice pursuant to this subsection and the notice is returned as undeliverable, the department shall attempt alternative methods of notification, including a telephone call to the person's last known telephone number.

(3) The existence of the notice requirements contained in subsections (1) and (2) of this section shall not require an extension of the release date in the event that the release plan changes after notification.

(4) If an inmate convicted of a violent offense, a sex offense as defined by RCW 9.94A.030, or a felony harassment offense as defined by RCW 9A.46.060 or 9A.46.110, escapes from a correctional facility, the department of corrections shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the inmate resided immediately before the inmate's arrest and conviction. If previously requested, the department shall also notify the witnesses and the victim of the crime for which the inmate was convicted or the victim's next of kin if the crime was a homicide. If the inmate is recaptured, the department shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(5) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(6) The department of corrections shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(7) The department of corrections shall keep, for a minimum of two years following the release of an inmate, the following:

(a) A document signed by an individual as proof that that person is registered in the victim or witness notification program; and

(b) A receipt showing that an individual registered in the victim or witness notification program was mailed a notice, at the individual's last known address, upon the release or movement of an inmate.

(8) For purposes of this section the following terms have the following meanings:

(a) "Violent offense" means a violent offense under RCW 9.94A.030;

(b) "Next of kin" means a person's spouse, parents, siblings and children.

(9) Nothing in this section shall impose any liability upon a chief of police of a city or sheriff of a county for failing to request in writing a notice as provided in subsection (1) of this section.

Sec. 29. RCW 9.94A.625 and 2000 c 226 s 5 are each amended to read as follows:

(1) A term of confinement ordered in a sentence pursuant to this chapter shall be tolled by any period of time during which the offender has absented himself or herself from confinement without the prior approval of the entity in whose custody the offender has been placed. A term of partial confinement shall be tolled during any period of time spent in total confinement pursuant to a new conviction or pursuant to sanctions for violation of sentence conditions on a separate felony conviction.

(2) Any term of community custody((~~, community placement, or community supervision~~)) shall be tolled by any period of time during which the offender has absented himself or herself from supervision without prior approval of the entity under whose supervision the offender has been placed.

(3) Any period of community custody((~~, community placement, or community supervision~~)) shall be tolled during any period of time the offender is in confinement for any reason. However, if an offender is detained pursuant to RCW 9.94A.740 or 9.94A.631 and is later found not to have violated a condition or requirement of community custody((~~, community placement, or community supervision~~)), time spent in confinement due to such detention shall not toll the period of community custody((~~, community placement, or community supervision~~)).

(4) For terms of confinement or community custody((~~, community placement, or community supervision~~)), the date for the tolling of the sentence shall be established by the entity responsible for the confinement or supervision.

Sec. 30. RCW 9.94A.650 and 2006 c 73 s 9 are each amended to read as follows:

(1) This section applies to offenders who have never been previously convicted of a felony in this state, federal court, or another state, and who have never participated in a program of deferred prosecution for a felony, and who are convicted of a felony that is not:

(a) Classified as a violent offense or a sex offense under this chapter;

(b) Manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in Schedule I or II that is a narcotic drug or flunitrazepam classified in Schedule IV;

(c) Manufacture, delivery, or possession with intent to deliver a methamphetamine, its salts, isomers, and salts of its isomers as defined in RCW 69.50.206(d)(2);

(d) The selling for profit of any controlled substance or counterfeit substance classified in Schedule I, RCW 69.50.204, except leaves and flowering tops of marihuana; or

(e) Felony driving while under the influence of intoxicating liquor or any drug or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug.

(2) In sentencing a first-time offender the court may waive the imposition of a sentence within the standard sentence range and impose a sentence which may include up to ninety days of confinement in a facility operated or utilized under contract by the county and a requirement that the offender refrain from committing new offenses. ((~~The sentence may also include a term of community supervision or community custody as specified in subsection (3) of this section, which, in addition to crime-related prohibitions, may include requirements that the offender perform any one or more of the following:~~

~~(a) Devote time to a specific employment or occupation;~~

~~(b) Undergo available outpatient treatment for up to the period specified in subsection (3) of this section, or inpatient treatment not to exceed the standard range of confinement for that offense;~~

~~(c) Pursue a prescribed, secular course of study or vocational training;~~

~~(d) Remain within prescribed geographical boundaries and notify the community corrections officer prior to any change in the offender's address or employment;~~

~~(e) Report as directed to a community corrections officer; or~~

~~(f) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030 and/or perform community restitution work.~~))

(3) ((~~The terms and statuses applicable to sentences under subsection (2) of this section are:~~

~~(a) For sentences imposed on or after July 25, 1999, for crimes committed before July 1, 2000, up to one year of community supervision. If treatment is ordered, the period of community supervision may include up to the period of treatment, but shall not exceed two years; and~~

~~(b) For crimes committed on or after July 1, 2000,~~)) The court may impose up to one year of community custody unless treatment is ordered, in which case the period of community custody may include up to the period of treatment, but shall not exceed two years. ((~~Any term of community custody imposed under this section is subject to conditions and sanctions as authorized in this section and in RCW 9.94A.715 (2) and (3).~~))

(4) ((~~The department shall discharge from community supervision any offender sentenced under this section before July 25, 1999, who has served at least one year of community supervision and has completed any treatment ordered by the court.~~)) As a condition of community custody, in addition to any conditions authorized in section 10 of this act, the court may order the offender to pay all court-ordered legal financial obligations and/or perform community restitution work.

Sec. 31. RCW 9.94A.660 and 2006 c 339 s 302 and 2006 c 73 s 10 are each reenacted and amended to read as follows:

(1) An offender is eligible for the special drug offender sentencing alternative if:

(a) The offender is convicted of a felony that is not a violent offense or sex offense and the violation does not involve a sentence enhancement under RCW 9.94A.533 (3) or (4);

(b) The offender is convicted of a felony that is not a felony driving while under the influence of intoxicating liquor or any drug under RCW 46.61.502(6) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug under RCW 46.61.504(6);

(c) The offender has no current or prior convictions for a sex offense at any time or violent offense within ten years before conviction of the current offense, in this state, another state, or the United States;

(d) For a violation of the Uniform Controlled Substances Act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW, the offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance;

(e) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence;

(f) The standard sentence range for the current offense is greater than one year; and

(g) The offender has not received a drug offender sentencing alternative more than once in the prior ten years before the current offense.

(2) A motion for a sentence under this section may be made by the court, the offender, or the state. If the sentencing court determines that the offender is eligible for this alternative, the court may order an examination of the offender. The examination shall, at a minimum, address the following issues:

(a) Whether the offender suffers from drug addiction;

(b) Whether the addiction is such that there is a probability that criminal behavior will occur in the future;

(c) Whether effective treatment for the offender's addiction is available from a provider that has been licensed or certified by the division of alcohol and substance abuse of the department of social and health services; and

(d) Whether the offender and the community will benefit from the use of the alternative.

(3) The examination report must contain:

(a) Information on the issues required to be addressed in subsection (2) of this section; and

(b) A proposed treatment plan that must, at a minimum, contain:

(i) A proposed treatment provider that has been licensed or certified by the division of alcohol and substance abuse of the department of social and health services;

(ii) The recommended frequency and length of treatment, including both residential chemical dependency treatment and treatment in the community;

(iii) A proposed monitoring plan, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others; and

(iv) Recommended crime-related prohibitions and affirmative conditions.

(4) After receipt of the examination report, if the court determines that a sentence under this section is appropriate, the court shall waive imposition of a sentence within the standard sentence range and impose a sentence consisting of either a prison-based alternative under subsection (5) of this section or a residential chemical dependency treatment-based alternative under subsection (6) of this section. The residential chemical dependency treatment-based alternative is only available if the midpoint of the standard range is twenty-four months or less.

(5) The prison-based alternative shall include:

(a) A period of total confinement in a state facility for one-half of the midpoint of the standard sentence range or twelve months, whichever is greater. During incarceration in the state facility, offenders sentenced under this subsection shall undergo a comprehensive substance abuse assessment and receive, within available resources, treatment services appropriate for the offender. The treatment services shall be designed by the division of alcohol and substance abuse of the department of social and health services, in cooperation with the department of corrections;

(b) The remainder of the midpoint of the standard range as a term of community custody which must include appropriate substance abuse treatment in a program that has been approved by the division of alcohol and substance abuse of the department of social and health services. If the department finds that conditions of community custody have been willfully violated, the offender may be reclassified to serve the remaining balance of the original sentence. An offender who fails to complete the program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court;

(c) Crime-related prohibitions including a condition not to use illegal controlled substances;

(d) A requirement to submit to urinalysis or other testing to monitor that status; and

(e) A term of community custody pursuant to ((~~RCW 9.94A.715~~)) section 8 of this act to be imposed upon failure to complete or administrative termination from the special drug offender sentencing alternative program.

(6) The residential chemical dependency treatment-based alternative shall include:

(a) A term of community custody equal to one-half of the midpoint of the standard sentence range or two years, whichever is greater, conditioned on the offender entering and remaining in residential chemical dependency treatment certified under chapter 70.96A RCW for a period set by the court between three and six months. If the court imposes a term of community custody, the department shall, within available resources, make chemical dependency assessment and treatment services available to the offender during the term of community custody. The court shall impose, as conditions of community custody, treatment and other conditions as proposed in the plan under subsection (3)(b) of this section. ((~~The department may impose conditions and sanctions as authorized in RCW 9.94A.715 (2), (3), (6), and (7), 9.94A.737, and 9.94A.740.~~)) The court shall schedule a progress hearing during the period of residential chemical dependency treatment, and schedule a treatment termination hearing for three months before the expiration of the term of community custody;

(b) Before the progress hearing and treatment termination hearing, the treatment provider and the department shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment. At the hearing, the court may:

(i) Authorize the department to terminate the offender's community custody status on the expiration date determined under (a) of this subsection; or

(ii) Continue the hearing to a date before the expiration date of community custody, with or without modifying the conditions of community custody; or

(iii) Impose a term of total confinement equal to one-half the midpoint of the standard sentence range, followed by a term of community custody under ((~~RCW 9.94A.715~~)) section 8 of this act;

(c) If the court imposes a term of total confinement under (b)(iii) of this subsection, the department shall, within available resources, make chemical dependency assessment and treatment services available to the offender during the terms of total confinement and community custody.

(7) ((~~If the court imposes a sentence under this section, the court may prohibit the offender from using alcohol or controlled substances and may require that the monitoring for controlled substances be conducted by the department or by a treatment alternatives to street crime program or a comparable court or agency-referred program.~~)) The offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring for alcohol or controlled substances. ((~~In addition,~~))

(8) The court may impose any of the following conditions:

(a) ((~~Devote time to a specific employment or training;~~

~~(b) Remain within prescribed geographical boundaries and notify the court or the community corrections officer before any change in the offender's address or employment;~~

~~(c) Report as directed to a community corrections officer;~~

~~(d)~~)) Pay all court-ordered legal financial obligations; or

(((~~e~~))) (b) Perform community restitution work((~~;~~

~~(f) Stay out of areas designated by the sentencing court;~~

~~(g) Such other conditions as the court may require such as affirmative conditions~~)).

(((~~(8)~~))) (9)(a) The court may bring any offender sentenced under this section back into court at any time on its own initiative to evaluate the offender's progress in treatment or to determine if any violations of the conditions of the sentence have occurred.

(b) If the offender is brought back to court, the court may modify the ((~~terms~~)) conditions of the community custody or impose sanctions under (c) of this subsection.

(c) The court may order the offender to serve a term of total confinement within the standard range of the offender's current offense at any time during the period of community custody if the offender violates the conditions or requirements of the sentence or if the offender is failing to make satisfactory progress in treatment.

(d) An offender ordered to serve a term of total confinement under (c) of this subsection shall receive credit for any time previously served under this section.

(((~~(9)~~))) (10) In serving a term of community custody imposed upon failure to complete, or administrative termination from, the special drug offender sentencing alternative program, the offender shall receive no credit for time served in community custody prior to termination of the offender's participation in the program.

(11) If an offender sentenced to the prison-based alternative under subsection (5) of this section is found by the United States attorney general to be subject to a deportation order, a hearing shall be held by the department unless waived by the offender, and, if the department finds that the offender is subject to a valid deportation order, the department may administratively terminate the offender from the program and reclassify the offender to serve the remaining balance of the original sentence.

(((~~(10)~~))) (12) An offender sentenced under this section shall be subject to all rules relating to earned release time with respect to any period served in total confinement.

(((~~(11)~~))) (13) Costs of examinations and preparing treatment plans under subsections (2) and (3) of this section may be paid, at the option of the county, from funds provided to the county from the criminal justice treatment account under RCW 70.96A.350.

Sec. 32. RCW 9.94A.670 and 2006 c 133 s 1 are each amended to read as follows:

(1) Unless the context clearly requires otherwise, the definitions in this subsection apply to this section only.

(a) "Sex offender treatment provider" or "treatment provider" means a certified sex offender treatment provider or a certified affiliate sex offender treatment provider as defined in RCW 18.155.020.

(b) "Substantial bodily harm" means bodily injury that involves a temporary but substantial disfigurement, or that causes a temporary but substantial loss or impairment of the function of any body part or organ, or that causes a fracture of any body part or organ.

(c) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the crime charged. "Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

(2) An offender is eligible for the special sex offender sentencing alternative if:

(a) The offender has been convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent offense. If the conviction results from a guilty plea, the offender must, as part of his or her plea of guilty, voluntarily and affirmatively admit he or she committed all of the elements of the crime to which the offender is pleading guilty. This alternative is not available to offenders who plead guilty to the offense charged under *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970) and *State v. Newton*, 87 Wash.2d 363, 552 P.2d 682 (1976);

(b) The offender has no prior convictions for a sex offense as defined in RCW 9.94A.030 or any other felony sex offenses in this or any other state;

(c) The offender has no prior adult convictions for a violent offense that was committed within five years of the date the current offense was committed;

(d) The offense did not result in substantial bodily harm to the victim;

(e) The offender had an established relationship with, or connection to, the victim such that the sole connection with the victim was not the commission of the crime; and

(f) The offender's standard sentence range for the offense includes the possibility of confinement for less than eleven years.

(3) If the court finds the offender is eligible for this alternative, the court, on its own motion or the motion of the state or the offender, may order an examination to determine whether the offender is amenable to treatment.

(a) The report of the examination shall include at a minimum the following:

(i) The offender's version of the facts and the official version of the facts;

(ii) The offender's offense history;

(iii) An assessment of problems in addition to alleged deviant behaviors;

(iv) The offender's social and employment situation; and

(v) Other evaluation measures used.

The report shall set forth the sources of the examiner's information.

(b) The examiner shall assess and report regarding the offender's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

(i) Frequency and type of contact between offender and therapist;

(ii) Specific issues to be addressed in the treatment and description of planned treatment modalities;

(iii) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;

(iv) Anticipated length of treatment; and

(v) Recommended crime-related prohibitions and affirmative conditions, which must include, to the extent known, an identification of specific activities or behaviors that are precursors to the offender's offense cycle, including, but not limited to, activities or behaviors such as viewing or listening to pornography or use of alcohol or controlled substances.

(c) The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The examiner shall be selected by the party making the motion. The offender shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

(4) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this alternative, consider whether the alternative is too lenient in light of the extent and circumstances of the offense, consider whether the offender has victims in addition to the victim of the offense, consider whether the offender is amenable to treatment, consider the risk the offender would present to the community, to the victim, or to persons of similar age and circumstances as the victim, and consider the victim's opinion whether the offender should receive a treatment disposition under this section. The court shall give great weight to the victim's opinion whether the offender should receive a treatment disposition under this section. If the sentence imposed is contrary to the victim's opinion, the court shall enter written findings stating its reasons for imposing the treatment disposition. The fact that the offender admits to his or her offense does not, by itself, constitute amenability to treatment. If the court determines that this alternative is appropriate, the court shall then impose a sentence or, pursuant to RCW 9.94A.712, a minimum term of sentence, within the standard sentence range. If the sentence imposed is less than eleven years of confinement, the court may suspend the execution of the sentence ((~~and impose the following conditions of suspension:~~)) as provided in this section.

(5) As conditions of the suspended sentence, the court must impose the following:

(a) ((~~The court shall order the offender to serve~~)) A term of confinement of up to twelve months or the maximum term within the standard range, whichever is less. The court may order the offender to serve a term of confinement greater than twelve months or the maximum term within the standard range based on the presence of an aggravating circumstance listed in RCW 9.94A.535(3). In no case shall the term of confinement exceed the statutory maximum sentence for the offense. The court may order the offender to serve all or part of his or her term of confinement in partial confinement. An offender sentenced to a term of confinement under this subsection is not eligible for earned release under RCW 9.92.151 or 9.94A.728.

(b) ((~~The court shall place the offender on~~)) A term of community custody ((~~for~~)) equal to the length of the suspended sentence, the length of the maximum term imposed pursuant to RCW 9.94A.712, or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department under ((~~RCW 9.94A.720~~)) section 10 of this act.

(c) ((~~The court shall order~~)) Treatment for any period up to five years in duration. The court, in its discretion, shall order outpatient sex offender treatment or inpatient sex offender treatment, if available. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The offender shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the community corrections officer, and the court. If any party or the court objects to a proposed change, the offender shall not change providers or conditions without court approval after a hearing.

(d) ((~~As conditions of the suspended sentence, the court shall impose~~)) Specific prohibitions and affirmative conditions relating to the known precursor activities or behaviors identified in the proposed treatment plan under subsection (3)(b)(v) of this section or identified in an annual review under subsection ((~~(7)~~)) (8)(b) of this section.

((~~(5)~~)) (6) As conditions of the suspended sentence, the court may impose one or more of the following:

(a) Crime-related prohibitions;

(b) Require the offender to devote time to a specific employment or occupation;

(c) Require the offender to remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;

(d) Require the offender to report as directed to the court and a community corrections officer;

(e) Require the offender to pay all court-ordered legal financial obligations as provided in RCW 9.94A.030;

(f) Require the offender to perform community restitution work; or

(g) Require the offender to reimburse the victim for the cost of any counseling required as a result of the offender's crime.

((~~(6)~~)) (7) At the time of sentencing, the court shall set a treatment termination hearing for three months prior to the anticipated date for completion of treatment.

((~~(7)~~)) (8)(a) The sex offender treatment provider shall submit quarterly reports on the offender's progress in treatment to the court and the parties. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance, offender's compliance with requirements, treatment activities, the offender's relative progress in treatment, and any other material specified by the court at sentencing.

(b) The court shall conduct a hearing on the offender's progress in treatment at least once a year. At least fourteen days prior to the hearing, notice of the hearing shall be given to the victim. The victim shall be given the opportunity to make statements to the court regarding the offender's supervision and treatment. At the hearing, the court may modify conditions of community custody including, but not limited to, crime-related prohibitions and affirmative conditions relating to activities and behaviors identified as part of, or relating to precursor activities and behaviors in, the offender's offense cycle or revoke the suspended sentence.

((~~(8)~~)) (9) At least fourteen days prior to the treatment termination hearing, notice of the hearing shall be given to the victim. The victim shall be given the opportunity to make statements to the court regarding the offender's supervision and treatment. Prior to the treatment termination hearing, the treatment provider and community corrections officer shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment, including proposed community custody conditions. The court may order an evaluation regarding the advisability of termination from treatment by a sex offender treatment provider who may not be the same person who treated the offender under subsection ((~~(4)~~)) (5) of this section or any person who employs, is employed by, or shares profits with the person who treated the offender under subsection ((~~(4)~~)) (5) of this section unless the court has entered written findings that such evaluation is in the best interest of the victim and that a successful evaluation of the offender would otherwise be impractical. The offender shall pay the cost of the evaluation. At the treatment termination hearing the court may: (a) Modify conditions of community custody, and either (b) terminate treatment, or (c) extend treatment in two-year increments for up to the remaining period of community custody.

((~~(9)~~)) (10)(a) If a violation of conditions other than a second violation of the prohibitions or affirmative conditions relating to precursor behaviors or activities imposed under subsection ((~~(4)~~)) (5)(d) or ((~~(7)~~)) (8)(b) of this section occurs during community custody, the department shall either impose sanctions as provided for in ((~~RCW 9.94A.737(2)(a)~~)) section 16(1) of this act or refer the violation to the court and recommend revocation of the suspended sentence as provided for in subsections ((~~(6)~~)) (7) and ((~~(8)~~)) (9) of this section.

(b) If a second violation of the prohibitions or affirmative conditions relating to precursor behaviors or activities imposed under subsection ((~~(4)~~)) (5)(d) or ((~~(7)~~)) (8)(b) of this section occurs during community custody, the department shall refer the

violation to the court and recommend revocation of the suspended sentence as provided in subsection (((~~(10)~~))) (11) of this section.

(((~~(10)~~))) (11) The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence if: (a) The offender violates the conditions of the suspended sentence, or (b) the court finds that the offender is failing to make satisfactory progress in treatment. All confinement time served during the period of community custody shall be credited to the offender if the suspended sentence is revoked.

(((~~(11)~~))) (12) If the offender violates a requirement of the sentence that is not a condition of the suspended sentence pursuant to subsection (5) or (6) of this section, the department may impose sanctions pursuant to section 16(1) of this act.

(13) The offender's sex offender treatment provider may not be the same person who examined the offender under subsection (3) of this section or any person who employs, is employed by, or shares profits with the person who examined the offender under subsection (3) of this section, unless the court has entered written findings that such treatment is in the best interests of the victim and that successful treatment of the offender would otherwise be impractical. Examinations and treatment ordered pursuant to this subsection shall only be conducted by certified sex offender treatment providers or certified affiliate sex offender treatment providers under chapter 18.155 RCW unless the court finds that:

(a) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; or

(b)(i) No certified sex offender treatment providers or certified affiliate sex offender treatment providers are available for treatment within a reasonable geographical distance of the offender's home; and

(ii) The evaluation and treatment plan comply with this section and the rules adopted by the department of health.

(((~~(12)~~))) (14) If the offender is less than eighteen years of age when the charge is filed, the state shall pay for the cost of initial evaluation and treatment.

Sec. 33. RCW 9.94A.690 and 2006 c 73 s 11 are each amended to read as follows:

(1)(a) An offender is eligible to be sentenced to a work ethic camp if the offender:

(i) Is sentenced to a term of total confinement of not less than twelve months and one day or more than thirty-six months;

(ii) Has no current or prior convictions for any sex offenses or for violent offenses; and

(iii) Is not currently subject to a sentence for, or being prosecuted for, a violation of felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)), a violation of physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)), a violation of the uniform controlled substances act, or a criminal solicitation to commit such a violation under chapter 9A.28 or 69.50 RCW.

(b) The length of the work ethic camp shall be at least one hundred twenty days and not more than one hundred eighty days.

(2) If the sentencing court determines that the offender is eligible for the work ethic camp and is likely to qualify under subsection (3) of this section, the judge shall impose a sentence within the standard sentence range and may recommend that the offender serve the sentence at a work ethic camp. In sentencing an offender to the work ethic camp, the court shall specify: (a) That upon completion of the work ethic camp the offender shall be released on community custody for any remaining time of total confinement; (b) the applicable conditions of ((~~supervision on~~)) community custody ((~~status~~)) as ((~~required by RCW 9.94A.700(4) and~~)) authorized by ((~~RCW 9.94A.700(5)~~)) section 10 of this act; and (c) that violation of the conditions may result in a return to total confinement for the balance of the offender's remaining time of confinement.

(3) The department shall place the offender in the work ethic camp program, subject to capacity, unless: (a) The department determines that the offender has physical or mental impairments that would prevent participation and completion of the program; (b) the department determines that the offender's custody level prevents placement in the program; (c) the offender refuses to agree to the terms and conditions of the program; (d) the offender has been found by the United States attorney general to be subject to a deportation detainer or order; or (e) the offender has participated in the work ethic camp program in the past.

(4) An offender who fails to complete the work ethic camp program, who is administratively terminated from the program, or who otherwise violates any conditions of supervision, as defined by the department, shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court and shall be subject to all rules relating to earned release time.

(5) During the last two weeks prior to release from the work ethic camp program the department shall provide the offender with comprehensive transition training.

Sec. 34. RCW 9.94A.712 and 2006 c 124 s 3, 2006 c 122 s 5, and 2005 c 436 s 2 are each reenacted and amended to read as follows:

(1) An offender who is not a persistent offender shall be sentenced under this section if the offender:

(a) Is convicted of:

(i) Rape in the first degree, rape in the second degree, rape of a child in the first degree, child molestation in the first degree, rape of a child in the second degree, or indecent liberties by forcible compulsion;

(ii) Any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or

(iii) An attempt to commit any crime listed in this subsection (1)(a);

((~~committed on or after September 1, 2001;~~)) or

(b) Has a prior conviction for an offense listed in RCW 9.94A.030(((~~(33)~~))) (31)(b), and is convicted of any sex offense ((~~which was committed after September 1, 2001. For purposes of this subsection (1)(b),~~)) other than failure to register ((~~is not a sex offense~~)).

(2) An offender convicted of rape of a child in the first or second degree or child molestation in the first degree who was seventeen years of age or younger at the time of the offense shall not be sentenced under this section.

(3)(a) Upon a finding that the offender is subject to sentencing under this section, the court shall impose a sentence to a maximum term and a minimum term.

(b) The maximum term shall consist of the statutory maximum sentence for the offense.

(c)(i) Except as provided in (c)(ii) of this subsection, the minimum term shall be either within the standard sentence range for the offense, or outside the standard sentence range pursuant to RCW 9.94A.535, if the offender is otherwise eligible for such a sentence.

(ii) If the offense that caused the offender to be sentenced under this section was rape of a child in the first degree, rape of a child in the second degree, or child molestation in the first degree, and there has been a finding that the offense was predatory under RCW 9.94A.836, the minimum term shall be either the maximum of the standard sentence range for the offense or twenty-five years, whichever is greater. If the offense that caused the offender to be sentenced under this section was rape in the first degree, rape in the second degree, indecent liberties by forcible compulsion, or kidnapping in the first degree with sexual motivation, and there has been a finding that the victim was under the age of fifteen at the time of the offense under RCW 9.94A.837, the minimum term shall be either the maximum of the standard sentence range for the offense or twenty-five years, whichever is greater. If the offense that caused the offender to be sentenced under this section is rape in the first degree, rape in the second degree with forcible compulsion, indecent liberties with forcible compulsion, or kidnapping in the first degree with sexual motivation, and there

has been a finding under RCW 9.94A.838 that the victim was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult, the minimum sentence shall be either the maximum of the standard sentence range for the offense or twenty-five years, whichever is greater.

(d) The minimum terms in (c)(ii) of this subsection do not apply to a juvenile tried as an adult pursuant to RCW 13.04.030(1)(e) (i) or (v). The minimum term for such a juvenile shall be imposed under (c)(i) of this subsection.

(4) A person sentenced under subsection (3) of this section shall serve the sentence in a facility or institution operated, or utilized under contract, by the state.

(5) When a court sentences a person to the custody of the department under this section, the court shall, in addition to the other terms of the sentence, sentence the offender to community custody under the supervision of the department and the authority of the board for any period of time the person is released from total confinement before the expiration of the maximum sentence.

(6)(a)((~~(i) Unless a condition is waived by the court, the conditions of community custody shall include those provided for in RCW 9.94A.700(4). The conditions may also include those provided for in RCW 9.94A.700(5). The court may also order the offender to participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community, and the department and the board shall enforce such conditions pursuant to RCW 9.94A.713, 9.95.425, and 9.95.430.~~

~~(ii) If the offense that caused the offender to be sentenced under this section was an offense listed in subsection (1)(a) of this section and the victim of the offense was under eighteen years of age at the time of the offense, the court shall, as a condition of community custody, prohibit the offender from residing in a community protection zone.~~

~~(b)~~)) As part of any sentence under this section, the court shall also require the offender to comply with any conditions imposed by the board under RCW ((~~9.94A.713 and~~)) 9.95.420 through 9.95.435.

(b) An offender released by the board under RCW 9.95.420 is subject to the supervision of the department until the expiration of the maximum term of the sentence. The department shall monitor the offender's compliance with conditions of community custody imposed by the court, department, or board, and promptly report any violations to the board. Any violation of conditions of community custody established or modified by the board are subject to the provisions of RCW 9.95.425 through 9.95.440.

Sec. 35. RCW 9.94A.728 and 2007 c 483 s 304 are each amended to read as follows:

No person serving a sentence imposed pursuant to this chapter and committed to the custody of the department shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows:

(1) Except as otherwise provided for in subsection (2) of this section, the term of the sentence of an offender committed to a correctional facility operated by the department may be reduced by earned release time in accordance with procedures that shall be developed and promulgated by the correctional agency having jurisdiction in which the offender is confined. The earned release time shall be for good behavior and good performance, as determined by the correctional agency having jurisdiction. The correctional agency shall not credit the offender with earned release credits in advance of the offender actually earning the credits. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. If an offender is transferred from a county jail to the department, the administrator of a county jail facility shall certify to the department the amount of time spent in custody at the facility and the amount of earned release time. An offender who has been convicted of a felony committed after July 23, 1995, that involves any applicable deadly weapon enhancements under RCW 9.94A.533 (3) or (4), or both, shall not receive any good time credits or earned release time for that portion of his or her sentence that results from any deadly weapon enhancements.

(a) In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 1990, and before July 1, 2003, the aggregate earned release time may not exceed fifteen percent of the sentence. In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 2003, the aggregate earned release time may not exceed ten percent of the sentence.

(b)(i) In the case of an offender who qualifies under (b)(ii) of this subsection, the aggregate earned release time may not exceed fifty percent of the sentence.

(ii) An offender is qualified to earn up to fifty percent of aggregate earned release time under this subsection (1)(b) if he or she:

(A) Is classified in one of the two lowest risk categories under (b)(iii) of this subsection;

(B) Is not confined pursuant to a sentence for:

(I) A sex offense;

(II) A violent offense;

(III) A crime against persons as defined in RCW 9.94A.411;

(IV) A felony that is domestic violence as defined in RCW 10.99.020;

(V) A violation of RCW 9A.52.025 (residential burglary);

(VI) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(VII) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor); (C) Has no prior conviction for:

(I) A sex offense;

(II) A violent offense;

(III) A crime against persons as defined in RCW 9.94A.411;

(IV) A felony that is domestic violence as defined in RCW 10.99.020;

(V) A violation of RCW 9A.52.025 (residential burglary);

(VI) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(VII) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

(D) Participates in programming or activities as directed by the offender's individual reentry plan as provided under RCW 72.09.270 to the extent that such programming or activities are made available by the department; and

(E) Has not committed a new felony after July 22, 2007, while under ((~~community supervision, community placement, or~~)) community custody.

(iii) For purposes of determining an offender's eligibility under this subsection (1)(b), the department shall perform a risk assessment of every offender committed to a correctional facility operated by the department who has no current or prior conviction for a sex offense, a violent offense, a crime against persons as defined in RCW 9.94A.411, a felony that is domestic violence as defined in RCW 10.99.020, a violation of RCW 9A.52.025 (residential burglary), a violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine, or a violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor). The department must classify each assessed offender in one of four risk categories between highest and lowest risk.

(iv) The department shall recalculate the earned release time and reschedule the expected release dates for each qualified offender under this subsection (1)(b).

(v) This subsection (1)(b) applies retroactively to eligible offenders serving terms of total confinement in a state correctional facility as of July 1, 2003.

(vi) This subsection (1)(b) does not apply to offenders convicted after July 1, 2010.

(c) In no other case shall the aggregate earned release time exceed one-third of the total sentence;

(2)(a) ((~~A person convicted of a sex offense or an offense categorized as a serious violent offense, assault in the second degree, vehicular homicide, vehicular assault, assault of a child in the second degree, any crime against persons where it is determined in accordance with RCW 9.94A.602 that the offender or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become eligible, in accordance with a program developed by the department, for transfer to community custody status in lieu of earned release time pursuant to subsection (1) of this section;~~

~~(b)~~)) A person convicted of a sex offense, a violent offense, any crime against persons under RCW 9.94A.411(2), or a felony offense under chapter 69.50 or 69.52 RCW, ((~~committed on or after July 1, 2000,~~)) may become eligible, in accordance with a program developed by the department, for transfer to community custody ((~~status~~)) in lieu of earned release time pursuant to subsection (1) of this section;

((~~(c)~~)) (b) The department shall, as a part of its program for release to the community in lieu of earned release, require the offender to propose a release plan that includes an approved residence and living arrangement. All offenders with ((~~community placement or~~)) community custody terms eligible for release to community custody ((~~status~~)) in lieu of earned release shall provide an approved residence and living arrangement prior to release to the community;

((~~(d)~~)) (c) The department may deny transfer to community custody ((~~status~~)) in lieu of earned release time pursuant to subsection (1) of this section if the department determines an offender's release plan, including proposed residence location and living arrangements, may violate the conditions of the sentence or conditions of supervision, place the offender at risk to violate the conditions of the sentence, place the offender at risk to reoffend, or present a risk to victim safety or community safety. The department's authority under this section is independent of any court-ordered condition of sentence or statutory provision regarding conditions for community custody ((~~or community placement~~));

((~~(e)~~)) (d) If the department denies transfer to community custody ((~~status~~)) in lieu of earned early release pursuant to ((~~(d)~~)) (c) of this subsection, the department may transfer an offender to partial confinement in lieu of earned early release up to three months. The three months in partial confinement is in addition to that portion of the offender's term of confinement that may be served in partial confinement as provided in this section;

((~~(f)~~)) (e) An offender serving a term of confinement imposed under RCW 9.94A.670((~~(4)~~)) (5)(a) is not eligible for earned release credits under this section;

(3) An offender may leave a correctional facility pursuant to an authorized furlough or leave of absence. In addition, offenders may leave a correctional facility when in the custody of a corrections officer or officers;

(4)(a) The secretary may authorize an extraordinary medical placement for an offender when all of the following conditions exist:

(i) The offender has a medical condition that is serious enough to require costly care or treatment;

(ii) The offender poses a low risk to the community because he or she is physically incapacitated due to age or the medical condition; and

(iii) Granting the extraordinary medical placement will result in a cost savings to the state.

(b) An offender sentenced to death or to life imprisonment without the possibility of release or parole is not eligible for an extraordinary medical placement.

(c) The secretary shall require electronic monitoring for all offenders in extraordinary medical placement unless the electronic monitoring equipment interferes with the function of the offender's medical equipment or results in the loss of funding for the offender's medical care. The secretary shall specify who shall provide the monitoring services and the terms under which the monitoring shall be performed.

(d) The secretary may revoke an extraordinary medical placement under this subsection at any time;

(5) The governor, upon recommendation from the clemency and pardons board, may grant an extraordinary release for reasons of serious health problems, senility, advanced age, extraordinary meritorious acts, or other extraordinary circumstances;

(6) No more than the final six months of the offender's term of confinement may be served in partial confinement designed to aid the offender in finding work and reestablishing himself or herself in the community. This is in addition to that period of earned early release time that may be exchanged for partial confinement pursuant to subsection (2)(((~~e~~))) (d) of this section;

(7) The governor may pardon any offender;

(8) The department may release an offender from confinement any time within ten days before a release date calculated under this section; ((~~and~~))

(9) An offender may leave a correctional facility prior to completion of his or her sentence if the sentence has been reduced as provided in RCW 9.94A.870((~~.~~)); and

(10) Notwithstanding any other provisions of this section, an offender sentenced for a felony crime listed in RCW 9.94A.540 as subject to a mandatory minimum sentence of total confinement shall not be released from total confinement before the completion of the listed mandatory minimum sentence for that felony crime of conviction unless allowed under RCW 9.94A.540, however persistent offenders are not eligible for extraordinary medical placement.

Sec. 36. RCW 9.94A.760 and 2005 c 263 s 1 are each amended to read as follows:

(1) Whenever a person is convicted in superior court, the court may order the payment of a legal financial obligation as part of the sentence. The court must on either the judgment and sentence or on a subsequent order to pay, designate the total amount of a legal financial obligation and segregate this amount among the separate assessments made for restitution, costs, fines, and other assessments required by law. On the same order, the court is also to set a sum that the offender is required to pay on a monthly basis towards satisfying the legal financial obligation. If the court fails to set the offender monthly payment amount, the department shall set the amount if the department has active supervision of the offender, otherwise the county clerk shall set the amount. Upon receipt of an offender's monthly payment, restitution shall be paid prior to any payments of other monetary obligations. After restitution is satisfied, the county clerk shall distribute the payment proportionally among all other fines, costs, and assessments imposed, unless otherwise ordered by the court.

(2) If the court determines that the offender, at the time of sentencing, has the means to pay for the cost of incarceration, the court may require the offender to pay for the cost of incarceration at a rate of fifty dollars per day of incarceration, if incarcerated in a prison, or the court may require the offender to pay the actual cost of incarceration per day of incarceration, if incarcerated in a county jail. In no case may the court require the offender to pay more than one hundred dollars per day for the cost of incarceration. Payment of other court-ordered financial obligations, including all legal financial obligations and costs of supervision shall take precedence over the payment of the cost of incarceration ordered by the court. All funds recovered from offenders for the cost of incarceration in the county jail shall be remitted to the county and the costs of incarceration in a prison shall be remitted to the department.

(3) The court may add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction is to be issued immediately. If the court chooses not to order the immediate issuance of a notice of payroll deduction at sentencing, the court shall add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction may be issued or other income-withholding action may be taken, without further notice to the offender if a monthly court-ordered legal financial obligation payment is not paid when due, and an amount equal to or greater than the amount payable for one month is owed.

If a judgment and sentence or subsequent order to pay does not include the statement that a notice of payroll deduction may be issued or other income-withholding action may be taken if a

monthly legal financial obligation payment is past due, the department or the county clerk may serve a notice on the offender stating such requirements and authorizations. Service shall be by personal service or any form of mail requiring a return receipt.

(4) Independent of the department or the county clerk, the party or entity to whom the legal financial obligation is owed shall have the authority to use any other remedies available to the party or entity to collect the legal financial obligation. These remedies include enforcement in the same manner as a judgment in a civil action by the party or entity to whom the legal financial obligation is owed. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim. The judgment and sentence shall identify the party or entity to whom restitution is owed so that the state, party, or entity may enforce the judgment. If restitution is ordered pursuant to RCW 9.94A.750(6) or 9.94A.753(6) to a victim of rape of a child or a victim's child born from the rape, the Washington state child support registry shall be identified as the party to whom payments must be made. Restitution obligations arising from the rape of a child in the first, second, or third degree that result in the pregnancy of the victim may be enforced for the time periods provided under RCW 9.94A.750(6) and 9.94A.753(6). All other legal financial obligations for an offense committed prior to July 1, 2000, may be enforced at any time during the ten-year period following the offender's release from total confinement or within ten years of entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend the criminal judgment an additional ten years for payment of legal financial obligations including crime victims' assessments. All other legal financial obligations for an offense committed on or after July 1, 2000, may be enforced at any time the offender remains under the court's jurisdiction. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The department may only supervise the offender's compliance with payment of the legal financial obligations during any period in which the department is authorized to supervise the offender in the community under RCW 9.94A.728, 9.94A.501, or in which the offender is confined in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender's compliance during any such period. The department is not responsible for supervision of the offender during any subsequent period of time the offender remains under the court's jurisdiction. The county clerk is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.

(5) In order to assist the court in setting a monthly sum that the offender must pay during the period of supervision, the offender is required to report to the department for purposes of preparing a recommendation to the court. When reporting, the offender is required, under oath, to respond truthfully and honestly to all questions concerning present, past, and future earning capabilities and the location and nature of all property or financial assets. The offender is further required to bring all documents requested by the department.

(6) After completing the investigation, the department shall make a report to the court on the amount of the monthly payment that the offender should be required to make towards a satisfied legal financial obligation.

(7)(a) During the period of supervision, the department may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the department sets the monthly payment amount, the department may modify the monthly payment amount without the matter being returned to the court. During the period of supervision, the department may require the offender to report to the department for the purposes of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the department in order to prepare the collection schedule.

(b) Subsequent to any period of supervision, or if the department is not authorized to supervise the offender in the community, the county clerk may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the county clerk sets the monthly payment amount, or if the department set the monthly payment amount and the department has subsequently turned the collection of the legal financial obligation over to the county clerk, the clerk may modify the monthly payment amount without the matter being returned to the court. During the period of repayment, the county clerk may require the offender to report to the clerk for the purpose of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the county clerk in order to prepare the collection schedule.

(8) After the judgment and sentence or payment order is entered, the department is authorized, for any period of supervision, to collect the legal financial obligation from the offender. Subsequent to any period of supervision or, if the department is not authorized to supervise the offender in the community, the county clerk is authorized to collect unpaid legal financial obligations from the offender. Any amount collected by the department shall be remitted daily to the county clerk for the purpose of disbursements. The department and the county clerks are authorized, but not required, to accept credit cards as payment for a legal financial obligation, and any costs incurred related to accepting credit card payments shall be the responsibility of the offender.

(9) The department or any obligee of the legal financial obligation may seek a mandatory wage assignment for the purposes of obtaining satisfaction for the legal financial obligation pursuant to RCW 9.94A.7701. Any party obtaining a wage assignment shall notify the county clerk. The county clerks shall notify the department, or the administrative office of the courts, whichever is providing the monthly billing for the offender.

(10) The requirement that the offender pay a monthly sum towards a legal financial obligation constitutes a condition or requirement of a sentence and the offender is subject to the penalties for noncompliance as provided in RCW 9.94A.634 (as recodified by this act), 9.94A.737, or 9.94A.740.

(11)(a) Until January 1, 2004, the department shall mail individualized monthly billings to the address known by the department for each offender with an unsatisfied legal financial obligation.

(b) Beginning January 1, 2004, the administrative office of the courts shall mail individualized monthly billings to the address known by the office for each offender with an unsatisfied legal financial obligation.

(c) The billing shall direct payments, other than outstanding cost of supervision assessments under RCW 9.94A.780, parole assessments under RCW 72.04A.120, and cost of probation assessments under RCW 9.95.214, to the county clerk, and cost of supervision, parole, or probation assessments to the department.

(d) The county clerk shall provide the administrative office of the courts with notice of payments by such offenders no less frequently than weekly.

(e) The county clerks, the administrative office of the courts, and the department shall maintain agreements to implement this subsection.

(12) The department shall arrange for the collection of unpaid legal financial obligations during any period of supervision in the community through the county clerk. The

department shall either collect unpaid legal financial obligations or arrange for collections through another entity if the clerk does not assume responsibility or is unable to continue to assume responsibility for collection pursuant to subsection (4) of this section. The costs for collection services shall be paid by the offender.

(13) The county clerk may access the records of the employment security department for the purposes of verifying employment or income, seeking any assignment of wages, or performing other duties necessary to the collection of an offender's legal financial obligations.

(14) Nothing in this chapter makes the department, the state, the counties, or any state or county employees, agents, or other persons acting on their behalf liable under any circumstances for the payment of these legal financial obligations or for the acts of any offender who is no longer, or was not, subject to supervision by the department for a term of community custody, ((~~community placement, or community supervision,~~)) and who remains under the jurisdiction of the court for payment of legal financial obligations.

Sec. 37. RCW 9.94A.775 and 2003 c 379 s 17 are each amended to read as follows:

If an offender with an unsatisfied legal financial obligation is not subject to supervision by the department for a term of ((~~community placement,~~)) community custody, ((~~or community supervision,~~)) or has not completed payment of all legal financial obligations included in the sentence at the expiration of his or her term of ((~~community placement,~~)) community custody, ((~~or community supervision,~~)) the department shall notify the administrative office of the courts of the termination of the offender's supervision and provide information to the administrative office of the courts to enable the county clerk to monitor payment of the remaining obligations. The county clerk is authorized to monitor payment after such notification. The secretary of corrections and the administrator for the courts shall enter into an interagency agreement to facilitate the electronic transfer of information about offenders, unpaid obligations, and payees to carry out the purposes of this section.

Sec. 38. RCW 9.94A.780 and 2003 c 379 s 18 are each amended to read as follows:

(1) Whenever a punishment imposed under this chapter requires supervision services to be provided, the offender shall pay to the department of corrections the monthly assessment, prescribed under subsection (2) of this section, which shall be for the duration of the terms of supervision and which shall be considered as payment or part payment of the cost of providing supervision to the offender. The department may exempt or defer a person from the payment of all or any part of the assessment based upon any of the following factors:

(a) The offender has diligently attempted but has been unable to obtain employment that provides the offender sufficient income to make such payments.

(b) The offender is a student in a school, college, university, or a course of vocational or technical training designed to fit the student for gainful employment.

(c) The offender has an employment handicap, as determined by an examination acceptable to or ordered by the department.

(d) The offender's age prevents him or her from obtaining employment.

(e) The offender is responsible for the support of dependents and the payment of the assessment constitutes an undue hardship on the offender.

(f) Other extenuating circumstances as determined by the department.

(2) The department of corrections shall adopt a rule prescribing the amount of the assessment. The department may, if it finds it appropriate, prescribe a schedule of assessments that shall vary in accordance with the intensity or cost of the supervision. The department may not prescribe any assessment that is less than ten dollars nor more than fifty dollars.

(3) All amounts required to be paid under this section shall be collected by the department of corrections and deposited by the department in the dedicated fund established pursuant to RCW 72.11.040.

(4) This section shall not apply to probation services provided under an interstate compact pursuant to chapter 9.95 RCW or to probation services provided for persons placed on probation prior to June 10, 1982.

(5) If a county clerk assumes responsibility for collection of unpaid legal financial obligations under RCW 9.94A.760, or under any agreement with the department under that section, whether before or after the completion of any period of ((~~community placement,~~)) community custody, ((~~or community supervision,~~)) the clerk may impose a monthly or annual assessment for the cost of collections. The amount of the assessment shall not exceed the actual cost of collections. The county clerk may exempt or defer payment of all or part of the assessment based upon any of the factors listed in subsection (1) of this section. The offender shall pay the assessment under this subsection to the county clerk who shall apply it to the cost of collecting legal financial obligations under RCW 9.94A.760.

Sec. 39. RCW 9.94A.820 and 2004 c 38 s 10 are each amended to read as follows:

(1) Sex offender examinations and treatment ordered as a special condition of ((~~community placement or~~)) community custody under this chapter shall be conducted only by certified sex offender treatment providers or certified affiliate sex offender treatment providers under chapter 18.155 RCW unless the court or the department finds that: (a) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (b) the treatment provider is employed by the department; or (c)(i) no certified sex offender treatment providers or certified affiliate sex offender treatment providers are available to provide treatment within a reasonable geographic distance of the offender's home, as determined in rules adopted by the secretary; and (ii) the evaluation and treatment plan comply with the rules adopted by the department of health. A treatment provider selected by an offender under (c) of this subsection, who is not certified by the department of health shall consult with a certified sex offender treatment provider during the offender's period of treatment to ensure compliance with the rules adopted by the department of health. The frequency and content of the consultation shall be based on the recommendation of the certified sex offender treatment provider.

(2) A sex offender's failure to participate in treatment required as a condition of ((~~community placement or~~)) community custody is a violation that will not be excused on the basis that no treatment provider was located within a reasonable geographic distance of the offender's home.

Sec. 40. RCW 4.24.556 and 2004 c 38 s 1 are each amended to read as follows:

(1) A certified sex offender treatment provider, or a certified affiliate sex offender treatment provider who has completed at least fifty percent of the required hours under the supervision of a certified sex offender treatment provider, acting in the course of his or her duties, providing treatment to a person who has been released to a less restrictive alternative under chapter 71.09 RCW or to a level III sex offender on community custody as a court ((~~or~~)), department, or board ordered condition of sentence is not negligent because he or she treats a high risk offender; sex offenders are known to have a risk of reoffense. The treatment provider is not liable for civil damages resulting from the reoffense of a client unless the treatment provider's acts or omissions constituted gross negligence or willful or wanton misconduct. This limited liability provision does not eliminate the treatment provider's duty to warn of and protect from a client's threatened violent behavior if the client communicates a serious threat of physical violence against a reasonably ascertainable victim or victims. In addition to any other requirements to report violations, the sex offender treatment provider is obligated to report an offender's expressions of intent to harm or other predatory behavior, whether or not there is an ascertainable victim, in progress reports and other established processes that enable courts and supervising entities to assess and address the progress and appropriateness of treatment. This limited liability provision applies only to the conduct of certified sex offender treatment providers, and certified affiliate sex

offender treatment providers who have completed at least fifty percent of the required hours under the supervision of a certified sex offender treatment provider, and not the conduct of the state.

(2) Sex offender treatment providers who provide services to the department of corrections by identifying risk factors and notifying the department of risks for the subset of high risk offenders who are not amenable to treatment and who are under court order for treatment or supervision are practicing within the scope of their profession.

Sec. 41. RCW 9.95.017 and 2003 c 218 s 2 are each amended to read as follows:

(1) The board shall cause to be prepared criteria for duration of confinement, release on parole, and length of parole for persons committed to prison for crimes committed before July 1, 1984.

The proposed criteria should take into consideration RCW 9.95.009(2). Before submission to the governor, the board shall solicit comments and review on their proposed criteria for parole release.

(2) Persons committed to the department of corrections and who are under the authority of the board for crimes committed on or after September 1, 2001, are subject to the provisions for duration of confinement, release to community custody, and length of community custody established in RCW 9.94A.712, ((~~9.94A.713~~)) section 11 of this act, 72.09.335, and 9.95.420 through 9.95.440.

Sec. 42. RCW 9.95.064 and 2001 2nd sp.s. c 12 s 326 are each amended to read as follows:

(1) In order to minimize the trauma to the victim, the court may attach conditions on release of an offender under RCW 9.95.062, convicted of a crime committed before July 1, 1984, regarding the whereabouts of the defendant, contact with the victim, or other conditions.

(2) Offenders released under RCW 9.95.420 are subject to crime-related prohibitions and affirmative conditions established by the court, the department of corrections, or the board pursuant to RCW ((~~9.94A.715 and~~)) 9.94A.712, ((~~9.94A.713~~)) section 11 of this act, 72.09.335, and 9.95.420 through 9.95.440.

Sec. 43. RCW 9.95.110 and 2003 c 218 s 7 are each amended to read as follows:

(1) The board may permit an offender convicted of a crime committed before July 1, 1984, to leave the buildings and enclosures of a state correctional institution on parole, after such convicted person has served the period of confinement fixed for him or her by the board, less time credits for good behavior and diligence in work: PROVIDED, That in no case shall an inmate be credited with more than one-third of his or her sentence as fixed by the board.

The board may establish rules and regulations under which an offender may be allowed to leave the confines of a state correctional institution on parole, and may return such person to the confines of the institution from which he or she was paroled, at its discretion.

(2) The board may permit an offender convicted of a crime committed on or after September 1, 2001, and sentenced under RCW 9.94A.712, to leave a state correctional institution on community custody according to the provisions of RCW 9.94A.712, ((~~9.94A.713~~)) section 11 of this act, 72.09.335, and 9.95.420 through 9.95.440. The person may be returned to the institution following a violation of his or her conditions of release to community custody pursuant to the hearing provisions of RCW 9.95.435.

Sec. 44. RCW 9.95.123 and 2001 2nd sp.s. c 12 s 336 are each amended to read as follows:

In conducting on-site parole hearings or community custody revocation ((~~hearings or community custody~~)) or violations hearings, the board shall have the authority to administer oaths and affirmations, examine witnesses, receive evidence, and issue subpoenas for the compulsory attendance of witnesses and the production of evidence for presentation at such hearings. Subpoenas issued by the board shall be effective throughout the state. Witnesses in attendance at any on-site parole or community custody revocation hearing shall be paid the same fees and allowances, in the same manner and under the same conditions as provided for witnesses in the courts of the state in accordance with chapter 2.40 RCW. If any person fails or refuses to obey a subpoena issued by the board, or obeys the subpoena but refuses to testify concerning any matter under examination at the hearing, the board may petition the superior court of the county where the hearing is being conducted for enforcement of the subpoena: PROVIDED, That an offer to pay statutory fees and mileage has been made to the witness at the time of the service of the subpoena. The petition shall be accompanied by a copy of the subpoena and proof of service, and shall set forth in what specific manner the subpoena has not been complied with, and shall ask an order of the court to compel the witness to appear and testify before the board. The court, upon such petition, shall enter an order directing the witness to appear before the court at a time and place to be fixed in such order and then and there to show cause why he or she has not responded to the subpoena or has refused to testify. A copy of the order shall be served upon the witness. If it appears to the court that the subpoena was properly issued and that the particular questions which the witness refuses to answer are reasonable and relevant, the court shall enter an order that the witness appear at the time and place fixed in the order and testify or produce the required papers, and on failing to obey the order, the witness shall be dealt with as for contempt of court.

Sec. 45. RCW 9.95.420 and 2007 c 363 s 2 are each amended to read as follows:

(1)(a) Except as provided in (c) of this subsection, before the expiration of the minimum term, as part of the end of sentence review process under RCW 72.09.340, 72.09.345, and where appropriate, 72.09.370, the department shall conduct, and the offender shall participate in, an examination of the offender, incorporating methodologies that are recognized by experts in the prediction of sexual dangerousness, and including a prediction of the probability that the offender will engage in sex offenses if released.

(b) The board may contract for an additional, independent examination, subject to the standards in this section.

(c) If at the time the sentence is imposed by the superior court the offender's minimum term has expired or will expire within one hundred twenty days of the sentencing hearing, the department shall conduct, within ninety days of the offender's arrival at a department of corrections facility, and the offender shall participate in, an examination of the offender, incorporating methodologies that are recognized by experts in the prediction of sexual dangerousness, and including a prediction of the probability that the offender will engage in sex offenses if released.

(2) The board shall impose the conditions and instructions provided for in ((~~RCW 9.94A.720~~)) section 11 of this act. The board shall consider the department's recommendations and may impose conditions in addition to those recommended by the department. The board may impose or modify conditions of community custody following notice to the offender.

(3)(a) Except as provided in (b) of this subsection, no later than ninety days before expiration of the minimum term, but after the board receives the results from the end of sentence review process and the recommendations for additional or modified conditions of community custody from the department, the board shall conduct a hearing to determine whether it is more likely than not that the offender will engage in sex offenses if released on conditions to be set by the board. The board may consider an offender's failure to participate in an evaluation under subsection (1) of this section in determining whether to release the offender. The board shall order the offender released, under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the offender will commit sex offenses if released. If the board does not order the offender released, the board shall establish a new minimum term as provided in RCW 9.95.011.

(b) If at the time the offender's minimum term has expired or will expire within one hundred twenty days of the offender's arrival at a department of correction's facility, then no later than one hundred twenty days after the offender's arrival at a

department of corrections facility, but after the board receives the results from the end of sentence review process and the recommendations for additional or modified conditions of community custody from the department, the board shall conduct a hearing to determine whether it is more likely than not that the offender will engage in sex offenses if released on conditions to be set by the board. The board may consider an offender's failure to participate in an evaluation under subsection (1) of this section in determining whether to release the offender. The board shall order the offender released, under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the offender will commit sex offenses if released. If the board does not order the offender released, the board shall establish a new minimum term as provided in RCW 9.95.011.

(4) In a hearing conducted under subsection (3) of this section, the board shall provide opportunities for the victims of any crimes for which the offender has been convicted to present oral, video, written, or in-person testimony to the board. The procedures for victim input shall be developed by rule. To facilitate victim involvement, county prosecutor's offices shall ensure that any victim impact statements and known contact information for victims of record are forwarded as part of the judgment and sentence.

Sec. 46. RCW 9.95.440 and 2003 c 218 s 6 are each amended to read as follows:

In the event the board suspends the release status of an offender released under RCW 9.95.420 by reason of an alleged violation of a condition of release, or pending disposition of a new criminal charge, the board may nullify the suspension order and reinstate release under previous conditions or any new conditions the board determines advisable under ((~~RCW 9.94A.713(5)~~)) section 11 of this act. Before the board may nullify a suspension order and reinstate release, it shall determine that the best interests of society and the offender shall be served by such reinstatement rather than return to confinement.

Sec. 47. RCW 46.61.524 and 2006 c 73 s 16 are each amended to read as follows:

((~~(1) A person convicted under RCW 46.61.502(6), 46.61.504(6), 46.61.520(1)(a), or 46.61.522(1)(b) shall, as a condition of community custody imposed under RCW 9.94A.545 or community placement imposed under RCW 9.94A.660, complete a diagnostic evaluation by an alcohol or drug dependency agency approved by the department of social and health services or a qualified probation department, as defined under RCW 46.61.516 that has been approved by the department of social and health services. This report shall be forwarded to the department of licensing. If the person is found to have an alcohol or drug problem that requires treatment, the person shall complete treatment in a program approved by the department of social and health services under chapter 70.96A RCW. If the person is found not to have an alcohol or drug problem that requires treatment, he or she shall complete a course in an information school approved by the department of social and health services under chapter 70.96A RCW. The convicted person shall pay all costs for any evaluation, education, or treatment required by this section, unless the person is eligible for an existing program offered or approved by the department of social and health services. Nothing in chapter 348, Laws of 1991 requires the addition of new treatment or assessment facilities nor affects the department of social and health services use of existing programs and facilities authorized by law.~~

~~(2)~~)) As provided for under RCW 46.20.285, the department shall revoke the license, permit to drive, or a nonresident privilege of a person convicted of vehicular homicide under RCW 46.61.520 or vehicular assault under RCW 46.61.522. The department shall determine the eligibility of a person convicted of vehicular homicide under RCW 46.61.520(1)(a) or vehicular assault under RCW 46.61.522(1)(b) to receive a license based upon the report provided by the designated alcoholism treatment facility or probation department designated pursuant to section 10(4)(b) of this act, and shall deny reinstatement until satisfactory progress in an approved program has been established and the person is otherwise qualified.

Sec. 48. RCW 72.09.015 and 2007 c 483 s 202 are each amended to read as follows:

The definitions in this section apply throughout this chapter.

(1) "Adult basic education" means education or instruction designed to achieve general competence of skills in reading, writing, and oral communication, including English as a second language and preparation and testing services for obtaining a high school diploma or a general equivalency diploma.

(2) "Base level of correctional services" means the minimum level of field services the department of corrections is required by statute to provide for the supervision and monitoring of offenders.

(3) "Community custody" has the same meaning as that provided in RCW 9.94A.030 and also includes community placement and community supervision as defined in section 53 of this act.

(4) "Contraband" means any object or communication the secretary determines shall not be allowed to be: (a) Brought into; (b) possessed while on the grounds of; or (c) sent from any institution under the control of the secretary.

((~~(4)~~)) (5) "County" means a county or combination of counties.

((~~(5)~~)) (6) "Department" means the department of corrections.

((~~(6)~~)) (7) "Earned early release" means earned release as authorized by RCW 9.94A.728.

((~~(7)~~)) (8) "Evidence-based" means a program or practice that has had multiple-site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective in reducing recidivism for the population.

((~~(8)~~)) (9) "Extended family visit" means an authorized visit between an inmate and a member of his or her immediate family that occurs in a private visiting unit located at the correctional facility where the inmate is confined.

((~~(9)~~)) (10) "Good conduct" means compliance with department rules and policies.

((~~(10)~~)) (11) "Good performance" means successful completion of a program required by the department, including an education, work, or other program.

((~~(11)~~)) (12) "Immediate family" means the inmate's children, stepchildren, grandchildren, great grandchildren, parents, stepparents, grandparents, great grandparents, siblings, and a person legally married to an inmate. "Immediate family" does not include an inmate adopted by another inmate or the immediate family of the adopted or adopting inmate.

((~~(12)~~)) (13) "Indigent inmate," "indigent," and "indigency" mean an inmate who has less than a ten-dollar balance of disposable income in his or her institutional account on the day a request is made to utilize funds and during the thirty days previous to the request.

((~~(13)~~)) (14) "Individual reentry plan" means the plan to prepare an offender for release into the community. It should be developed collaboratively between the department and the offender and based on an assessment of the offender using a standardized and comprehensive tool to identify the ((~~offenders' [offender's]~~)) offender's risks and needs. The individual reentry plan describes actions that should occur to prepare individual offenders for release from prison or jail, specifies the supervision and services they will experience in the community, and describes an offender's eventual discharge to aftercare upon successful completion of supervision. An individual reentry plan is updated throughout the period of an offender's incarceration and supervision to be relevant to the offender's current needs and risks.

((~~(14)~~)) (15) "Inmate" means a person committed to the custody of the department, including but not limited to persons residing in a correctional institution or facility and persons released from such facility on furlough, work release, or community custody, and persons received from another state, state agency, county, or federal jurisdiction.

((~~(15)~~)) (16) "Privilege" means any goods or services, education or work programs, or earned early release days, the receipt of which are directly linked to an inmate's (a) good

conduct; and (b) good performance. Privileges do not include any goods or services the department is required to provide under the state or federal Constitution or under state or federal law.

((~~(16)~~)) (17) "Promising practice" means a practice that presents, based on preliminary information, potential for becoming a research-based or consensus-based practice.

((~~(17)~~)) (18) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

((~~(18)~~)) (19) "Secretary" means the secretary of corrections or his or her designee.

((~~(19)~~)) (20) "Significant expansion" includes any expansion into a new product line or service to the class I business that results from an increase in benefits provided by the department, including a decrease in labor costs, rent, or utility rates (for water, sewer, electricity, and disposal), an increase in work program space, tax advantages, or other overhead costs.

((~~(20)~~)) (21) "Superintendent" means the superintendent of a correctional facility under the jurisdiction of the Washington state department of corrections, or his or her designee.

((~~(21)~~)) (22) "Unfair competition" means any net competitive advantage that a business may acquire as a result of a correctional industries contract, including labor costs, rent, tax advantages, utility rates (water, sewer, electricity, and disposal), and other overhead costs. To determine net competitive advantage, the correctional industries board shall review and quantify any expenses unique to operating a for-profit business inside a prison.

((~~(22)~~)) (23) "Vocational training" or "vocational education" means "vocational education" as defined in RCW 72.62.020.

((~~(23)~~)) (24) "Washington business" means an in-state manufacturer or service provider subject to chapter 82.04 RCW existing on June 10, 2004.

((~~(24)~~)) (25) "Work programs" means all classes of correctional industries jobs authorized under RCW 72.09.100.

Sec. 49. RCW 72.09.270 and 2007 c 483 s 203 are each amended to read as follows:

(1) The department of corrections shall develop an individual reentry plan as defined in RCW 72.09.015 for every offender who is committed to the jurisdiction of the department except:

(a) Offenders who are sentenced to life without the possibility of release or sentenced to death under chapter 10.95 RCW; and

(b) Offenders who are subject to the provisions of 8 U.S.C. Sec. 1227.

(2) The individual reentry plan may be one document, or may be a series of individual plans that combine to meet the requirements of this section.

(3) In developing individual reentry plans, the department shall assess all offenders using standardized and comprehensive tools to identify the criminogenic risks, programmatic needs, and educational and vocational skill levels for each offender. The assessment tool should take into account demographic biases, such as culture, age, and gender, as well as the needs of the offender, including any learning disabilities, substance abuse or mental health issues, and social or behavior deficits.

(4)(a) The initial assessment shall be conducted as early as sentencing, but, whenever possible, no later than forty-five days of being sentenced to the jurisdiction of the department of corrections.

(b) The offender's individual reentry plan shall be developed as soon as possible after the initial assessment is conducted, but, whenever possible, no later than sixty days after completion of the assessment, and shall be periodically reviewed and updated as appropriate.

(5) The individual reentry plan shall, at a minimum, include:

(a) A plan to maintain contact with the inmate's children and family, if appropriate. The plan should determine whether parenting classes, or other services, are appropriate to facilitate successful reunification with the offender's children and family;

(b) An individualized portfolio for each offender that includes the offender's education achievements, certifications, employment, work experience, skills, and any training received prior to and during incarceration; and

(c) A plan for the offender during the period of incarceration through reentry into the community that addresses the needs of the offender including education, employment, substance abuse treatment, mental health treatment, family reunification, and other areas which are needed to facilitate a successful reintegration into the community.

(6)(a) Prior to discharge of any offender, the department shall:

(i) Evaluate the offender's needs and, to the extent possible, connect the offender with existing services and resources that meet those needs; and

(ii) Connect the offender with a community justice center and/or community transition coordination network in the area in which the offender will be residing once released from the correctional system if one exists.

(b) If the department recommends partial confinement in an offender's individual reentry plan, the department shall maximize the period of partial confinement for the offender as allowed pursuant to RCW 9.94A.728 to facilitate the offender's transition to the community.

(7) The department shall establish mechanisms for sharing information from individual reentry plans to those persons involved with the offender's treatment, programming, and reentry, when deemed appropriate. When feasible, this information shall be shared electronically.

(8)(a) In determining the county of discharge for an offender released to community custody ((~~or community placement~~)), the department may not approve a residence location that is not in the offender's county of origin unless it is determined by the department that the offender's return to his or her county of origin would be inappropriate considering any court-ordered condition of the offender's sentence, victim safety concerns, negative influences on the offender in the community, or the location of family or other sponsoring persons or organizations that will support the offender.

(b) If the offender is not returned to his or her county of origin, the department shall provide the law and justice council of the county in which the offender is placed with a written explanation.

(c) For purposes of this section, the offender's county of origin means the county of the offender's first felony conviction in Washington.

(9) Nothing in this section creates a vested right in programming, education, or other services.

Sec. 50. RCW 72.09.345 and 1997 c 364 s 4 are each amended to read as follows:

(1) In addition to any other information required to be released under this chapter, the department is authorized, pursuant to RCW 4.24.550, to release relevant information that is necessary to protect the public concerning offenders convicted of sex offenses.

(2) In order for public agencies to have the information necessary to notify the public as authorized in RCW 4.24.550, the secretary shall establish and administer an end-of-sentence review committee for the purposes of assigning risk levels, reviewing available release plans, and making appropriate referrals for sex offenders. The committee shall assess, on a case-by-case basis, the public risk posed by sex offenders who are: (a) Preparing for their release from confinement for sex offenses committed on or after July 1, 1984; and (b) accepted from another state under a reciprocal agreement under the interstate compact authorized in chapter 72.74 RCW.

(3) Notwithstanding any other provision of law, the committee shall have access to all relevant records and information in the possession of public agencies relating to the offenders under review, including police reports; prosecutors' statements of probable cause; presentence investigations and reports; complete judgments and sentences; current classification referrals; criminal history summaries; violation and disciplinary reports; all psychological evaluations and psychiatric hospital reports; sex offender treatment program reports; and juvenile records. Records and information obtained

under this subsection shall not be disclosed outside the committee unless otherwise authorized by law.

(4) The committee shall review each sex offender under its authority before the offender's release from confinement or start of the offender's term of ((~~community placement or~~)) community custody in order to: (a) Classify the offender into a risk level for the purposes of public notification under RCW 4.24.550; (b) where available, review the offender's proposed release plan in accordance with the requirements of RCW 72.09.340; and (c) make appropriate referrals.

(5) The committee shall classify as risk level I those sex offenders whose risk assessments indicate a low risk of reoffense within the community at large. The committee shall classify as risk level II those offenders whose risk assessments indicate a moderate risk of reoffense within the community at large. The committee shall classify as risk level III those offenders whose risk assessments indicate a high risk of reoffense within the community at large.

(6) The committee shall issue to appropriate law enforcement agencies, for their use in making public notifications under RCW 4.24.550, narrative notices regarding the pending release of sex offenders from the department's facilities. The narrative notices shall, at a minimum, describe the identity and criminal history behavior of the offender and shall include the department's risk level classification for the offender. For sex offenders classified as either risk level II or III, the narrative notices shall also include the reasons underlying the classification.

Sec. 51. RCW 72.09.580 and 1999 c 196 s 12 are each amended to read as follows:

Except as specifically prohibited by other law, and for purposes of determining, modifying, or monitoring compliance with conditions of community custody((~~, community placement, or community supervision as authorized under RCW 9.94A.505 and 9.94A.545~~)), the department:

(1) Shall have access to all relevant records and information in the possession of public agencies relating to offenders, including police reports, prosecutors' statements of probable cause, complete criminal history information, psychological evaluations and psychiatric hospital reports, sex offender treatment program reports, and juvenile records; and

(2) May require periodic reports from providers of treatment or other services required by the court or the department, including progress reports, evaluations and assessments, and reports of violations of conditions imposed by the court or the department.

NEW SECTION. **Sec. 52.** (1) This chapter codifies sentencing provisions that may be applicable to sentences for crimes committed prior to July 1, 2000.

(2) This chapter supplements chapter 9.94A RCW and should be read in conjunction with that chapter.

NEW SECTION. **Sec. 53.** In addition to the definitions set out in RCW 9.94A.030, the following definitions apply for purposes of this chapter:

(1) "Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

(2) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed by a court pursuant to this chapter or RCW 16.52.200(6) or 46.61.524. Where the court finds that any offender has a chemical dependency that has contributed to his or her offense, the conditions of supervision may, subject to available resources, include treatment. For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

(3) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

NEW SECTION. **Sec. 54.** The court may order an offender whose sentence includes community placement or community supervision to undergo a mental status evaluation and to participate in available outpatient mental health treatment, if the court finds that reasonable grounds exist to believe that the offender is a mentally ill person as defined in RCW 71.24.025, and that this condition is likely to have influenced the offense. An order requiring mental status evaluation or treatment must be based on a presentence report and, if applicable, mental status evaluations that have been filed with the court to determine the offender's competency or eligibility for a defense of insanity. The court may order additional evaluations at a later date if deemed appropriate

NEW SECTION. **Sec. 55.** A person convicted of a sex offense or an offense categorized as a serious violent offense, assault in the second degree, vehicular homicide, vehicular assault, assault of a child in the second degree, any crime against persons where it is determined in accordance with RCW 9.94A.602 that the offender or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become eligible, in accordance with a program developed by the department, for transfer to community custody status in lieu of earned release time pursuant to RCW 9.94A.728(1).

NEW SECTION. **Sec. 56.** (1) Sections 7 through 59 of this act apply to all sentences imposed or reimposed on or after August 1, 2009, for any crime committed on or after the effective date of this section.

(2) Sections 7 through 59 of this act also apply to all sentences imposed or reimposed on or after August 1, 2009, for crimes committed prior to the effective date of this section, to the extent that such application is constitutionally permissible.

(3) To the extent that application of sections 7 through 59 of this act is not constitutionally permissible with respect to any offender, the sentence for such offender shall be governed by the law as it existed before the effective date of this section, or on such prior date as may be constitutionally required, notwithstanding any amendment or repeal of provisions of such law.

(4) If application of sections 7 through 59 of this act is not constitutionally permissible with respect to any offender, the judgment and sentence shall specify the particular sentencing provisions that will not apply to such offender. Whenever practical, the judgment and sentence shall use the terminology set out in this act.

(5) The sentencing guidelines commission shall prepare a summary of the circumstances under which application of sections 7 through 59 of this act is not constitutionally permissible. The summary should include recommendations of conditions that could be included in judgments and sentences in order to prevent unconstitutional application of the act. This summary shall be incorporated into the *Adult Sentencing Guidelines Manual*.

(6) Sections 7 through 59 of this act shall not affect the enforcement of any sentence that was imposed prior to August 1, 2009, unless the offender is resentenced after that date.

NEW SECTION. **Sec. 57.** (1) The following sections are recodified as part of a new chapter in Title 9 RCW: RCW 9.94A.628, 9.94A.634, 9.94A.700, 9.94A.705, and 9.94A.710.

(2) RCW 9.94A.610 (as amended by this act), 9.94A.612 (as amended by this act), 9.94A.614, 9.94A.616, 9.94A.618, and 9.94A.620 are each recodified as sections in chapter 72.09 RCW.

(3) Sections 52 through 55 of this act are added to the new chapter created in subsection (1) of this section.

(4) The code reviser is authorized to improve the organization of chapter 9.94A RCW by renumbering existing sections and adding subchapter headings.

(5) The code reviser shall correct any cross-references to sections affected by this section in other sections of the code.

NEW SECTION. **Sec. 58.** The following acts or parts of acts are each repealed:

(1) RCW 9.94A.545 (Community custody) and 2006 c 128 s 4, 2003 c 379 s 8, 2000 c 28 s 13, 1999 c 196 s 10, 1988 c 143 s 23, & 1984 c 209 s 22;

(2) RCW 9.94A.713 (Nonpersistent offenders--Conditions) and 2006 c 130 s 1 & 2001 2nd sp.s. c 12 s 304;

(3) RCW 9.94A.715 (Community custody for specified offenders--Conditions) and 2006 c 130 s 2, 2006 c 128 s 5, 2003 c 379 s 6, 2001 2nd sp.s. c 12 s 302, 2001 c 10 s 5, & 2000 c 28 s 25;

(4) RCW 9.94A.720 (Supervision of offenders) and 2003 c 379 s 7, 2002 c 175 s 14, & 2000 c 28 s 26;

(5) RCW 9.94A.800 (Sex offender treatment in correctional facility) and 2000 c 28 s 34;

(6) RCW 9.94A.830 (Legislative finding and intent--Commitment of felony sexual offenders after July 1, 1987) and 1987 c 402 s 2 & 1986 c 301 s 1; and

(7) RCW 79A.60.070 (Conviction under RCW 79A.60.050 or 79A.60.060--Community supervision or community placement--Conditions) and 2000 c 11 s 96 & 1998 c 219 s 3.

NEW SECTION. **Sec. 59.** The repealers in section 58 of this act shall not affect the validity of any sentence that was imposed prior to the effective date of this section or the authority of the department of corrections to supervise any offender pursuant to such sentence.

NEW SECTION. **Sec. 60.** The code reviser shall report to the 2009 legislature on any amendments necessary to accomplish the purposes of this act.

NEW SECTION. **Sec. 61.** Section 25 of this act expires July 1, 2010.

NEW SECTION. **Sec. 62.** Sections 7 through 61 of this act take effect August 1, 2009."

Senators Kline and Hargrove spoke in favor of adoption of the committee amendment.

The President declared the question before the Senate to be the adoption of the committee amendment by the Committee on Judiciary to House Bill No. 2719.

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

MOTION

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

On page 1, line 2 of the title, after "sentences;" strike the remainder of the title and insert "amending RCW 9.94A.441, 9.94A.500, 9.94A.530, 9.94A.737, 9.94A.740, 9.94A.501, 9.94A.505, 9.94A.610, 9.94A.612, 9.94A.625, 9.94A.650, 9.94A.670, 9.94A.690, 9.94A.728, 9.94A.760, 9.94A.775, 9.94A.780, 9.94A.820, 4.24.556, 9.95.017, 9.95.064, 9.95.110, 9.95.123, 9.95.420, 9.95.440, 46.61.524, 72.09.015, 72.09.270, 72.09.345, and 72.09.580; reenacting and amending RCW 9.94A.525, 9.94A.030, 9.94A.660, and 9.94A.712; adding new sections to chapter 9.94A RCW; adding new sections to chapter 72.09 RCW; adding a new chapter to Title 9 RCW; creating new sections; recodifying RCW 9.94A.628, 9.94A.634, 9.94A.700, 9.94A.705, 9.94A.710, 9.94A.610, 9.94A.612, 9.94A.614, 9.94A.616, 9.94A.618, and 9.94A.620; repealing RCW 9.94A.545, 9.94A.713, 9.94A.715, 9.94A.720, 9.94A.800, 9.94A.830, and 79A.60.070; providing an effective date; and providing an expiration date."

MOTION

On motion of Senator Kline, the rules were suspended, House Bill No. 2719 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Kline spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 2719 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2719 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

HOUSE BILL NO. 2719 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

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

MOTION

Senator Haugen moved adoption of the following resolution:

SENATE RESOLUTION
8740

By Senator Haugen

WHEREAS, Utsalady Ladies Aid was formed in 1908 by the women of a small community on Camano Island who were concerned about the religious education for their young people; and

WHEREAS, The notes of the non-denominational religious education the women received were written originally in Norwegian, the native language of many of the members; and

WHEREAS, The women of Utsalady Ladies Aid used money raised through lutefisk dinners and quilt raffles to construct a building to serve the community, which is now listed on the Washington State Register and the National Register of Historic Places; and

WHEREAS, The Utsalady Ladies Aid building was built upon dedicated community collaboration and the skill of local artisans; and

WHEREAS, The Ladies Aid made their building available to local school functions, picnics, Sunday school, 4-H classes, campfire groups, funerals, weddings, voting booths, and community parties; and

WHEREAS, During World War II the Utsalady building was a first-aid station for the Red Cross where women wrapped bandages for war veterans and a community base for scrap drives; and

WHEREAS, Utsalady Ladies Aid continues to be the heart of the community by serving as a local meeting place, a place for women to have fellowship and by reaching out to youth through scholarships for young people in the community who wish to pursue continued education; and

WHEREAS, Utsalady Ladies Aid is the second longest running group in Island County and continues to be the center of the small community; and

WHEREAS, The founders of Utsalady Ladies Aid strove to instill the pioneer spirit into their future generations by preserving the past for the future and passing down traditions from their ancestors to the youngest members of the community; and

NOW, THEREFORE, BE IT RESOLVED, That the Washington State Senate honor the Utsalady Ladies Aid for serving the community for 100 years; and

BE IT FURTHER RESOLVED, That copies of this resolution be immediately transmitted by the Secretary of the Senate to the board of directors and members of the Utsalady Ladies Aid.

Senator Haugen spoke in favor of adoption of the resolution.

POINT OF INQUIRY

Senator Jacobsen: "Would the good lady from the 10th yield to a question? I've always wondered where the name 'Utsalady' came from. Could you explain that?"

Senator Haugen: "Well, Utsalady, I can tell you what the tale of the community was. This was a logging community and in 1850, at one time Utsalady was bigger than Seattle, and there was a reporter who came out from New York who went to this little community to see how come this has been so big. It gotten to be such a large little community and, like I said, there were all these saloons there and this guy went into this saloon and at the same time he was asking, 'What's the name of this community?' One of the men who was working in the mill, who was a Scotsman who had married a native women and just had a child came running in and saying, 'Utsalady, Utsalady.' It's a laddy!! It's a laddy!! The tale is really that Utsalady is a name that from our local native Americans which were the kikiallus. They called it 'the land of berries.' The people would come to this area from all across, the different tribes would come to camp and pick the little wild blackberries that grew on the island. So that's how Utsalady came to have its name. In the original spelling with two 'd's'. It only has one now so I really do believe that it was the Scotsman."

The President declared the question before the Senate to be the adoption of Senate Resolution No. 8740.

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

INTRODUCTION OF SPECIAL GUESTS

The President welcomed and introduced members of the Utsalady Ladies Aid who were seated in the gallery.

MOTION

Senator Haugen moved adoption of the following resolution:

SENATE RESOLUTION
8741

By Senator Haugen

WHEREAS, Josephine Sunset Home is a Christian community welcoming people of all faiths caring for the whole person - body, mind, and spirit; and

WHEREAS, Josephine Sunset Home was built by a $10,000 donation to the Norwegian Lutheran Church by John Hals to build an elder care facility in 1907 in honor of his wife and son who died in childbirth; and

WHEREAS, The faces of the residents of Josephine Sunset Home are the faces of those who helped build the community; doctors, farmers, teachers, mothers and fathers; and

WHEREAS, The staff at Josephine offer a diverse variety of events to keep its citizens active and involved in the community, from church services to fashion shows and trivia nights; and

WHEREAS, Josephine Sunset Home uses innovative residential and nonresidential health care and long term care services, comprehensive child care services, and a special focus on integrated programs that strive to be a resource for the community; and

WHEREAS, Josephine staff work to constructively serve their residents by offering resident forums and making the multigenerational home a community base where everyone is welcome; and

WHEREAS, In addition to caring for its full time residents, Josephine staff offer child care, preschool, adult day services, and care team ministry; and

WHEREAS, Josephine Sunset Home ties the community together by hosting a plethora of intriguing and entertaining events, and valuing its residents who have spent their lives serving the community; and

NOW, THEREFORE, BE IT RESOLVED, That the Washington State Senate honor the 100 years that Josephine Sunset Home has given honorable service to the community; and

BE IT FURTHER RESOLVED, That copies of this resolution be immediately transmitted by the Secretary of the Senate to the Mayor of Stanwood, and Josephine Sunset Home staff.

Senators Haugen and Pflug spoke in favor of adoption of the resolution.

The President declared the question before the Senate to be the adoption of Senate Resolution No. 8741.

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

INTRODUCTION OF SPECIAL GUESTS

The President welcomed and introduced members of the Josephine Sunset Home who were seated in the gallery.

MOTION

At 11:54 a.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

AFTERNOON SESSION

The Senate was called to order at 1:28 p.m. by President Owen.

MOTION

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

SECOND READING
CONFIRMATION OF GUBERNATORIAL APPOINTMENTS

MOTION

Senator King moved that Gubernatorial Appointment No. 9323, James L. Kemp, as a member of the Board of Trustees, State School for the Blind, be confirmed.

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

MOTION

On motion of Senator Brandland, Senators Carrell, Delvin, Morton and Swecker were excused.

APPOINTMENT OF JAMES L. KEMP

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9323, James L. Kemp as a member of the Board of Trustees, State School for the Blind.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9323, James L. Kemp as a

member of the Board of Trustees, State School for the Blind and the appointment was confirmed by the following vote: Yeas, 47; Nays, 0; Absent, 1; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Tom, Weinstein and Zarelli - 47

Absent: Senator Fraser - 1

Excused: Senator Swecker - 1

Gubernatorial Appointment No. 9323, James L. Kemp, having received the constitutional majority was declared confirmed as a member of the Board of Trustees, State School for the Blind.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2881, by House Committee on Health Care & Wellness (originally sponsored by Representatives Hinkle, Kenney and Cody)

Concerning the practice of dentistry.

The measure was read the second time.

MOTION

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

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 18.32.215 and 2003 c 57 s 2 are each amended to read as follows:

(1) An applicant holding a valid license and currently engaged in practice in another state may be granted a license without examination required by this chapter, on the payment of any required fees, if the applicant:

(a) Is a graduate of a dental college, school, or dental department of an institution approved by the commission under RCW 18.32.040(1); or

(b)(i) Has practiced in another state for at least four years; and

(ii) Has completed a one-year postdoctoral residency approved by the commission. The residency may have been completed outside Washington.

(2) The commission may also require the applicant to: (((~~(1)~~))) (a) File with the commission documentation certifying the applicant is licensed to practice in another state; and (((~~(2)~~))) (b) provide information as the commission deems necessary pertaining to the conditions and criteria of the Uniform Disciplinary Act, chapter 18.130 RCW, and to demonstrate to the commission a knowledge of Washington law pertaining to the practice of dentistry.

NEW SECTION. **Sec. 2.** A new section is added to chapter 18.32 RCW to read as follows:

By November 15, 2009, the commission shall report to the governor and the legislature with recommendations for appropriate standards for issuing a license to a foreign-trained dentist. The recommendations shall consider the balance between maintaining assurances that Washington's dental professionals are well-qualified and planning for an adequate supply of dentists to meet the future needs of Washington's diverse urban and rural communities. In addition to considering the use of standards established by accreditation organizations, the recommendations shall consider other options to reduce barriers to licensure.

NEW SECTION. **Sec. 3.** This act expires July 1, 2010."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Health & Long-Term Care to Substitute House Bill No. 2881.

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

MOTION

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

On page 1, line 1 of the title, after "dentistry;" strike the remainder of the title and insert "amending RCW 18.32.215; adding a new section to chapter 18.32 RCW; and providing an expiration date."

MOTION

On motion of Senator Keiser, the rules were suspended, Substitute House Bill No. 2881 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

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

MOTION

On motion of Senator Regala, Senators Fraser and Hargrove were excused.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2881 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2881 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Tom, Weinstein and Zarelli - 47

Excused: Senators Hargrove and Swecker - 2

SUBSTITUTE HOUSE BILL NO. 2881 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SECOND SUBSTITUTE HOUSE BILL NO. 3129, by House Committee on Appropriations Subcommittee on Education (originally sponsored by Representatives Schmick, Anderson, Quall, Simpson and Ormsby)

Regarding online learning programs for high school students

to earn college credit.

The measure was read the second time.

MOTION

Senator McAuliffe moved that the following committee striking amendment by the Committee on Early Learning & K-12 Education be adopted.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** The legislature finds that student interest and participation in online learning continues to grow. At the same time, the legislature, business community, and public are encouraging additional programs for high school students to earn college credits. Fortunately for students attending schools in rural areas, the two trends can be combined to provide learning opportunities that are both rigorous and accessible, and in some cases available free to the student. In 2006-07, more than four thousand five hundred students were able to take an online college course through the running start program, which the community and technical college system makes accessible statewide through its WashingtonOnline consortium. A more concerted effort is needed to make schools and students aware of these opportunities.

NEW SECTION. **Sec. 2.** A new section is added to chapter 28A.300 RCW to read as follows:

(1) The office of the superintendent of public instruction shall compile information about online learning programs for high school students to earn college credit and place the information on its web site. Examples of information to be compiled and placed on the web site include links to purveyors of online learning programs, comparisons among various types of programs regarding costs or awarding of credit, advantages and disadvantages of online learning programs, and other general assistance and guidance for students, teachers, and counselors in selecting and considering online learning programs. The office shall use the expertise of the digital learning commons and WashingtonOnline to provide assistance and suggest resources.

(2) High schools shall ensure that teachers and counselors have information about online learning programs for high school students to earn college credit and are able to assist parents and students in accessing the information. High schools shall ensure that parents and students have opportunities to learn about online learning programs under this section.

(3) For the purposes of this section, online learning programs for high school students to earn college credit include such programs as the running start program under RCW 28A.600.300 through 28A.600.400, advanced placement courses authorized by the college board, the digital learning commons, University of Washington extension, WashingtonOnline, and other programs and providers that meet qualifications under current laws and rules to offer courses that high schools may accept for credit toward graduation requirements or that offer courses generally accepted for credit by public institutions of higher education in Washington.

Sec. 3. RCW 28A.600.320 and 1994 c 205 s 3 are each amended to read as follows:

A school district shall provide general information about the program to all pupils in grades ten, eleven, and twelve and the parents and guardians of those pupils, including information about the opportunity to enroll in the program through online courses available at community and technical colleges and other state institutions of higher education. To assist the district in planning, a pupil shall inform the district of the pupil's intent to enroll in courses at an institution of higher education for credit. Students are responsible for applying for admission to the institution of higher education.

NEW SECTION. **Sec. 4.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2008, in the omnibus appropriations act, this act is null and void."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Early Learning & K-12 Education to Second Substitute House Bill No. 3129.

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

MOTION

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

On page 1, line 2 of the title, after "credit;" strike the remainder of the title and insert "amending RCW 28A.600.320; adding a new section to chapter 28A.300 RCW; and creating new sections."

MOTION

On motion of Senator McAuliffe, the rules were suspended, Second Substitute House Bill No. 3129 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators McAuliffe and King spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Second Substitute House Bill No. 3129 as amended by the Senate .

ROLL CALL

The Secretary called the roll on the final passage of Second Substitute House Bill No. 3129 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Tom, Weinstein and Zarelli - 47

Excused: Senators Hargrove and Swecker - 2

SECOND SUBSTITUTE HOUSE BILL NO. 3129 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 3002, by House Committee on Commerce & Labor (originally sponsored by Representatives Williams, Sells, Ericks, Simpson, Hurst, Loomis, Conway, Liias, VanDeWege, Kenney, Linville and Ormsby)

Applying arbitration to bargaining by the state and the Washington state patrol.

The measure was read the second time.

MOTION

On motion of Senator Kohl-Welles, the rules were suspended, Substitute House Bill No. 3002 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

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

Senator Holmquist spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 3002.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 3002 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 1; Absent, 0; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Tom, Weinstein and Zarelli - 47

Voting nay: Senator Holmquist - 1

Excused: Senator Swecker - 1

SUBSTITUTE HOUSE BILL NO. 3002, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION FOR IMMEDIATE RECONSIDERATION

Senator McAuliffe moved to immediately reconsider the vote by which Second Substitute House Bill No. 2722 passed the Senate earlier in the day.

MOTION

On motion of Senator McAuliffe, the rules were suspended, Second Substitute House Bill No. 2722 was returned to second reading for the purpose of amendment.

SECOND READING

SECOND SUBSTITUTE HOUSE BILL NO. 2722, by House Committee on Appropriations (originally sponsored by Representatives Pettigrew, Kenney, Morris, Sullivan, Hasegawa, Upthegrove, Loomis, Pedersen, Darneille, Conway, Hudgins, Quall, Ericks, Kagi and Ormsby)

Creating an advisory committee to address the achievement gap for African-American students.

The measure was read the second time.

Senator McAuliffe moved that the following amendment by Senators McAuliffe, King and Tom be adopted.

On page 2, at the beginning of line 34, strike "secretary" and insert "president"

Senators McAuliffe and King spoke in favor of adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators McAuliffe, King and Tom on page 2, line 34 to Second Substitute House Bill No. 2722.

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

MOTION

On motion of Senator McAuliffe, the rules were suspended, Second Substitute House Bill No. 2722 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator McAuliffe spoke in favor of passage of the bill.

MOTION

On motion of Senator Stevens, Senator Benton was excused.

The President declared the question before the Senate to be the final passage of Second Substitute House Bill No. 2722 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Second Substitute House Bill No. 2722 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 48

Excused: Senator Benton - 1

SECOND SUBSTITUTE HOUSE BILL NO. 2722 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

At 1:59 p.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

The Senate was called to order at 4:13 p.m. by President Owen.

MOTION

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

MESSAGE FROM THE HOUSE

March 6, 2008

MR. PRESIDENT:
The Speaker has signed the following bill:
ENGROSSED SUBSTITUTE HOUSE BILL NO. 2438,
and the same is herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

March 6, 2008

MR. PRESIDENT:
The Speaker has signed the following bills:
HOUSE BILL NO. 1149,
SUBSTITUTE HOUSE BILL NO. 1421,
HOUSE BILL NO. 1923,
SUBSTITUTE HOUSE BILL NO. 2427,
SUBSTITUTE HOUSE BILL NO. 2496,
HOUSE BILL NO. 2637,
SUBSTITUTE HOUSE BILL NO. 2654,
HOUSE BILL NO. 2730,
SUBSTITUTE HOUSE BILL NO. 2778,
HOUSE BILL NO. 2792,
ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2815,
SUBSTITUTE HOUSE BILL NO. 2859,
HOUSE BILL NO. 2923,
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

March 6, 2008

MR. PRESIDENT:
The Speaker has signed the following bills:
ENGROSSED SUBSTITUTE HOUSE BILL NO. 3012
SUBSTITUTE HOUSE BILL NO. 3029,
HOUSE BILL NO. 3097,
SECOND SUBSTITUTE HOUSE BILL NO. 3104,
ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 3123,
HOUSE BILL NO. 3151
SUBSTITUTE HOUSE BILL NO. 3206,
HOUSE BILL NO. 3275,
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

MESSAGE FROM THE HOUSE

March 6, 2008

MR. PRESIDENT:
The Speaker has signed the following bills:
ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 5278,
SUBSTITUTE SENATE BILL NO. 6184,
SUBSTITUTE SENATE BILL NO. 6244,
SUBSTITUTE SENATE BILL NO. 6260,
SENATE BILL NO. 6271,
SENATE BILL NO. 6283,
SENATE BILL NO. 6284,
SUBSTITUTE SENATE BILL NO. 6309,
SUBSTITUTE SENATE BILL NO. 6322,
SUBSTITUTE SENATE BILL NO. 6324,
SUBSTITUTE SENATE BILL NO. 6457,
SENATE BILL NO. 6464,
SENATE BILL NO. 6465,
SUBSTITUTE SENATE BILL NO. 6500,
SENATE BILL NO. 6504,
SUBSTITUTE SENATE BILL NO. 6544,
ENGROSSED SENATE BILL NO. 6591,
SUBSTITUTE SENATE BILL NO. 6604,
SENATE BILL NO. 6685,
SENATE BILL NO. 6753,
SUBSTITUTE SENATE BILL NO. 6770,
SENATE BILL NO. 6837,
and the same are herewith transmitted.

BARBARA BAKER, Chief Clerk

SIGNED BY THE PRESIDENT

The President signed:
ENGROSSED SUBSTITUTE HOUSE BILL NO. 2438,

SIGNED BY THE PRESIDENT

The President signed:
HOUSE BILL NO. 1149,
SUBSTITUTE HOUSE BILL NO. 1421,
HOUSE BILL NO. 1923,
SUBSTITUTE HOUSE BILL NO. 2427,
SUBSTITUTE HOUSE BILL NO. 2496,
HOUSE BILL NO. 2637,
SUBSTITUTE HOUSE BILL NO. 2654,
HOUSE BILL NO. 2730,
SUBSTITUTE HOUSE BILL NO. 2778,
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ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 3123,
HOUSE BILL NO. 3151,
SUBSTITUTE HOUSE BILL NO. 3206,
HOUSE BILL NO. 3275,

MOTION

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

MOTION

On motion of Senator Brandland, Senator Roach was excused.

MOTION

On motion of Senator Regala, Senator Hobbs was excused.

SECOND READING

FOURTH SUBSTITUTE HOUSE BILL NO. 1103, by House Committee on Health Care & Wellness (originally sponsored by Representatives Campbell, Green, Kenney, Hudgins, Appleton, Schual-Berke and Cody)

Concerning health professions. Revised for 4th Substitute: Increasing the authority of regulators to remove health care practitioners who pose a risk to the public.

The measure was read the second time.

MOTION

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

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** From statehood, Washington has constitutionally provided for the regulation of the practice of medicine and the sale of drugs and medicines. This constitutional recognition of the importance of regulating health care practitioners derives not from providers' financial interest in their license, but from the greater need to protect the public health and safety by assuring that the health care providers and medicines that society relies upon meet certain standards of quality.

The legislature finds that the issuance of a license to practice as a health care provider should be a means to promote quality and not be a means to provide financial benefit for providers. Statutory and administrative requirements provide sufficient due process protections to prevent the unwarranted revocation of a health care provider's license. While those due process protections must be maintained, there is an urgent need to return to the original constitutional mandate that patients be ensured quality from their health care providers. The legislature has recognized and medical malpractice reforms have recognized the importance of quality and patient safety through such measures as a new adverse events reporting system. Reforms to the health care provider licensing system is another step toward improving quality in health care. Therefore, the legislature intends to increase the authority of those engaged in the regulation of health care providers to swiftly identify and remove health care providers who pose a risk to the public.

Sec. 2. RCW 18.130.020 and 1995 c 336 s 1 are each amended to read as follows:

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

(1) "Disciplining authority" means the agency, board, or commission having the authority to take disciplinary action against a holder of, or applicant for, a professional or business license upon a finding of a violation of this chapter or a chapter specified under RCW 18.130.040.

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

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

(4) "Board" means any of those boards specified in RCW 18.130.040.

(5) "Clinical expertise" means the proficiency or judgment that a license holder in a particular profession acquires through clinical experience or clinical practice and that is not possessed by a lay person.

(6) "Commission" means any of the commissions specified in RCW 18.130.040.

((~~(6)~~)) (7) "Unlicensed practice" means:

(a) Practicing a profession or operating a business identified in RCW 18.130.040 without holding a valid, unexpired, unrevoked, and unsuspended license to do so; or

(b) Representing to a consumer, through offerings, advertisements, or use of a professional title or designation, that the individual is qualified to practice a profession or operate a business identified in RCW 18.130.040, without holding a valid, unexpired, unrevoked, and unsuspended license to do so.

((~~(7)~~)) (8) "Disciplinary action" means sanctions identified in RCW 18.130.160.

((~~(8)~~)) (9) "Practice review" means an investigative audit of records related to the complaint, without prior identification of specific patient or consumer names, or an assessment of the conditions, circumstances, and methods of the professional's practice related to the complaint, to determine whether unprofessional conduct may have been committed.

((~~(9)~~)) (10) "Health agency" means city and county health departments and the department of health.

((~~(10)~~)) (11) "License," "licensing," and "licensure" shall be deemed equivalent to the terms "license," "licensing," "licensure," "certificate," "certification," and "registration" as those terms are defined in RCW 18.120.020.

(12) "Standards of practice" means the care, skill, and learning associated with the practice of a profession.

Sec. 3. RCW 18.130.050 and 2006 c 99 s 4 are each amended to read as follows:

Except as provided in section 5 of this act, the disciplining authority has the following authority:

(1) To adopt, amend, and rescind such rules as are deemed necessary to carry out this chapter;

(2) To investigate all complaints or reports of unprofessional conduct as defined in this chapter ((~~and~~));

(3) To hold hearings as provided in this chapter;

((~~(3)~~)) (4) To issue subpoenas and administer oaths in connection with any investigation, consideration of an application for license, hearing, or proceeding held under this chapter;

((~~(4)~~)) (5) To take or cause depositions to be taken and use other discovery procedures as needed in any investigation, hearing, or proceeding held under this chapter;

((~~(5)~~)) (6) To compel attendance of witnesses at hearings;

((~~(6)~~)) (7) In the course of investigating a complaint or report of unprofessional conduct, to conduct practice reviews and to issue citations and assess fines for failure to produce documents, records, or other items in accordance with section 20 of this act;

((~~(7)~~)) (8) To take emergency action ordering summary suspension of a license, or restriction or limitation of the license holder's practice pending proceedings by the disciplining authority. Within fourteen days of a request by the affected license holder, the disciplining authority must provide a show cause hearing in accordance with the requirements of section 6 of this act. Consistent with RCW 18.130.370, a disciplining authority shall issue a summary suspension of the license or temporary practice permit of a license holder prohibited from practicing a health care profession in another state, federal, or foreign jurisdiction because of an act of unprofessional conduct that is substantially equivalent to an act of unprofessional conduct prohibited by this chapter or any of the chapters specified in RCW 18.130.040. The summary suspension remains in effect until proceedings by the Washington disciplining authority have been completed;

((~~(8)~~)) (9) To conduct show cause hearings in accordance with section 5 or 6 of this act to review an action taken by the disciplining authority to suspend a license or restrict or limit a license holder's practice pending proceedings by the disciplining authority;

(10) To use a presiding officer as authorized in RCW 18.130.095(3) or the office of administrative hearings as authorized in chapter 34.12 RCW to conduct hearings. The disciplining authority shall make the final decision regarding disposition of the license unless the disciplining authority elects to delegate in writing the final decision to the presiding officer. Disciplining authorities identified in RCW 18.130.040(2)(b) may not delegate the final decision regarding disposition of the license or imposition of sanctions to a presiding officer in any case pertaining to standards of practice or where clinical expertise is necessary;

((~~(9)~~)) (11) To use individual members of the boards to direct investigations and to authorize the issuance of a citation under subsection (7) of this section. However, the member of the board shall not subsequently participate in the hearing of the case;

((~~(10)~~)) (12) To enter into contracts for professional services determined to be necessary for adequate enforcement of this chapter;

((~~(11)~~)) (13) To contract with ((~~licensees~~)) license holders or other persons or organizations to provide services necessary for the monitoring and supervision of ((~~licensees~~)) license holders who are placed on probation, whose professional activities are restricted, or who are for any authorized purpose subject to monitoring by the disciplining authority;

((~~(12)~~)) (14) To adopt standards of professional conduct or practice;

((~~(13)~~)) (15) To grant or deny license applications, and in the event of a finding of unprofessional conduct by an applicant or license holder, to impose any sanction against a license applicant or license holder provided by this chapter. After January 1, 2009, all sanctions must be issued in accordance with section 12 of this act;

((~~(14)~~)) (16) To restrict or place conditions on the practice of new licensees in order to protect the public and promote the safety of and confidence in the health care system;

(17) To designate individuals authorized to sign subpoenas and statements of charges;

((~~(15)~~)) (18) To establish panels consisting of three or more members of the board to perform any duty or authority within the board's jurisdiction under this chapter;

((~~(16)~~)) (19) To review and audit the records of licensed health facilities' or services' quality assurance committee decisions in which a ((~~licensee's~~)) license holder's practice privilege or employment is terminated or restricted. Each health facility or service shall produce and make accessible to the disciplining authority the appropriate records and otherwise facilitate the review and audit. Information so gained shall not be subject to discovery or introduction into evidence in any civil action pursuant to RCW 70.41.200(3).

Sec. 4. RCW 18.130.060 and 2006 c 99 s 1 are each amended to read as follows:

In addition to the authority specified in RCW 18.130.050 and section 5 of this act, the secretary has the following additional authority:

(1) To employ such investigative, administrative, and clerical staff as necessary for the enforcement of this chapter. The secretary must, whenever practical, make primary assignments on a long-term basis to foster the development and maintenance of staff expertise. To ensure continuity and best practices, the secretary will regularly evaluate staff assignments and workload distribution;

(2) Upon the request of a board or commission, to appoint pro tem members to participate as members of a panel of the board or commission in connection with proceedings specifically identified in the request. Individuals so appointed must meet the same minimum qualifications as regular members of the board or commission. Pro tem members appointed for matters under this chapter are appointed for a term of no more than one year. No pro tem member may serve more than four one-year terms. While serving as board or commission members pro tem, persons so appointed have all the powers, duties, and immunities, and are entitled to the emoluments, including travel expenses in accordance with RCW 43.03.050 and 43.03.060, of regular members of the board or commission. The chairperson of a panel shall be a regular member of the board or commission appointed by the board or commission chairperson. Panels have authority to act as directed by the board or commission with respect to all matters ((~~concerning the review, investigation, and adjudication of all complaints, allegations, charges, and matters~~)) subject to the jurisdiction of the board or commission and within the authority of the board or commission. The authority to act through panels does not restrict the authority of the board or commission to act as a single body at any phase of proceedings within the board's or commission's jurisdiction. Board or commission panels may ((~~make interim orders and~~)) issue final orders and decisions with respect to matters and cases delegated to the panel by the board or commission. Final decisions may be appealed as provided in chapter 34.05 RCW, the administrative procedure act;

(3) To establish fees to be paid for witnesses, expert witnesses, and consultants used in any investigation and to establish fees to witnesses in any agency adjudicative proceeding as authorized by RCW 34.05.446;

(4) To conduct investigations and practice reviews at the direction of the disciplining authority and to issue subpoenas, administer oaths, and take depositions in the course of conducting those investigations and practice reviews at the direction of the disciplining authority;

(5) To have the health professions regulatory program establish a system to recruit potential public members, to review the qualifications of such potential members, and to provide orientation to those public members appointed pursuant to law by the governor or the secretary to the boards and commissions specified in RCW 18.130.040(2)(b), and to the advisory committees and councils for professions specified in RCW 18.130.040(2)(a); and

(6) To adopt rules, in consultation with the disciplining authorities, requiring every license holder to report information identified in RCW 18.130.070.

NEW SECTION. **Sec. 5.** A new section is added to chapter 18.130 RCW to read as follows:

With regard to complaints that only allege that a license holder has committed an act or acts of unprofessional conduct involving sexual misconduct, the secretary shall serve as the sole disciplining authority in every aspect of the disciplinary process, including initiating investigations, investigating, determining the disposition of the complaint, holding hearings, preparing findings of fact, issuing orders or dismissals of charges as provided in RCW 18.130.110, entering into stipulations permitted by RCW 18.130.172, or issuing summary suspensions under section 6 of this act. The board or commission shall review all cases and only refer to the secretary sexual misconduct cases that do not involve clinical expertise or standard of care issues.

NEW SECTION. **Sec. 6.** A new section is added to chapter 18.130 RCW to read as follows:

(1) Upon an order of a disciplining authority to summarily suspend a license, or restrict or limit a license holder's practice pursuant to RCW 18.130.050 or section 5 of this act, the license holder is entitled to a show cause hearing before a panel or the secretary as identified in subsection (2) of this section within fourteen days of requesting a show cause hearing. The license holder must request the show cause hearing within twenty days of the issuance of the order. At the show cause hearing, the disciplining authority has the burden of demonstrating that more probable than not, the license holder poses an immediate threat to the public health and safety. The license holder must request a hearing regarding the statement of charges in accordance with RCW 18.130.090.

(2)(a) In the case of a license holder who is regulated by a board or commission identified in RCW 18.130.040(2)(b), the show cause hearing must be held by a panel of the appropriate board or commission.

(b) In the case of a license holder who is regulated by the secretary under RCW 18.130.040(2)(a), the show cause hearing must be held by the secretary.

(3) At the show cause hearing, the show cause hearing panel or the secretary may consider the statement of charges, the motion, and documents supporting the request for summary action, the respondent's answer to the statement of charges, and shall provide the license holder with an opportunity to provide documentary evidence and written testimony, and be represented by counsel. Prior to the show cause hearing, the disciplining authority shall provide the license holder with all documentation in support of the charges against the license holder.

(4)(a) If the show cause hearing panel or secretary determines that the license holder does not pose an immediate threat to the public health and safety, the panel or secretary may overturn the summary suspension or restriction order.

(b) If the show cause hearing panel or secretary determines that the license holder poses an immediate threat to the public health and safety, the summary suspension or restriction order shall remain in effect. The show cause hearing panel or secretary may amend the order as long as the amended order ensures that the license holder will no longer pose an immediate threat to the public health and safety.

(5) Within forty-five days of the show cause hearing panel's or secretary's determination to sustain the summary suspension or place restrictions on the license, the license holder may request a full hearing on the merits of the disciplining authority's decision to suspend or restrict the license. A full hearing must be provided within forty-five days of receipt of the request for a hearing, unless stipulated otherwise.

NEW SECTION. **Sec. 7.** A new section is added to chapter 18.130 RCW to read as follows:

(1)(a) The secretary is authorized to receive criminal history record information that includes nonconviction data for any purpose associated with investigation or licensing and investigate the complete criminal history and pending charges of all applicants and license holders.

(b) Dissemination or use of nonconviction data for purposes other than that authorized in this section is prohibited. Disciplining authorities shall restrict the use of background check results in determining the individual's suitability for a license and in conducting disciplinary functions.

(2)(a) The secretary shall establish requirements for each applicant for an initial license to obtain a state background check through the state patrol prior to the issuance of any license. The background check may be fingerprint-based at the discretion of the department.

(b) The secretary shall specify those situations where a background check under (a) of this subsection is inadequate and an applicant for an initial license must obtain an electronic fingerprint-based national background check through the state patrol and federal bureau of investigation. Situations where a background check is inadequate may include instances where an applicant has recently lived out of state or where the applicant has a criminal record in Washington. The secretary shall issue a temporary practice permit to an applicant who must have a national background check conducted if the background check conducted under (a) of this subsection does not reveal a criminal record in Washington, and if the applicant meets the provisions of RCW 18.130.075.

(3) In addition to the background check required in subsection (2) of this section, an investigation may include an examination of state and national criminal identification data. The disciplining authority shall use the information for determining eligibility for licensure or renewal. The disciplining authority may also use the information when determining whether to proceed with an investigation of a report under RCW 18.130.080. For a national criminal history records check, the department shall require fingerprints be submitted to and searched through the Washington state patrol identification and criminal history section. The Washington state patrol shall forward the fingerprints to the federal bureau of investigation.

(4) The secretary shall adopt rules to require license holders to report to the disciplining authority any arrests, convictions, or other determinations or findings by a law enforcement agency occurring after the effective date of this section for a criminal offense. The report must be made within fourteen days of the conviction.

(5) The secretary shall conduct an annual review of a representative sample of all license holders who have previously obtained a background check through the department. The selection of the license holders to be reviewed must be representative of all categories of license holders and geographic locations.

(6)(a) When deciding whether or not to issue an initial license, the disciplining authority shall consider the results of any background check conducted under subsection (2) of this section that reveals a conviction for any criminal offense that constitutes unprofessional conduct under this chapter or the chapters specified in RCW 18.130.040(2) or a series of arrests that when considered together demonstrate a pattern of behavior that, without investigation, may pose a risk to the safety of the license holder's patients.

(b) If the background check conducted under subsection (2) of this section reveals any information related to unprofessional conduct that has not been previously disclosed to the disciplining authority, the disciplining authority shall take appropriate disciplinary action against the license holder.

(7) The department shall:

(a) Require the applicant or license holder to submit full sets of fingerprints if necessary to complete the background check;

(b) Require the applicant to submit any information required by the state patrol; and

(c) Notify the applicant if their background check reveals a criminal record. Only when the background check reveals a criminal record will an applicant receive a notice. Upon receiving such a notice, the applicant may request and the department shall provide a copy of the record to the extent permitted under RCW 10.97.050, including making accessible to the applicant for their personal use and information any records of arrest, charges, or allegations of criminal conduct or other nonconviction data pursuant to RCW 10.97.050(4).

(8) Criminal justice agencies shall provide the secretary with both conviction and nonconviction information that the secretary requests for investigations under this chapter.

(9) There is established a unit within the department for the purpose of detection, investigation, and prosecution of any act prohibited or declared unlawful under this chapter. The secretary will employ supervisory, legal, and investigative personnel for the unit who must be qualified by training and experience.

Sec. 8. RCW 18.130.080 and 2006 c 99 s 5 are each amended to read as follows:

(1) ((~~A person, including but not limited to consumers, licensees, corporations, organizations, health care facilities, impaired practitioner programs, or voluntary substance abuse monitoring programs approved by disciplining authorities, and state and local governmental agencies,~~)) (a) An individual, an impaired practitioner program, or a voluntary substance abuse monitoring program approved by a disciplining authority, may submit a written complaint to the disciplining authority charging a license holder or applicant with unprofessional conduct and specifying the grounds therefor or to report information to the disciplining authority, or voluntary substance abuse monitoring program, or an impaired practitioner program approved by the disciplining authority, which indicates that the license holder may not be able to practice his or her profession with reasonable skill and safety to consumers as a result of a mental or physical condition.

(b)(i) Every license holder, corporation, organization, health care facility, and state and local governmental agency that employs a license holder shall report to the disciplining authority when the employed license holder's services have been terminated or restricted based upon a final determination that the license holder has either committed an act or acts that may constitute unprofessional conduct or that the license holder may not be able to practice his or her profession with reasonable skill and safety to consumers as a result of a mental or physical condition.

(ii) All reports required by (b)(i) of this subsection must be submitted to the disciplining authority as soon as possible, but no later than twenty days after a determination has been made. A report should contain the following information, if known:

(A) The name, address, and telephone number of the person making the report;

(B) The name, address, and telephone number of the license holder being reported;

(C) The case number of any patient whose treatment is the subject of the report;

(D) A brief description or summary of the facts that gave rise to the issuance of the report, including dates of occurrences;

(E) If court action is involved, the name of the court in which the action is filed, the date of filing, and the docket number; and

(F) Any further information that would aid in the evaluation of the report.

(iii) Mandatory reports required by (b)(i) of this subsection are exempt from public inspection and copying to the extent permitted under chapter 42.56 RCW or to the extent that public inspection or copying of the report would invade or violate a person's right to privacy as set forth in RCW 42.56.050.

(2) If the disciplining authority determines that ((~~the~~)) a complaint submitted under subsection (1) of this section merits investigation, or if the disciplining authority has reason to believe, without a formal complaint, that a license holder or applicant may have engaged in unprofessional conduct, the disciplining authority shall investigate to determine whether there has been unprofessional conduct. In determining whether or not to investigate, the disciplining authority shall consider any prior complaints received by the disciplining authority, any prior findings of fact under RCW 18.130.110, any stipulations to informal disposition under RCW 18.130.172, and any comparable action taken by other state disciplining authorities.

((~~(2)~~)) (3) Notwithstanding subsection ((~~(1)~~)) (2) of this section, the disciplining authority shall initiate an investigation in every instance where:

(a) The disciplining authority receives information that a health care provider has been disqualified from participating in the federal medicare program, under Title XVIII of the federal social security act, or the federal medicaid program, under Title XIX of the federal social security act; or

(b) There is a pattern of complaints, arrests, or other actions that may not have resulted in a formal adjudication of wrongdoing, but when considered together demonstrate a pattern of similar conduct that, without investigation, likely poses a risk to the safety of the license holder's patients.

(4) Failure of a license holder to submit a mandatory report to the disciplining authority under subsection (1)(b) of this section is punishable by a civil penalty not to exceed five hundred dollars and constitutes unprofessional conduct.

(5) If a report has been made by a hospital to the department under RCW 70.41.210 or an ambulatory surgical facility under RCW 70.230.120, a report to the disciplining authority under subsection (1)(b) of this section is not required.

((~~(3) A person who files a complaint or reports information under this section in good faith is immune from suit in any civil action related to the filing or contents of the complaint.~~))

(6) A person is immune from civil liability, whether direct or derivative, for providing information in good faith to the disciplining authority under this section.

(7)(a) The secretary is authorized to receive criminal history record information that includes nonconviction data for any purpose associated with the investigation or licensing of persons under this chapter.

(b) Dissemination or use of nonconviction data for purposes other than that authorized in this section is prohibited.

Sec. 9. RCW 18.130.095 and 2005 c 274 s 231 are each amended to read as follows:

(1)(a) The secretary, in consultation with the disciplining authorities, shall develop uniform procedural rules to respond to public inquiries concerning complaints and their disposition, active investigations, statement of charges, findings of fact, and final orders involving a ((~~licensee~~)) license holder, applicant, or unlicensed person. The uniform procedural rules adopted under this subsection apply to all adjudicative proceedings conducted under this chapter and shall include provisions for establishing time periods for initial assessment, investigation, charging, discovery, settlement, and adjudication of complaints, and shall include enforcement provisions for violations of the specific time periods by the department, the disciplining authority, and the respondent. A ((~~licensee~~)) license holder must be notified upon receipt of a complaint, except when the notification would impede an effective investigation. At the earliest point of time the ((~~licensee~~)) license holder must be allowed to submit a written statement about that complaint, which statement must be included in the file. Complaints filed after July 27, 1997, are exempt from public disclosure under chapter 42.56 RCW until the complaint has been initially assessed and determined to warrant an investigation by the disciplining authority. Complaints determined not to warrant an investigation by the disciplining authority are no longer considered complaints, but must remain in the records and tracking system of the department. Information about complaints that did not warrant an investigation, including the existence of the complaint, may be released only upon receipt of a written public disclosure request or pursuant to an interagency agreement as provided in (b) of this subsection. Complaints determined to warrant no cause for action after investigation are subject to public disclosure, must include an explanation of the determination to close the complaint, and must remain in the records and tracking system of the department.

(b) The secretary, on behalf of the disciplining authorities, shall enter into interagency agreements for the exchange of records, which may include complaints filed but not yet assessed, with other state agencies if access to the records will assist those agencies in meeting their federal or state statutory responsibilities. Records obtained by state agencies under the interagency agreements are subject to the limitations on disclosure contained in (a) of this subsection.

(2) The uniform procedures for conducting investigations shall provide that prior to taking a written statement:

(a) For violation of this chapter, the investigator shall inform such person, in writing of: (i) The nature of the complaint; (ii) that the person may consult with legal counsel at his or her expense prior to making a statement; and (iii) that any statement that the person makes may be used in an adjudicative proceeding conducted under this chapter; and

(b) From a witness or potential witness in an investigation under this chapter, the investigator shall inform the person, in writing, that the statement may be released to the ((~~licensee~~)) license holder, applicant, or unlicensed person under investigation if a statement of charges is issued.

(3) Only upon the authorization of a disciplining authority identified in RCW 18.130.040(2)(b), the secretary, or his or her designee, may serve as the presiding officer for any disciplinary proceedings of the disciplining authority authorized under this chapter. ((~~Except as provided in RCW 18.130.050(8),~~)) The presiding officer shall not vote on or make any final decision in cases pertaining to standards of practice or where clinical expertise is necessary. All functions performed by the presiding officer shall be subject to chapter 34.05 RCW. The secretary, in consultation with the disciplining authorities, shall adopt procedures for implementing this subsection.

(4) The uniform procedural rules shall be adopted by all disciplining authorities listed in RCW 18.130.040(2), and shall be used for all adjudicative proceedings conducted under this chapter, as defined by chapter 34.05 RCW. The uniform procedural rules shall address the use of a presiding officer authorized in subsection (3) of this section to determine and issue decisions on all legal issues and motions arising during adjudicative proceedings.

Sec. 10. RCW 18.130.160 and 2006 c 99 s 6 and 2006 c 8 s 104 are each reenacted and amended to read as follows:

Upon a finding, after hearing, that a license holder ((~~or applicant~~)) has committed unprofessional conduct or is unable to practice with reasonable skill and safety due to a physical or mental condition, the disciplining authority ((~~may consider the imposition of sanctions, taking into account~~)) shall issue an order including sanctions adopted in accordance with the

schedule adopted under section 12 of this act giving proper consideration to any prior findings of fact under RCW 18.130.110, any stipulations to informal disposition under RCW 18.130.172, and any action taken by other in-state or out-of-state disciplining authorities((, and issue an)). The order ((providing)) must provide for one or any combination of the following, as directed by the schedule:

(1) Revocation of the license;

(2) Suspension of the license for a fixed or indefinite term;

(3) Restriction or limitation of the practice;

(4) Requiring the satisfactory completion of a specific program of remedial education or treatment;

(5) The monitoring of the practice by a supervisor approved by the disciplining authority;

(6) Censure or reprimand;

(7) Compliance with conditions of probation for a designated period of time;

(8) Payment of a fine for each violation of this chapter, not to exceed five thousand dollars per violation. Funds received shall be placed in the health professions account;

(9) Denial of the license request;

(10) Corrective action;

(11) Refund of fees billed to and collected from the consumer;

(12) A surrender of the practitioner's license in lieu of other sanctions, which must be reported to the federal data bank.

Any of the actions under this section may be totally or partly stayed by the disciplining authority. Safeguarding the public's health and safety is the paramount responsibility of every disciplining authority ((and)). In determining what action is appropriate, the disciplining authority must consider the schedule adopted under section 12 of this act. Where the schedule allows flexibility in determining the appropriate sanction, the disciplining authority must first consider what sanctions are necessary to protect or compensate the public. Only after such provisions have been made may the disciplining authority consider and include in the order requirements designed to rehabilitate the license holder ((or applicant)). All costs associated with compliance with orders issued under this section are the obligation of the license holder ((or applicant)). The disciplining authority may order permanent revocation of a license if it finds that the license holder can never be rehabilitated or can never regain the ability to practice with reasonable skill and safety.

Surrender or permanent revocation of a license under this section is not subject to a petition for reinstatement under RCW 18.130.150.

The disciplining authority may determine that a case presents unique circumstances that the schedule adopted under section 12 of this act does not adequately address. The disciplining authority may deviate from the schedule adopted under section 12 of this act when selecting appropriate sanctions, but the disciplining authority must issue a written explanation of the basis for not following the schedule.

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

Sec. 11. RCW 18.130.170 and 1995 c 336 s 8 are each amended to read as follows:

(1) If the disciplining authority believes a license holder ((or applicant)) may be unable to practice with reasonable skill and safety to consumers by reason of any mental or physical condition, a statement of charges in the name of the disciplining authority shall be served on the license holder ((or applicant)) and notice shall also be issued providing an opportunity for a hearing. The hearing shall be limited to the sole issue of the capacity of the license holder ((or applicant)) to practice with reasonable skill and safety. If the disciplining authority determines that the license holder ((or applicant)) is unable to practice with reasonable skill and safety for one of the reasons stated in this subsection, the disciplining authority shall impose such sanctions under RCW 18.130.160 as is deemed necessary to protect the public.

(2)(a) In investigating or adjudicating a complaint or report that a license holder ((or applicant)) may be unable to practice with reasonable skill or safety by reason of any mental or physical condition, the disciplining authority may require a license holder ((or applicant)) to submit to a mental or physical examination by one or more licensed or certified health professionals designated by the disciplining authority. The license holder ((or applicant)) shall be provided written notice of the disciplining authority's intent to order a mental or physical examination, which notice shall include: (i) A statement of the specific conduct, event, or circumstances justifying an examination; (ii) a summary of the evidence supporting the disciplining authority's concern that the license holder ((or applicant)) may be unable to practice with reasonable skill and safety by reason of a mental or physical condition, and the grounds for believing such evidence to be credible and reliable; (iii) a statement of the nature, purpose, scope, and content of the intended examination; (iv) a statement that the license holder ((or applicant)) has the right to respond in writing within twenty days to challenge the disciplining authority's grounds for ordering an examination or to challenge the manner or form of the examination; and (v) a statement that if the license holder ((or applicant)) timely responds to the notice of intent, then the license holder ((or applicant)) will not be required to submit to the examination while the response is under consideration.

(b) Upon submission of a timely response to the notice of intent to order a mental or physical examination, the license holder ((or applicant)) shall have an opportunity to respond to or refute such an order by submission of evidence or written argument or both. The evidence and written argument supporting and opposing the mental or physical examination shall be reviewed by either a panel of the disciplining authority members who have not been involved with the allegations against the license holder ((or applicant)) or a neutral decision maker approved by the disciplining authority. The reviewing panel of the disciplining authority or the approved neutral decision maker may, in its discretion, ask for oral argument from the parties. The reviewing panel of the disciplining authority or the approved neutral decision maker shall prepare a written decision as to whether: There is reasonable cause to believe that the license holder ((or applicant)) may be unable to practice with reasonable skill and safety by reason of a mental or physical condition, or the manner or form of the mental or physical examination is appropriate, or both.

(c) Upon receipt by the disciplining authority of the written decision, or upon the failure of the license holder ((or applicant)) to timely respond to the notice of intent, the disciplining authority may issue an order requiring the license holder ((or applicant)) to undergo a mental or physical examination. All such mental or physical examinations shall be narrowly tailored to address only the alleged mental or physical condition and the ability of the license holder ((or applicant)) to practice with reasonable skill and safety. An order of the disciplining authority requiring the license holder ((or applicant)) to undergo a mental or physical examination is not a final order for purposes of appeal. The cost of the examinations ordered by the disciplining authority shall be paid out of the health professions account. In addition to any examinations ordered by the disciplining authority, the ((licensee)) license

holder may submit physical or mental examination reports from licensed or certified health professionals of the license holder's ((~~or applicant's~~)) choosing and expense.

(d) If the disciplining authority finds that a license holder ((~~or applicant~~)) has failed to submit to a properly ordered mental or physical examination, then the disciplining authority may order appropriate action or discipline under RCW 18.130.180(9), unless the failure was due to circumstances beyond the person's control. However, no such action or discipline may be imposed unless the license holder ((~~or applicant~~)) has had the notice and opportunity to challenge the disciplining authority's grounds for ordering the examination, to challenge the manner and form, to assert any other defenses, and to have such challenges or defenses considered by either a panel of the disciplining authority members who have not been involved with the allegations against the license holder ((~~or applicant~~)) or a neutral decision maker approved by the disciplining authority, as previously set forth in this section. Further, the action or discipline ordered by the disciplining authority shall not be more severe than a suspension of the license, certification, registration, or application until such time as the license holder ((~~or applicant~~)) complies with the properly ordered mental or physical examination.

(e) Nothing in this section shall restrict the power of a disciplining authority to act in an emergency under RCW 34.05.422(4), 34.05.479, and 18.130.050(((~~7~~))) (8).

(f) A determination by a court of competent jurisdiction that a license holder ((~~or applicant~~)) is mentally incompetent or ((~~mentally ill~~)) an individual with mental illness is presumptive evidence of the license holder's ((~~or applicant's~~)) inability to practice with reasonable skill and safety. An individual affected under this section shall at reasonable intervals be afforded an opportunity, at his or her expense, to demonstrate that the individual can resume competent practice with reasonable skill and safety to the consumer.

(3) For the purpose of subsection (2) of this section, ((~~an applicant or~~)) a license holder governed by this chapter, by making application, practicing, or filing a license renewal, is deemed to have given consent to submit to a mental, physical, or psychological examination when directed in writing by the disciplining authority and further to have waived all objections to the admissibility or use of the examining health professional's testimony or examination reports by the disciplining authority on the ground that the testimony or reports constitute privileged communications.

NEW SECTION. **Sec. 12.** A new section is added to chapter 18.130 RCW to read as follows:

(1) Each of the disciplining authorities identified in RCW 18.130.040(2)(b) shall appoint a representative to review the secretary's sanctioning guidelines, as well as guidelines adopted by any of the boards and commissions, and collaborate to develop a schedule that defines appropriate ranges of sanctions that are applicable upon a determination that a license holder has committed unprofessional conduct as defined in this chapter or the chapters specified in RCW 18.130.040(2). The schedule must identify aggravating and mitigating circumstances that may enhance or reduce the sanction imposed by the disciplining authority for unprofessional conduct. The schedule must apply to all disciplining authorities. In addition, the disciplining authorities shall make provisions for instances in which there are multiple findings of unprofessional conduct. When establishing the proposed schedule, the disciplining authorities shall consider maintaining consistent sanction determinations that maximize the protection of the public's health and while maintaining the rights of health care providers of the different health professions. The disciplining authorities shall submit the proposed schedule and recommendations to modify or adopt the secretary's guidelines to the secretary no later than November 15, 2008.

(2) The secretary shall adopt rules establishing a uniform sanctioning schedule that is consistent with the proposed schedule developed under subsection (1) of this section. The schedule shall be applied to all disciplinary actions commenced under this chapter after January 1, 2009. The secretary shall use his or her emergency rule-making authority pursuant to the procedures under chapter 34.05 RCW, to adopt rules that take effect no later than January 1, 2009, to implement the schedule.

(3) The disciplining authority may determine that a case presents unique circumstances that the schedule adopted under this section does not adequately address. The disciplining authority may deviate from the schedule adopted under this section when selecting appropriate sanctions, but the disciplining authority must issue a written explanation in the order of the basis for not following the schedule.

(4) The secretary shall report to the legislature by January 15, 2009, on the adoption of the sanctioning schedule.

Sec. 13. RCW 18.130.310 and 1989 1st ex.s. c 9 s 313 are each amended to read as follows:

(1) Subject to RCW 40.07.040, the disciplinary authority shall submit ((~~a biennial~~)) an annual report to the legislature on its proceedings during the ((~~biennium~~)) year, detailing the number of complaints made, investigated, and adjudicated and manner of disposition. In addition, the report must provide data on the department's background check activities conducted under section 7 of this act and the effectiveness of those activities in identifying potential license holders who may not be qualified to practice safely. The report must summarize the distribution of the number of cases assigned to each attorney and investigator for each profession. The identity of the attorney and investigator must remain anonymous. The report may include recommendations for improving the disciplinary process, including proposed legislation. The department shall develop a uniform report format.

(2) Each disciplining authority identified in RCW 18.130.040(2)(b) may submit an annual report to complement the report required under subsection (1) of this section. Each report may provide additional information about the disciplinary activities, rule-making and policy activities, and receipts and expenditures for the individual disciplining authority.

Sec. 14. RCW 70.41.210 and 2005 c 470 s 1 are each amended to read as follows:

(1) The chief administrator or executive officer of a hospital shall report to the department when the practice of a health care practitioner as defined in subsection (2) of this section is restricted, suspended, limited, or terminated based upon a conviction, determination, or finding by the hospital that the health care practitioner has committed an action defined as unprofessional conduct under RCW 18.130.180. The chief administrator or executive officer shall also report any voluntary restriction or termination of the practice of a health care practitioner as defined in subsection (2) of this section while the practitioner is under investigation or the subject of a proceeding by the hospital regarding unprofessional conduct, or in return for the hospital not conducting such an investigation or proceeding or not taking action. The department will forward the report to the appropriate disciplining authority.

(2) The reporting requirements apply to the following health care practitioners: Pharmacists as defined in chapter 18.64 RCW; advanced registered nurse practitioners as defined in chapter 18.79 RCW; dentists as defined in chapter 18.32 RCW; naturopaths as defined in chapter 18.36A RCW; optometrists as defined in chapter 18.53 RCW; osteopathic physicians and surgeons as defined in chapter 18.57 RCW; osteopathic ((~~physician [physicians']~~)) physicians' assistants as defined in chapter 18.57A RCW; physicians as defined in chapter 18.71 RCW; physician assistants as defined in chapter 18.71A RCW; podiatric physicians and surgeons as defined in chapter 18.22 RCW; and psychologists as defined in chapter 18.83 RCW.

(3) Reports made under subsection (1) of this section shall be made within fifteen days of the date: (a) A conviction, determination, or finding is made by the hospital that the health care practitioner has committed an action defined as

unprofessional conduct under RCW 18.130.180; or (b) the voluntary restriction or termination of the practice of a health care practitioner, including his or her voluntary resignation, while under investigation or the subject of proceedings regarding unprofessional conduct under RCW 18.130.180 is accepted by the hospital.

(4) Failure of a hospital to comply with this section is punishable by a civil penalty not to exceed ((~~two~~)) five hundred ((~~fifty~~)) dollars.

(5) A hospital, its chief administrator, or its executive officer who files a report under this section is immune from suit, whether direct or derivative, in any civil action related to the filing or contents of the report, unless the conviction, determination, or finding on which the report and its content are based is proven to not have been made in good faith. The prevailing party in any action brought alleging the conviction, determination, finding, or report was not made in good faith, shall be entitled to recover the costs of litigation, including reasonable attorneys' fees.

(6) The department shall forward reports made under subsection (1) of this section to the appropriate disciplining authority designated under Title 18 RCW within fifteen days of the date the report is received by the department. The department shall notify a hospital that has made a report under subsection (1) of this section of the results of the disciplining authority's case disposition decision within fifteen days after the case disposition. Case disposition is the decision whether to issue a statement of charges, take informal action, or close the complaint without action against a practitioner. In its biennial report to the legislature under RCW 18.130.310, the department shall specifically identify the case dispositions of reports made by hospitals under subsection (1) of this section.

(7) The department shall not increase hospital license fees to carry out this section before July 1, ((~~2007~~)) 2008.

NEW SECTION. **Sec. 15.** A new section is added to chapter 42.52 RCW to read as follows:

Members of a health profession board or commission as identified in RCW 18.130.040(2)(b) may express their professional opinions to an elected official about the work of the board or commission on which the member serves, even if those opinions differ from the department of health's official position. Such communication shall be to inform the elected official and not to lobby in support or opposition to any initiative to the legislature.

Sec. 16. RCW 43.70.320 and 1993 c 492 s 411 are each amended to read as follows:

(1) There is created in the state treasury an account to be known as the health professions account. All fees received by the department for health professions licenses, registration, certifications, renewals, or examinations and the civil penalties assessed and collected by the department under RCW 18.130.190 shall be forwarded to the state treasurer who shall credit such moneys to the health professions account.

(2) All expenses incurred in carrying out the health professions licensing activities of the department shall be paid from the account as authorized by legislative appropriation, except as provided in subsection (4) of this section. Any residue in the account shall be accumulated and shall not revert to the general fund at the end of the biennium.

(3) The secretary shall biennially prepare a budget request based on the anticipated costs of administering the health professions licensing activities of the department which shall include the estimated income from health professions fees.

(4) The secretary shall, at the request of a board or commission as applicable, spend unappropriated funds in the health professions account that are allocated to the requesting board or commission to meet unanticipated costs of that board or commission when revenues exceed more than fifteen percent over the department's estimated six-year spending projections for the requesting board or commission. Unanticipated costs shall be limited to spending as authorized in subsection (3) of this section for anticipated costs.

Sec. 17. RCW 18.130.040 and 2007 c 269 s 17 and 2007 c 70 s 11 are each reenacted and amended to read as follows:

(1) This chapter applies only to the secretary and the boards and commissions having jurisdiction in relation to the professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The secretary has authority under this chapter in relation to the following professions:

(i) Dispensing opticians licensed and designated apprentices under chapter 18.34 RCW;

(ii) Naturopaths licensed under chapter 18.36A RCW;

(iii) Midwives licensed under chapter 18.50 RCW;

(iv) Ocularists licensed under chapter 18.55 RCW;

(v) Massage operators and businesses licensed under chapter 18.108 RCW;

(vi) Dental hygienists licensed under chapter 18.29 RCW;

(vii) Acupuncturists licensed under chapter 18.06 RCW;

(viii) Radiologic technologists certified and X-ray technicians registered under chapter 18.84 RCW;

(ix) Respiratory care practitioners licensed under chapter 18.89 RCW;

(x) Persons registered under chapter 18.19 RCW;

(xi) Persons licensed as mental health counselors, marriage and family therapists, and social workers under chapter 18.225 RCW;

(xii) Persons registered as nursing pool operators under chapter 18.52C RCW;

(xiii) Nursing assistants registered or certified under chapter 18.88A RCW;

(xiv) Health care assistants certified under chapter 18.135 RCW;

(xv) Dietitians and nutritionists certified under chapter 18.138 RCW;

(xvi) Chemical dependency professionals certified under chapter 18.205 RCW;

(xvii) Sex offender treatment providers and certified affiliate sex offender treatment providers certified under chapter 18.155 RCW;

(xviii) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;

(xix) Denturists licensed under chapter 18.30 RCW;

(xx) Orthotists and prosthetists licensed under chapter 18.200 RCW;

(xxi) Surgical technologists registered under chapter 18.215 RCW;

(xxii) Recreational therapists; and

(xxiii) Animal massage practitioners certified under chapter 18.240 RCW.

(b) The boards and commissions having authority under this chapter are as follows:

(i) The podiatric medical board as established in chapter 18.22 RCW;

(ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;

(iii) The dental quality assurance commission as established in chapter 18.32 RCW governing licenses issued under chapter 18.32 RCW and licenses and registrations issued under chapter 18.260 RCW;

(iv) The board of hearing and speech as established in chapter 18.35 RCW;

(v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;

(vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;

(vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;

(viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;

(ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;

(x) The board of physical therapy as established in chapter 18.74 RCW;

(xi) The board of occupational therapy practice as established in chapter 18.59 RCW;

(xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses and registrations issued under that chapter;

(xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW; and

(xiv) The veterinary board of governors as established in chapter 18.92 RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses ((~~based on the conditions and criteria established in this chapter and the chapters specified in subsection (2) of this section. This chapter also governs any investigation, hearing, or proceeding relating to denial of licensure or issuance of a license conditioned on the applicant's compliance with an order entered pursuant to RCW 18.130.160 by~~)). The disciplining authority may also grant a license subject to conditions.

(4) All disciplining authorities shall adopt procedures to ensure substantially consistent application of this chapter, the Uniform Disciplinary Act, among the disciplining authorities listed in subsection (2) of this section.

Sec. 18. RCW 18.130.040 and 2007 c 269 s 17, 2007 c 253 s 13, and 2007 c 70 s 11 are each reenacted and amended to read as follows:

(1) This chapter applies only to the secretary and the boards and commissions having jurisdiction in relation to the professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The secretary has authority under this chapter in relation to the following professions:

(i) Dispensing opticians licensed and designated apprentices under chapter 18.34 RCW;

(ii) Naturopaths licensed under chapter 18.36A RCW;

(iii) Midwives licensed under chapter 18.50 RCW;

(iv) Ocularists licensed under chapter 18.55 RCW;

(v) Massage operators and businesses licensed under chapter 18.108 RCW;

(vi) Dental hygienists licensed under chapter 18.29 RCW;

(vii) Acupuncturists licensed under chapter 18.06 RCW;

(viii) Radiologic technologists certified and X-ray technicians registered under chapter 18.84 RCW;

(ix) Respiratory care practitioners licensed under chapter 18.89 RCW;

(x) Persons registered under chapter 18.19 RCW;

(xi) Persons licensed as mental health counselors, marriage and family therapists, and social workers under chapter 18.225 RCW;

(xii) Persons registered as nursing pool operators under chapter 18.52C RCW;

(xiii) Nursing assistants registered or certified under chapter 18.88A RCW;

(xiv) Health care assistants certified under chapter 18.135 RCW;

(xv) Dietitians and nutritionists certified under chapter 18.138 RCW;

(xvi) Chemical dependency professionals certified under chapter 18.205 RCW;

(xvii) Sex offender treatment providers and certified affiliate sex offender treatment providers certified under chapter 18.155 RCW;

(xviii) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;

(xix) Denturists licensed under chapter 18.30 RCW;

(xx) Orthotists and prosthetists licensed under chapter 18.200 RCW;

(xxi) Surgical technologists registered under chapter 18.215 RCW;

(xxii) Recreational therapists;

(xxiii) Animal massage practitioners certified under chapter 18.240 RCW; and

(xxiv) Athletic trainers licensed under chapter 18.250 RCW.

(b) The boards and commissions having authority under this chapter are as follows:

(i) The podiatric medical board as established in chapter 18.22 RCW;

(ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;

(iii) The dental quality assurance commission as established in chapter 18.32 RCW governing licenses issued under chapter 18.32 RCW and licenses and registrations issued under chapter 18.260 RCW;

(iv) The board of hearing and speech as established in chapter 18.35 RCW;

(v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;

(vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;

(vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;

(viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;

(ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;

(x) The board of physical therapy as established in chapter 18.74 RCW;

(xi) The board of occupational therapy practice as established in chapter 18.59 RCW;

(xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses and registrations issued under that chapter;

(xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW; and

(xiv) The veterinary board of governors as established in chapter 18.92 RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses ((~~based on the conditions and criteria established in this chapter and the chapters specified in subsection (2) of this section. This chapter also governs any investigation, hearing, or proceeding relating to denial of licensure or issuance of a license conditioned on the applicant's compliance with an order entered pursuant to RCW 18.130.160 by~~)). The disciplining authority may also grant a license subject to conditions.

(4) All disciplining authorities shall adopt procedures to ensure substantially consistent application of this chapter, the Uniform Disciplinary Act, among the disciplining authorities listed in subsection (2) of this section.

NEW SECTION. **Sec. 19.** A new section is added to chapter 18.130 RCW to read as follows:

(1) The disciplining authority may deny an application for licensure or grant a license with conditions if the applicant:

(a) Has had his or her license to practice any health care profession suspended, revoked, or restricted, by competent authority in any state, federal, or foreign jurisdiction;

(b) Has committed any act defined as unprofessional conduct for a license holder under RCW 18.130.180;

(c) Has been convicted or is subject to current prosecution or pending charges of a crime involving moral turpitude or a crime identified in RCW 43.43.830. For purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the prosecution or sentence has been deferred or suspended. At the request of an applicant for an original license whose conviction is under appeal, the disciplining authority may defer decision upon the application during the pendency of such a prosecution or appeal;

(d) Fails to prove that he or she is qualified in accordance with the provisions of this chapter, the chapters identified in RCW 18.130.040(2), or the rules adopted by the disciplining authority; or

(e) Is not able to practice with reasonable skill and safety to consumers by reason of any mental or physical condition.

(i) The disciplining authority may require the applicant, at his or her own expense, to submit to a mental, physical, or psychological examination by one or more licensed health professionals designated by the disciplining authority. The disciplining authority shall provide written notice of its requirement for a mental or physical examination that includes a statement of the specific conduct, event, or circumstances justifying an examination and a statement of the nature, purpose, scope, and content of the intended examination. If the applicant fails to submit to the examination or provide the results of the examination or any required waivers, the disciplining authority may deny the application.

(ii) An applicant governed by this chapter is deemed to have given consent to submit to a mental, physical, or psychological examination when directed in writing by the disciplining authority and further to have waived all objections to the admissibility or use of the examining health professional's testimony or examination reports by the disciplining authority on the grounds that the testimony or reports constitute privileged communications.

(2) The provisions of RCW 9.95.240 and chapter 9.96A RCW do not apply to a decision to deny a license under this section.

(3) The disciplining authority shall give written notice to the applicant of the decision to deny a license or grant a license with conditions in response to an application for a license. The notice must state the grounds and factual basis for the action and be served upon the applicant.

(4) A license applicant who is aggrieved by the decision to deny the license or grant the license with conditions has the right to an adjudicative proceeding. The application for adjudicative proceeding must be in writing, state the basis for contesting the adverse action, include a copy of the adverse notice, and be served on and received by the department within twenty-eight days of the decision. The license applicant has the burden to establish, by a preponderance of evidence, that the license applicant is qualified in accordance with the provisions of this chapter, the chapters identified in RCW 18.130.040(2), and the rules adopted by the disciplining authority.

NEW SECTION. **Sec. 20.** A new section is added to chapter 18.130 RCW to read as follows:

(1)(a) A licensee must produce documents, records, or other items that are within his or her possession or control within twenty-one calendar days of service of a request by a disciplining authority. If the twenty-one calendar day limit results in a hardship upon the licensee, he or she may request, for good cause, an extension not to exceed thirty additional calendar days.

(b) In the event the licensee fails to produce the documents, records, or other items as requested by the disciplining authority or fails to obtain an extension of the time for response, the disciplining authority may issue a written citation and assess a fine of up to one hundred dollars per day for each day after the issuance of the citation until the documents, records, or other items are produced.

(c) In no event may the administrative fine assessed by the disciplining authority exceed five thousand dollars for each investigation made with respect to the violation.

(2) Citations issued under this section must include the following:

(a) A statement that the citation represents a determination that the person named has failed to produce documents, records, or other items as required by this section and that the determination is final unless contested as provided in this section;

(b) A statement of the specific circumstances;

(c) A statement of the monetary fine, which is up to one hundred dollars per day for each day after the issuance of the citation;

(d) A statement informing the licensee that if the licensee desires a hearing to contest the finding of a violation, the hearing must be requested by written notice to the disciplining authority within twenty days of the date of issuance of the citation. The hearing is limited to the issue of whether the licensee timely produced the requested documents, records, or other items or had good cause for failure to do so; and

(e) A statement that in the event a licensee fails to pay a fine within thirty days of the date of assessment, the full amount of the assessed fine must be added to the fee for renewal of the license unless the citation is being appealed.

(3) RCW 18.130.165 governs proof and enforcement of the fine.

(4) Administrative fines collected under this section must be deposited in the health professions account created in RCW 43.70.320.

(5) Issuance of a citation under this section does not preclude the disciplining authority from pursuing other action under this chapter.

(6) The disciplining authority shall establish and make available to licensees the maximum daily monetary fine that may be issued under subsection (2)(c) of this section. The disciplining authority shall review the maximum fine on a regular basis, but at a minimum, each biennium.

Sec. 21. RCW 18.130.140 and 1984 c 279 s 14 are each amended to read as follows:

An individual who has been disciplined ((~~or~~)), whose license has been denied, or whose license has been granted with conditions by a disciplining authority may appeal the decision as provided in chapter 34.05 RCW.

Sec. 22. RCW 18.130.150 and 1997 c 58 s 831 are each amended to read as follows:

A person whose license has been suspended ((~~or revoked~~)) under this chapter may petition the disciplining authority for reinstatement after an interval as determined by the disciplining authority in the order unless the disciplining authority has found, pursuant to RCW 18.130.160, that the licensee can never be rehabilitated or can never regain the ability to practice with reasonable skill and safety. The disciplining authority shall hold hearings on the petition and may deny the petition or may order reinstatement and impose terms and conditions as provided in RCW 18.130.160 and issue an order of reinstatement. The disciplining authority may require successful completion of an examination as a condition of reinstatement.

A person whose license has been suspended for noncompliance with a support order or ((~~a residential or~~)) visitation order under RCW 74.20A.320 may petition for reinstatement at any time by providing the secretary a release issued by the department of social and health services stating that the person is in compliance with the order. If the person has continued to meet all other requirements for reinstatement during the suspension, the secretary shall automatically reissue the person's license upon receipt of the release, and payment of a reinstatement fee, if any.

Sec. 23. RCW 18.130.165 and 1993 c 367 s 20 are each amended to read as follows:

Where an order for payment of a fine is made as a result of a citation under section 20 of this act or a hearing under RCW 18.130.100 or 18.130.190 and timely payment is not made as directed in the final order, the disciplining authority may enforce the order for payment in the superior court in the county in which the hearing was held. This right of enforcement shall be in addition to any other rights the disciplining authority may have as to any licensee ordered to pay a fine but shall not be construed to limit a licensee's ability to seek judicial review under RCW 18.130.140.

In any action for enforcement of an order of payment of a fine, the disciplining authority's order is conclusive proof of the validity of the order of payment of a fine and the terms of payment.

Sec. 24. RCW 18.130.172 and 2000 c 171 s 29 are each amended to read as follows:

(1) Prior to serving a statement of charges under RCW 18.130.090 or 18.130.170, the disciplinary authority may furnish a statement of allegations to the licensee ((~~or applicant~~)) along with a detailed summary of the evidence relied upon to establish the allegations and a proposed stipulation for informal resolution of the allegations. These documents shall be exempt from public disclosure until such time as the allegations are resolved either by stipulation or otherwise.

(2) The disciplinary authority and the ((~~applicant or~~)) licensee may stipulate that the allegations may be disposed of informally in accordance with this subsection. The stipulation shall contain a statement of the facts leading to the filing of the complaint; the act or acts of unprofessional conduct alleged to have been committed or the alleged basis for determining that the ((~~applicant or~~)) licensee is unable to practice with reasonable skill and safety; a statement that the stipulation is not to be construed as a finding of either unprofessional conduct or inability to practice; an acknowledgment that a finding of unprofessional conduct or inability to practice, if proven, constitutes grounds for discipline under this chapter; and an agreement on the part of the licensee ((~~or applicant~~)) that the sanctions set forth in RCW 18.130.160, except RCW 18.130.160 (1), (2), (6), and (8), may be imposed as part of the stipulation, except that no fine may be imposed but the licensee ((~~or applicant~~)) may agree to reimburse the disciplinary authority the costs of investigation and processing the complaint up to an amount not exceeding one thousand dollars per allegation; and an agreement on the part of the disciplinary authority to forego further disciplinary proceedings concerning the allegations. A stipulation entered into pursuant to this subsection shall not be considered formal disciplinary action.

(3) If the licensee ((~~or applicant~~)) declines to agree to disposition of the charges by means of a stipulation pursuant to subsection (2) of this section, the disciplinary authority may proceed to formal disciplinary action pursuant to RCW 18.130.090 or 18.130.170.

(4) Upon execution of a stipulation under subsection (2) of this section by both the licensee ((~~or applicant~~)) and the disciplinary authority, the complaint is deemed disposed of and shall become subject to public disclosure on the same basis and to the same extent as other records of the disciplinary authority. Should the licensee ((~~or applicant~~)) fail to pay any agreed reimbursement within thirty days of the date specified in the stipulation for payment, the disciplinary authority may seek collection of the amount agreed to be paid in the same manner as enforcement of a fine under RCW 18.130.165.

Sec. 25. RCW 18.130.180 and 1995 c 336 s 9 are each amended to read as follows:

The following conduct, acts, or conditions constitute unprofessional conduct for any license holder ((~~or applicant~~)) under the jurisdiction of this chapter:

(1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession, whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder ((~~or applicant~~)) of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

(2) Misrepresentation or concealment of a material fact in obtaining a license or in reinstatement thereof;

(3) All advertising which is false, fraudulent, or misleading;

(4) Incompetence, negligence, or malpractice which results in injury to a patient or which creates an unreasonable risk that a patient may be harmed. The use of a nontraditional treatment by itself shall not constitute unprofessional conduct, provided that it does not result in injury to a patient or create an unreasonable risk that a patient may be harmed;

(5) Suspension, revocation, or restriction of the individual's license to practice any health care profession by competent authority in any state, federal, or foreign jurisdiction, a certified copy of the order, stipulation, or agreement being conclusive evidence of the revocation, suspension, or restriction;

(6) The possession, use, prescription for use, or distribution of controlled substances or legend drugs in any way other than for legitimate or therapeutic purposes, diversion of controlled substances or legend drugs, the violation of any drug law, or prescribing controlled substances for oneself;

(7) Violation of any state or federal statute or administrative rule regulating the profession in question, including any statute or rule defining or establishing standards of patient care or professional conduct or practice;

(8) Failure to cooperate with the disciplining authority by:

(a) Not furnishing any papers ((~~or~~)), documents, records, or other items;

(b) Not furnishing in writing a full and complete explanation covering the matter contained in the complaint filed with the disciplining authority;

(c) Not responding to subpoenas issued by the disciplining authority, whether or not the recipient of the subpoena is the accused in the proceeding; or

(d) Not providing reasonable and timely access for authorized representatives of the disciplining authority seeking to perform practice reviews at facilities utilized by the license holder;

(9) Failure to comply with an order issued by the disciplining authority or a stipulation for informal disposition entered into with the disciplining authority;

(10) Aiding or abetting an unlicensed person to practice when a license is required;

(11) Violations of rules established by any health agency;

(12) Practice beyond the scope of practice as defined by law or rule;

(13) Misrepresentation or fraud in any aspect of the conduct of the business or profession;

(14) Failure to adequately supervise auxiliary staff to the extent that the consumer's health or safety is at risk;

(15) Engaging in a profession involving contact with the public while suffering from a contagious or infectious disease involving serious risk to public health;

(16) Promotion for personal gain of any unnecessary or inefficacious drug, device, treatment, procedure, or service;

(17) Conviction of any gross misdemeanor or felony relating to the practice of the person's profession. For the purposes of this subsection, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

(18) The procuring, or aiding or abetting in procuring, a criminal abortion;

(19) The offering, undertaking, or agreeing to cure or treat disease by a secret method, procedure, treatment, or medicine, or the treating, operating, or prescribing for any health condition by a method, means, or procedure which the licensee refuses to divulge upon demand of the disciplining authority;

(20) The willful betrayal of a practitioner-patient privilege as recognized by law;

(21) Violation of chapter 19.68 RCW;

(22) Interference with an investigation or disciplinary proceeding by willful misrepresentation of facts before the disciplining authority or its authorized representative, or by the use of threats or harassment against any patient or witness to prevent them from providing evidence in a disciplinary proceeding or any other legal action, or by the use of financial inducements to any patient or witness to prevent or attempt to prevent him or her from providing evidence in a disciplinary proceeding;

(23) Current misuse of:

(a) Alcohol;

(b) Controlled substances; or

(c) Legend drugs;

(24) Abuse of a client or patient or sexual contact with a client or patient;

(25) Acceptance of more than a nominal gratuity, hospitality, or subsidy offered by a representative or vendor of medical or health-related products or services intended for patients, in contemplation of a sale or for use in research publishable in professional journals, where a conflict of interest is presented, as defined by rules of the disciplining authority, in consultation with the department, based on recognized professional ethical standards.

Sec. 26. RCW 9.96A.020 and 1999 c 16 s 1 are each amended to read as follows:

(1) Subject to the exceptions in subsections (3) ((~~and (4)~~)) through (5) of this section, and unless there is another provision of law to the contrary, a person is not disqualified from employment by the state of Washington or any of its counties, cities, towns, municipal corporations, or quasi-municipal corporations, nor is a person disqualified to practice, pursue or engage in any occupation, trade, vocation, or business for which a license, permit, certificate or registration is required to be issued by the state of Washington or any of its counties, cities, towns, municipal corporations, or quasi-municipal corporations solely because of a prior conviction of a felony. However, this section does not preclude the fact of any prior conviction of a crime from being considered.

(2) A person may be denied employment by the state of Washington or any of its counties, cities, towns, municipal corporations, or quasi-municipal corporations, or a person may be denied a license, permit, certificate or registration to pursue, practice or engage in an occupation, trade, vocation, or business by reason of the prior conviction of a felony if the felony for which he or she was convicted directly relates to the position of employment sought or to the specific occupation, trade, vocation, or business for which the license, permit, certificate or registration is sought, and the time elapsed since the conviction is less than ten years. However, for positions in the county treasurer's office, a person may be disqualified from employment because of a prior guilty plea or conviction of a felony involving embezzlement or theft, even if the time elapsed since the guilty plea or conviction is ten years or more.

(3) A person is disqualified for any certificate required or authorized under chapters 28A.405 or 28A.410 RCW, because of a prior guilty plea or the conviction of a felony involving sexual exploitation of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44 RCW where a minor is the victim, promoting prostitution of a minor under chapter 9A.88 RCW, or a violation of similar laws of another jurisdiction, even if the time elapsed since the guilty plea or conviction is ten years or more.

(4) A person is disqualified from employment by school districts, educational service districts, and their contractors hiring employees who will have regularly scheduled unsupervised access to children, because of a prior guilty plea or conviction of a felony involving sexual exploitation of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44 RCW where a minor is the victim, promoting prostitution of a minor under chapter 9A.88 RCW, or a violation of similar laws of another jurisdiction, even if the time elapsed since the guilty plea or conviction is ten years or more.

(5) The provisions of this chapter do not apply to issuance of licenses or credentials for professions regulated under chapter 18.130 RCW.

(6) Subsections (3) and (4) of this section only apply to a person applying for a certificate or for employment on or after July 25, 1993. Subsection (5) of this section only applies to a person applying for a license or credential on or after the effective date of this section.

Sec. 27. RCW 9.95.240 and 2003 c 66 s 1 are each amended to read as follows:

(1) Every defendant who has fulfilled the conditions of his or her probation for the entire period thereof, or who shall have been discharged from probation prior to the termination of the period thereof, may at any time prior to the expiration of the maximum period of punishment for the offense for which he or she has been convicted be permitted in the discretion of the court to withdraw his or her plea of guilty and enter a plea of not guilty, or if he or she has been convicted after a plea of not guilty, the court may in its discretion set aside the verdict of guilty; and in either case, the court may thereupon dismiss the information or indictment against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he or she has been convicted. The probationer shall be informed of this right in his or her probation papers: PROVIDED, That in any subsequent prosecution, for any other offense, such prior conviction may be pleaded and proved, and shall have the same effect as if probation had not been granted, or the information or indictment dismissed.

(2)(a) After the period of probation has expired, the defendant may apply to the sentencing court for a vacation of the defendant's record of conviction under RCW 9.94A.640. The court may, in its discretion, clear the record of conviction if it finds the defendant has met the equivalent of the tests in RCW 9.94A.640(2) as those tests would be applied to a person convicted of a crime committed before July 1, 1984.

(b) The clerk of the court in which the vacation order is entered shall immediately transmit the order vacating the conviction to the Washington state patrol identification section and to the local police agency, if any, which holds criminal history information for the person who is the subject of the conviction. The Washington state patrol and any such local police agency shall immediately update their records to reflect the vacation of the conviction, and shall transmit the order vacating the conviction to the federal bureau of investigation. A conviction that has been vacated under this section may not be disseminated or disclosed by the state patrol or local law enforcement agency to any person, except other criminal justice enforcement agencies.

(3) This section does not apply to chapter 18.130 RCW.

Sec. 28. RCW 43.43.825 and 2006 c 99 s 8 are each amended to read as follows:

(1) Upon a guilty plea or conviction of a person for any felony crime involving homicide under chapter 9A.32 RCW, assault under chapter 9A.36 RCW, kidnapping under chapter 9A.40 RCW, ((~~or~~)) sex offenses under chapter 9A.44 RCW, financial crimes under chapter 9A.60 RCW, violations of the uniform controlled substances act under chapter 69.50 RCW, any drug offense defined under RCW 9.94A.030, or a crime of

any type classified as a felony under Washington state law, the prosecuting attorney shall notify the state patrol of such guilty pleas or convictions.

(2) When the state patrol receives information that a person has pled guilty to or been convicted of one of the felony crimes under subsection (1) of this section, the state patrol shall transmit that information to the department of health. It is the duty of the department of health to identify whether the person holds a credential issued by a disciplining authority listed under RCW 18.130.040, and provide this information to the disciplining authority that issued the credential to the person who pled guilty or was convicted of a crime listed in subsection (1) of this section.

NEW SECTION. **Sec. 29.** A new section is added to chapter 18.71 RCW to read as follows:

(1) The commission shall conduct a pilot project to evaluate the effect of granting the commission additional authority over budget development, spending, and staffing. The pilot project shall begin on July 1, 2008, and conclude on June 30, 2013.

(2) The pilot project shall include the following provisions:

(a) That the secretary shall employ an executive director that is:

(i) Hired by and serves at the pleasure of the commission;

(ii) Exempt from the provisions of the civil service law, chapter 41.06 RCW and whose salary is established by the commission in accordance with RCW 43.03.028 and 42.17.370; and

(iii) Responsible for performing all administrative duties of the commission, including preparing an annual budget, and any other duties as delegated to the executive director by the commission;

(b) Consistent with the budgeting and accounting act:

(i) With regard to budget for the remainder of the 2007-2009 biennium, the commission has authority to spend the remaining funds allocated with respect to its professions, physicians regulated under this chapter and physician assistants regulated under chapter 18.71A RCW; and

(ii) Beginning with the 2009-2011 biennium, the commission is responsible for proposing its own biennial budget which the secretary must submit to the office of financial management;

(c) That, prior to adopting credentialing fees under RCW 43.70.250, the secretary shall collaborate with the commission to determine the appropriate fees necessary to support the activities of the commission;

(d) That, prior to the secretary exercising the secretary's authority to adopt uniform rules and guidelines, or any other actions that might impact the licensing or disciplinary authority of the commission, the secretary shall first meet with the commission to determine how those rules or guidelines, or changes to rules or guidelines, might impact the commission's ability to effectively carry out its statutory duties. If the commission, in consultation with the secretary, determines that the proposed rules or guidelines, or changes to existing rules or guidelines, will negatively impact the commission's ability to effectively carry out its statutory duties, then the individual commission shall collaborate with the secretary to develop alternative solutions to mitigate the impacts. If an alternative solution cannot be reached, the parties may resolve the dispute through a mediator as set forth in (f) of this subsection;

(e) That the commission shall negotiate with the secretary to develop performance-based expectations, including identification of key performance measures. The performance expectations should focus on consistent, timely regulation of health care professionals; and

(f) That in the event there is a disagreement between the commission and the secretary, that is unable to be resolved through negotiation, a representative of both parties shall agree on the designation of a third party to mediate the dispute.

(3) By December 15, 2013, the commission shall report to the governor and the legislature on the results of the pilot project. The report shall:

(a) Compare the effectiveness of licensing and disciplinary activities of each commission during the pilot project with the licensing and disciplinary activities of the commission prior to the pilot project and the disciplinary activities of other disciplining authorities during the same time period as the pilot project;

(b) Compare the efficiency of each commission with respect to the timeliness and personnel resources during the pilot project to the efficiency of the commission prior to the pilot project and the efficiency of other disciplining authorities during the same period as the pilot project;

(c) Compare the budgetary activity of each commission during the pilot project to the budgetary activity of the commission prior to the pilot project and to the budgetary activity of other disciplining authorities during the same period as the pilot project;

(d) Evaluate each commission's regulatory activities, including timelines, consistency of decision making, and performance levels in comparison to other disciplining authorities; and

(e) Review summaries of national research and data regarding regulatory effectiveness and patient safety.

(4) The secretary shall employ staff that are hired and managed by the executive director provided that nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement.

Sec. 30. RCW 18.71.0191 and 1994 sp.s. c 9 s 326 are each amended to read as follows:

Except as provided in section 29 of this act for the duration of the pilot project, the secretary of the department of health shall appoint, from a list of three names supplied by the commission, an executive director who shall act to carry out the provisions of this chapter. The secretary shall also employ such additional staff including administrative assistants, investigators, and clerical staff as are required to enable the commission to accomplish its duties and responsibilities. The executive director is exempt from the provisions of the civil service law, chapter 41.06 RCW, as now or hereafter amended.

NEW SECTION. **Sec. 31.** Section 30 of this act expires June 30, 2013.

NEW SECTION. **Sec. 32.** Section 17 of this act expires July 1, 2008.

NEW SECTION. **Sec. 33.** Section 18 of this act takes effect July 1, 2008.

NEW SECTION. **Sec. 34.** 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. 35.** The code reviser is directed to put the defined terms in RCW 18.130.020 in alphabetical order.

NEW SECTION. **Sec. 36.** Except for sections 2 and 18 of this act, which take effect July 1, 2008, and for section 12 of this act, which takes effect January 1, 2009, 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."

MOTION

Senator Keiser moved that the following amendment by Senators Keiser and Pflug to the committee striking amendment be adopted.

Beginning on page 40, line 10 of the amendment, strike sections 29 through 31, and insert the following:

"NEW SECTION. **Sec. 29.** A new section is added to chapter 18.71 RCW to read as follows:

(1) The commission shall conduct a pilot project to evaluate

the effect of granting the commission additional authority over budget development, spending, and staffing. The pilot project shall begin on July 1, 2008, and conclude on June 30, 2013.

(2) The pilot project shall include the following provisions:

(a) That the secretary shall employ an executive director that is:

(i) Hired by and serves at the pleasure of the commission;

(ii) Exempt from the provisions of the civil service law, chapter 41.06 RCW and whose salary is established by the commission in accordance with RCW 43.03.028 and 42.17.370; and

(iii) Responsible for performing all administrative duties of the commission, including preparing an annual budget, and any other duties as delegated to the executive director by the commission;

(b) Consistent with the budgeting and accounting act:

(i) With regard to budget for the remainder of the 2007-2009 biennium, the commission has authority to spend the remaining funds allocated with respect to its professions, physicians regulated under this chapter and physician assistants regulated under chapter 18.71A RCW; and

(ii) Beginning with the 2009-2011 biennium, the commission is responsible for proposing its own biennial budget which the secretary must submit to the office of financial management;

(c) That, prior to adopting credentialing fees under RCW 43.70.250, the secretary shall collaborate with the commission to determine the appropriate fees necessary to support the activities of the commission;

(d) That, prior to the secretary exercising the secretary's authority to adopt uniform rules and guidelines, or any other actions that might impact the licensing or disciplinary authority of the commission, the secretary shall first meet with the commission to determine how those rules or guidelines, or changes to rules or guidelines, might impact the commission's ability to effectively carry out its statutory duties. If the commission, in consultation with the secretary, determines that the proposed rules or guidelines, or changes to existing rules or guidelines, will negatively impact the commission's ability to effectively carry out its statutory duties, then the individual commission shall collaborate with the secretary to develop alternative solutions to mitigate the impacts. If an alternative solution cannot be reached, the parties may resolve the dispute through a mediator as set forth in (f) of this subsection;

(e) That the commission shall negotiate with the secretary to develop performance-based expectations, including identification of key performance measures. The performance expectations should focus on consistent, timely regulation of health care professionals; and

(f) That in the event there is a disagreement between the commission and the secretary, that is unable to be resolved through negotiation, a representative of both parties shall agree on the designation of a third party to mediate the dispute.

(3) By December 15, 2013, the secretary, the commission, and the other commissions conducting similar pilot projects under sections 30 through 32 of this act, shall report to the governor and the legislature on the results of the pilot project. The report shall:

(a) Compare the effectiveness of licensing and disciplinary activities of each commission during the pilot project with the licensing and disciplinary activities of the commission prior to the pilot project and the disciplinary activities of other disciplining authorities during the same time period as the pilot project;

(b) Compare the efficiency of each commission with respect to the timeliness and personnel resources during the pilot project to the efficiency of the commission prior to the pilot project and the efficiency of other disciplining authorities during the same period as the pilot project;

(c) Compare the budgetary activity of each commission during the pilot project to the budgetary activity of the commission prior to the pilot project and to the budgetary activity of other disciplining authorities during the same period as the pilot project;

(d) Evaluate each commission's regulatory activities, including timelines, consistency of decision making, and performance levels in comparison to other disciplining authorities; and

(e) Review summaries of national research and data regarding regulatory effectiveness and patient safety.

(4) The secretary shall employ staff that are hired and managed by the executive director provided that nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement.

NEW SECTION. **Sec. 30.** A new section is added to chapter 18.79 RCW to read as follows:

(1) The commission shall conduct a pilot project to evaluate the effect of granting the commission additional authority over budget development, spending, and staffing. The pilot project shall begin on July 1, 2008, and conclude on June 30, 2013.

(2) The pilot project shall include the following provisions:

(a) That the secretary shall employ an executive director that is:

(i) Hired by and serves at the pleasure of the commission;

(ii) Exempt from the provisions of the civil service law, chapter 41.06 RCW and whose salary is established by the commission in accordance with RCW 43.03.028 and 42.17.370; and

(iii) Responsible for performing all administrative duties of the commission, including preparing an annual budget, and any other duties as delegated to the executive director by the commission;

(b) Consistent with the budgeting and accounting act:

(i) With regard to budget for the remainder of the 2007-2009 biennium, the commission has authority to spend the remaining funds allocated with respect to advanced registered nurses, registered nurses, and licensed practical nurses regulated under this chapter; and

(ii) Beginning with the 2009-2011 biennium, the commission is responsible for proposing its own biennial budget which the secretary must submit to the office of financial management;

(c) That, prior to adopting credentialing fees under RCW 43.70.250, the secretary shall collaborate with the commission to determine the appropriate fees necessary to support the activities of the commission;

(d) That, prior to the secretary exercising the secretary's authority to adopt uniform rules and guidelines, or any other actions that might impact the licensing or disciplinary authority of the commission, the secretary shall first meet with the commission to determine how those rules or guidelines, or changes to rules or guidelines, might impact the commission's ability to effectively carry out its statutory duties. If the commission, in consultation with the secretary, determines that the proposed rules or guidelines, or changes to existing rules or guidelines, will negatively impact the commission's ability to effectively carry out its statutory duties, then the individual commission shall collaborate with the secretary to develop alternative solutions to mitigate the impacts. If an alternative solution cannot be reached, the parties may resolve the dispute through a mediator as set forth in (f) of this subsection;

(e) That the commission shall negotiate with the secretary to develop performance-based expectations, including identification of key performance measures. The performance expectations should focus on consistent, timely regulation of health care professionals; and

(f) That in the event there is a disagreement between the commission and the secretary, that is unable to be resolved through negotiation, a representative of both parties shall agree on the designation of a third party to mediate the dispute.

(3) By December 15, 2013, the secretary, the commission,

and the other commissions conducting similar pilot projects under sections 29, 31, and 32 of this act, shall report to the governor and the legislature on the results of the pilot project. The report shall:

(a) Compare the effectiveness of licensing and disciplinary activities of each commission during the pilot project with the licensing and disciplinary activities of the commission prior to the pilot project and the disciplinary activities of other disciplining authorities during the same time period as the pilot project;

(b) Compare the efficiency of each commission with respect to the timeliness and personnel resources during the pilot project to the efficiency of the commission prior to the pilot project and the efficiency of other disciplining authorities during the same period as the pilot project;

(c) Compare the budgetary activity of each commission during the pilot project to the budgetary activity of the commission prior to the pilot project and to the budgetary activity of other disciplining authorities during the same period as the pilot project;

(d) Evaluate each commission's regulatory activities, including timelines, consistency of decision making, and performance levels in comparison to other disciplining authorities; and

(e) Review summaries of national research and data regarding regulatory effectiveness and patient safety.

(4) The secretary shall employ staff that are hired and managed by the executive director provided that nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement.

NEW SECTION. **Sec. 31.** A new section is added to chapter 18.25 RCW to read as follows:

(1) The commission may conduct a pilot project to evaluate the effect of granting the commission additional authority over budget development, spending, and staffing. If the commission intends to conduct a pilot project, it must provide a notice in writing to the secretary by June 1, 2008. If the commission chooses to conduct a pilot project, the pilot project shall begin on July 1, 2008, and conclude on June 30, 2013.

(2) The pilot project shall include the following provisions:

(a) That the secretary shall employ an executive director that is:

(i) Hired by and serves at the pleasure of the commission;

(ii) Exempt from the provisions of the civil service law, chapter 41.06 RCW and whose salary is established by the commission in accordance with RCW 43.03.028 and 42.17.370; and

(iii) Responsible for performing all administrative duties of the commission, including preparing an annual budget, and any other duties as delegated to the executive director by the commission;

(b) Consistent with the budgeting and accounting act:

(i) With regard to budget for the remainder of the 2007-2009 biennium, the commission has authority to spend the remaining funds allocated with respect to chiropractors licensed under this chapter; and

(ii) Beginning with the 2009-2011 biennium, the commission is responsible for proposing its own biennial budget which the secretary must submit to the office of financial management;

(c) That, prior to adopting credentialing fees under RCW 43.70.250, the secretary shall collaborate with the commission to determine the appropriate fees necessary to support the activities of the commission;

(d) That, prior to the secretary exercising the secretary's authority to adopt uniform rules and guidelines, or any other actions that might impact the licensing or disciplinary authority of the commission, the secretary shall first meet with the commission to determine how those rules or guidelines, or changes to rules or guidelines, might impact the commission's ability to effectively carry out its statutory duties. If the commission, in consultation with the secretary, determines that the proposed rules or guidelines, or changes to existing rules or guidelines, will negatively impact the commission's ability to effectively carry out its statutory duties, then the individual commission shall collaborate with the secretary to develop alternative solutions to mitigate the impacts. If an alternative solution cannot be reached, the parties may resolve the dispute through a mediator as set forth in (f) of this subsection;

(e) That the commission shall negotiate with the secretary to develop performance-based expectations, including identification of key performance measures. The performance expectations should focus on consistent, timely regulation of health care professionals; and

(f) That in the event there is a disagreement between the commission and the secretary, that is unable to be resolved through negotiation, a representative of both parties shall agree on the designation of a third party to mediate the dispute.

(3) By December 15, 2013, the secretary, the commission, and the other commissions conducting similar pilot projects under sections 29, 30, and 32 of this act, shall report to the governor and the legislature on the results of the pilot project. The report shall:

(a) Compare the effectiveness of licensing and disciplinary activities of each commission during the pilot project with the licensing and disciplinary activities of the commission prior to the pilot project and the disciplinary activities of other disciplining authorities during the same time period as the pilot project;

(b) Compare the efficiency of each commission with respect to the timeliness and personnel resources during the pilot project to the efficiency of the commission prior to the pilot project and the efficiency of other disciplining authorities during the same period as the pilot project;

(c) Compare the budgetary activity of each commission during the pilot project to the budgetary activity of the commission prior to the pilot project and to the budgetary activity of other disciplining authorities during the same period as the pilot project;

(d) Evaluate each commission's regulatory activities, including timelines, consistency of decision making, and performance levels in comparison to other disciplining authorities; and

(e) Review summaries of national research and data regarding regulatory effectiveness and patient safety.

(4) The secretary shall employ staff that are hired and managed by the executive director provided that nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement.

NEW SECTION. **Sec. 32.** A new section is added to chapter 18.32 RCW to read as follows:

(1) The commission may conduct a pilot project to evaluate the effect of granting the commission additional authority over budget development, spending, and staffing. If the commission intends to conduct a pilot project, it must provide a notice in writing to the secretary by June 1, 2008. If the commission chooses to conduct a pilot project, the pilot project shall begin on July 1, 2008, and conclude on June 30, 2013.

(2) The pilot project shall include the following provisions:

(a) That the secretary shall employ an executive director that is:

(i) Hired by and serves at the pleasure of the commission;

(ii) Exempt from the provisions of the civil service law, chapter 41.06 RCW and whose salary is established by the commission in accordance with RCW 43.03.028 and 42.17.370; and

(iii) Responsible for performing all administrative duties of the commission, including preparing an annual budget, and any other duties as delegated to the executive director by the commission;

(b) Consistent with the budgeting and accounting act:

(i) With regard to budget for the remainder of the 2007-2009 biennium, the commission has authority to spend the remaining funds allocated with respect to its professions, dentists licensed under this chapter and expanded function dental auxiliaries and dental assistants regulated under chapter 18.260 RCW; and

(ii) Beginning with the 2009-2011 biennium, the commission is responsible for proposing its own biennial budget which the secretary must submit to the office of financial management;

(c) That, prior to adopting credentialing fees under RCW 43.70.250, the secretary shall collaborate with the commission to determine the appropriate fees necessary to support the activities of the commission;

(d) That, prior to the secretary exercising the secretary's authority to adopt uniform rules and guidelines, or any other actions that might impact the licensing or disciplinary authority of the commission, the secretary shall first meet with the commission to determine how those rules or guidelines, or changes to rules or guidelines, might impact the commission's ability to effectively carry out its statutory duties. If the commission, in consultation with the secretary, determines that the proposed rules or guidelines, or changes to existing rules or guidelines, will negatively impact the commission's ability to effectively carry out its statutory duties, then the individual commission shall collaborate with the secretary to develop alternative solutions to mitigate the impacts. If an alternative solution cannot be reached, the parties may resolve the dispute through a mediator as set forth in (f) of this subsection;

(e) That the commission shall negotiate with the secretary to develop performance-based expectations, including identification of key performance measures. The performance expectations should focus on consistent, timely regulation of health care professionals; and

(f) That in the event there is a disagreement between the commission and the secretary, that is unable to be resolved through negotiation, a representative of both parties shall agree on the designation of a third party to mediate the dispute.

(3) By December 15, 2013, the secretary, the commission, and the other commissions conducting similar pilot projects under sections 29 through 31 of this act, shall report to the governor and the legislature on the results of the pilot project. The report shall:

(a) Compare the effectiveness of licensing and disciplinary activities of each commission during the pilot project with the licensing and disciplinary activities of the commission prior to the pilot project and the disciplinary activities of other disciplining authorities during the same time period as the pilot project;

(b) Compare the efficiency of each commission with respect to the timeliness and personnel resources during the pilot project to the efficiency of the commission prior to the pilot project and the efficiency of other disciplining authorities during the same period as the pilot project;

(c) Compare the budgetary activity of each commission during the pilot project to the budgetary activity of the commission prior to the pilot project and to the budgetary activity of other disciplining authorities during the same period as the pilot project;

(d) Evaluate each commission's regulatory activities, including timelines, consistency of decision making, and performance levels in comparison to other disciplining authorities; and

(e) Review summaries of national research and data regarding regulatory effectiveness and patient safety.

(4) The secretary shall employ staff that are hired and managed by the executive director provided that nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement.

Sec. 33. RCW 18.71.0191 and 1994 sp.s. c 9 s 326 are each amended to read as follows:

Except as provided in section 29 of this act for the duration of the pilot project, the secretary of the department of health shall appoint, from a list of three names supplied by the commission, an executive director who shall act to carry out the provisions of this chapter. The secretary shall also employ such additional staff including administrative assistants, investigators, and clerical staff as are required to enable the commission to accomplish its duties and responsibilities. The executive director is exempt from the provisions of the civil service law, chapter 41.06 RCW, as now or hereafter amended.

Sec. 34. RCW 18.79.130 and 1994 sp.s. c 9 s 413 are each amended to read as follows:

Except as provided in section 30 of this act for the duration of the pilot project, the secretary shall appoint, after consultation with the commission, an executive director who shall act to carry out this chapter. The secretary shall also employ such professional, secretarial, clerical, and other assistants as may be necessary to effectively administer this chapter. The secretary shall fix the compensation and provide for travel expenses for the executive director and all such employees, in accordance with RCW 43.03.050 and 43.03.060.

NEW SECTION. **Sec. 35.** Sections 33 and 34 of this act expire June 30, 2013."

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

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

The President declared the question before the Senate to be the adoption of the amendment by Senators Keiser and Pflug on page 40, line 10 to the committee striking amendment to Fourth Substitute House Bill No. 1103.

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

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means as amended to Fourth Substitute House Bill No. 1103.

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

MOTION

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

On page 1, line 1 of the title, after "professions;" strike the remainder of the title and insert "amending RCW 18.130.020, 18.130.050, 18.130.060, 18.130.080, 18.130.095, 18.130.170, 18.130.310, 70.41.210, 43.70.320, 18.130.140, 18.130.150, 18.130.165, 18.130.172, 18.130.180, 9.96A.020, 9.95.240, 43.43.825, and 18.71.0191; reenacting and amending RCW 18.130.160, 18.130.040, and 18.130.040; adding new sections to chapter 18.130 RCW; adding a new section to chapter 42.52 RCW; adding a new section to chapter 18.71 RCW; creating new sections; prescribing penalties; providing effective dates; providing expiration dates; and declaring an emergency."

On page 43, beginning on line 9, strike the title amendment and insert the following:

"On page 1, line 1 of the title, after "professions;" strike the remainder of the title and insert amending RCW 18.130.020, 18.130.050, 18.130.060, 18.130.080, 18.130.095, 18.130.170, 18.130.310, 70.41.210, 43.70.320, 18.130.140, 18.130.150, 18.130.165, 18.130.172, 18.130.180, 9.96A.020, 9.95.240, 43.43.825, 18.71.0191, and 18.79.130; reenacting and amending RCW 18.130.160, 18.130.040, and 18.130.040; adding new sections to chapter 18.130 RCW; adding a new section to chapter 42.52 RCW; adding a new section to chapter 18.71

RCW; adding a new section to chapter 18.79 RCW; adding a new section to chapter 18.25 RCW; adding a new section to chapter 18.32 RCW; creating new sections; prescribing penalties; providing effective dates; providing expiration dates; and declaring an emergency."

MOTION

On motion of Senator Keiser, the rules were suspended, Fourth Substitute House Bill No. 1103 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

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

The President declared the question before the Senate to be the final passage of Fourth Substitute House Bill No. 1103 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Fourth Substitute House Bill No. 1103 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 1; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 48

Voting nay: Senator Holmquist - 1

FOURTH SUBSTITUTE HOUSE BILL NO. 1103 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1030, by House Committee on Public Safety & Emergency Preparedness (originally sponsored by Representatives Takko, Lovick, Simpson, Haler, Blake, Campbell, Ross, Skinner, Newhouse, Conway, Morrell, Chandler, McDonald, Rodne, Kristiansen, Wallace, Moeller, VanDeWege, McCune, Williams, Bailey, Warnick, Upthegrove, Alexander and Pearson)

Enhancing the penalty for eluding a police vehicle.

The measure was read the second time.

MOTION

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

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** This act may be known and cited as the Guillermo "Bobby" Aguilar and Edgar F. Trevino-Mendoza public safety act of 2008.

NEW SECTION. **Sec. 2.** A new section is added to chapter 9.94A RCW to read as follows:

(1) The prosecuting attorney may file a special allegation of endangerment by eluding in every criminal case involving a charge of attempting to elude a police vehicle under RCW 46.61.024, when sufficient admissible evidence exists, to show that one or more persons other than the defendant or the pursuing law enforcement officer were threatened with physical injury or harm by the actions of the person committing the crime of attempting to elude a police vehicle.

(2) In a criminal case in which there has been a special allegation, the state shall prove beyond a reasonable doubt that the accused committed the crime while endangering one or more persons other than the defendant or the pursuing law enforcement officer. The court shall make a finding of fact of whether or not one or more persons other than the defendant or the pursuing law enforcement officer were endangered at the time of the commission of the crime, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether or not one or more persons other than the defendant or the pursuing law enforcement officer were endangered during the commission of the crime.

Sec. 3. RCW 9.94A.533 and 2007 c 368 s 9 are each amended to read as follows:

(1) The provisions of this section apply to the standard sentence ranges determined by RCW 9.94A.510 or 9.94A.517.

(2) For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the standard sentence range is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by seventy-five percent.

(3) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any firearm enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the firearm enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a firearm enhancement. If the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any firearm enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Five years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection;

(b) Three years for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

(c) Eighteen months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection;

(d) If the offender is being sentenced for any firearm enhancements under (a), (b), and/or (c) of this subsection and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (4)(a), (b), and/or (c) of this section, or both, all firearm enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all firearm enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(4);

(f) The firearm enhancements in this section shall apply to all felony crimes except the following: Possession of a machine

gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony;

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a firearm enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(4) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any deadly weapon enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the deadly weapon enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a deadly weapon enhancement. If the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any deadly weapon enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Two years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection;

(b) One year for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

(c) Six months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection;

(d) If the offender is being sentenced under (a), (b), and/or (c) of this subsection for any deadly weapon enhancements and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (3)(a), (b), and/or (c) of this section, or both, all deadly weapon enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all deadly weapon enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(4);

(f) The deadly weapon enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony;

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a deadly weapon enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(5) The following additional times shall be added to the standard sentence range if the offender or an accomplice committed the offense while in a county jail or state correctional facility and the offender is being sentenced for one of the crimes listed in this subsection. If the offender or an accomplice committed one of the crimes listed in this subsection while in a county jail or state correctional facility, and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section:

(a) Eighteen months for offenses committed under RCW 69.50.401(2) (a) or (b) or 69.50.410;

(b) Fifteen months for offenses committed under RCW 69.50.401(2) (c), (d), or (e);

(c) Twelve months for offenses committed under RCW 69.50.4013.

For the purposes of this subsection, all of the real property of a state correctional facility or county jail shall be deemed to be part of that facility or county jail.

(6) An additional twenty-four months shall be added to the standard sentence range for any ranked offense involving a violation of chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435 or 9.94A.605. All enhancements under this subsection shall run consecutively to all other sentencing provisions, for all offenses sentenced under this chapter.

(7) An additional two years shall be added to the standard sentence range for vehicular homicide committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502 for each prior offense as defined in RCW 46.61.5055.

(8)(a) The following additional times shall be added to the standard sentence range for felony crimes committed on or after July 1, 2006, if the offense was committed with sexual motivation, as that term is defined in RCW 9.94A.030. If the offender is being sentenced for more than one offense, the sexual motivation enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to a sexual motivation enhancement. If the offender committed the offense with sexual motivation and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(i) Two years for any felony defined under the law as a class A felony or with a statutory maximum sentence of at least twenty years, or both;

(ii) Eighteen months for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both;

(iii) One year for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both;

(iv) If the offender is being sentenced for any sexual motivation enhancements under (i), (ii), and/or (iii) of this subsection and the offender has previously been sentenced for any sexual motivation enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of this subsection, all sexual motivation enhancements under this subsection shall be twice the amount of the enhancement listed;

(b) Notwithstanding any other provision of law, all sexual motivation enhancements under this subsection are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other sexual motivation enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(4);

(c) The sexual motivation enhancements in this subsection apply to all felony crimes;

(d) If the standard sentence range under this subsection exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a sexual motivation enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced;

(e) The portion of the total confinement sentence which the offender must serve under this subsection shall be calculated before any earned early release time is credited to the offender;

(f) Nothing in this subsection prevents a sentencing court from imposing a sentence outside the standard sentence range pursuant to RCW 9.94A.535.

(9) An additional one-year enhancement shall be added to the standard sentence range for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on or after July 22, 2007, if the offender engaged, agreed, or offered to engage the victim in the sexual conduct in return for a fee. If the offender is being sentenced for more than one offense, the one-year enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to the enhancement. If the offender is being sentenced for an anticipatory offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted, solicited another, or conspired to engage, agree, or offer to engage the victim in ((~~[the]~~)) the sexual conduct in return for a fee, an additional one-year enhancement shall be added to the standard sentence range determined under subsection (2) of this section. For purposes of this subsection, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW.

(10) An additional twelve months and one day shall be added to the standard sentence range for a conviction of attempting to elude a police vehicle as defined by RCW 46.61.024, if the conviction included a finding by special allegation of endangering one or more persons under section 2 of this act."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Judiciary to Engrossed Substitute House Bill No. 1030.

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

MOTION

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

On page 1, line 2 of the title, after "vehicle;" strike the remainder of the title and insert "amending RCW 9.94A.533; adding a new section to chapter 9.94A RCW; creating a new section; and prescribing penalties."

MOTION

On motion of Senator Kline, the rules were suspended, Engrossed Substitute House Bill No. 1030 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Kline and King spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 1030 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 1030 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 1; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 48

Voting nay: Senator McDermott - 1

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1030 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 2564, by Representatives Upthegrove, Pedersen, VanDeWege, Ormsby, Hunt, Wood, McIntire, Roberts, Hudgins, Jarrett, Rolfes, Kagi, Chase and Simpson

Adding bicyclist and pedestrian safety information to drivers' education curriculum.

The measure was read the second time.

MOTION

On motion of Senator Murray, the rules were suspended, House Bill No. 2564 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Murray spoke in favor of passage of the bill.

MOTION

On motion of Senator Hobbs, Senator McDermott was excused.

The President declared the question before the Senate to be the final passage of House Bill No. 2564.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2564 and the bill passed the Senate by the following vote: Yeas, 45; Nays, 2; Absent, 1; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Sheldon, Shin, Spanel, Stevens, Swecker, Tom and Zarelli - 45

Voting nay: Senators Honeyford and Schoesler - 2

Absent: Senator Weinstein - 1

Excused: Senator McDermott - 1

HOUSE BILL NO. 2564, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 2825, by Representatives Conway, Condotta and Armstrong

Allowing certain alcohol permit holders to obtain alcohol in nonbeverage form directly from suppliers.

The measure was read the second time.

MOTION

On motion of Senator Murray, the rules were suspended, House Bill No. 2825 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Murray spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 2825.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2825 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

HOUSE BILL NO. 2825, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2844, by House Committee on Appropriations (originally sponsored by Representatives Kagi, Priest, Upthegrove, Campbell, Simpson, Hunt, Blake, Jarrett, Nelson, Rolfes, Dickerson, Appleton, Takko, Loomis, Lantz, Pettigrew, Hunter, Moeller, Hudgins, Quall, O'Brien, Anderson, Kenney, Pedersen, McIntire and Roberts)

Regarding urban forestry.

The measure was read the second time.

MOTION

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

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** (1)(a) The legislature finds that pollution from storm water runoff is a leading source of pollution in Puget Sound and in important water bodies in eastern Washington such as the Columbia river. The decisions and actions of those living in adjacent communities impact the health of these water bodies. The loss of native and mature nonnative, nonnaturalized trees in urban areas throughout the region has contributed significantly to storm water and flooding problems in the region.

(b) The legislature further finds that the preservation and enhancement of city trees and urban and community forests are one of the most cost-effective ways to protect and improve water quality, air quality, human well-being, and our quality of life.

(c) The legislature further finds that appropriate selection, siting, and installation of trees can reduce heating and cooling energy costs and related greenhouse gas emissions. Retaining natural soils and vegetation, managing urban trees, planting additional trees, and restoring the functionality of forests on public lands can reduce the amount of pollutants in our communities, reduce utility infrastructure damage, reduce requirements for storm water retention and treatment facilities, and reduce flooding caused by major storm events that can cost the state economy millions of dollars a day. Reforesting urban stream channels can reduce or eliminate regulatory requirements such as total maximum daily load requirements.

(d) The legislature further finds that there are innovative urban forest management programs and partnerships led by many cities across the state. However, there is no statewide inventory or assessment of our community and urban forests. Few cities have clear goals and standards for their urban forests. About twelve percent of Washington's cities have urban forest management plans and less than half of Washington's communities have tree ordinances. Many communities report the need for better enforcement.

(2) It is the intent of the legislature to:

(a) Recognize and support city, town, and county efforts to conserve, protect, improve, and expand Washington's urban forest in order to reduce storm water pollution in Puget Sound, flooding, energy consumption and greenhouse gas emissions, air pollution, and storm impacts to utility infrastructure.

(b) Assist cities, towns, and counties by developing a statewide community and urban forest inventory, assessment, model plans, and model ordinances, and by providing technical assistance, incentives, and resources to help cities, towns, and counties become evergreen communities by utilizing these tools, maintenance programs, new partnerships, and community involvement.

(c) Develop the statewide community and urban forest inventory in a way that is compatible with emerging reporting protocols and that could facilitate future access to carbon markets for cities.

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

(1) "Community and urban forest assessment" means an analysis of the community and urban forest inventory to: Establish the scope and scale of forest-related benefits and services; determine the economic valuation of such benefits, highlight trends, and issues of concern; identify high priority areas to be addressed; outline strategies for addressing the critical issues and urban landscapes; and identify opportunities for retaining trees, expanding forest canopy, and planting additional trees to sustain Washington's urban and community forests.

(2) "Community and urban forest inventory" means a management tool designed to gauge the condition, management status, health, and diversity of a community and urban forest. An inventory may evaluate individual trees or groups of trees or canopy cover within community and urban forests, and will be periodically updated by the department of natural resources.

(3) "Department" means the department of community, trade, and economic development.

(4) "Evergreen community ordinances" means ordinances adopted by the legislative body of a city, town, or county that relate to urban forests and are consistent with this chapter.

(5) "Evergreen community" means a city, town, or county designated as such under section 7 of this act.

(6) "Management plan" means an evergreen community urban forest management plan developed pursuant to this chapter.

(7) "Public facilities" has the same meaning as defined in RCW 36.70A.030.

(8) "Public forest" means urban forests owned by the state, city, town, county, or other public entity within or adjacent to the urban growth areas.

(9) "Reforestation" means establishing and maintaining trees and urban forest canopy in plantable spaces such as street rights-of-way, transportation corridors, interchanges and highways, riparian areas, unstable slopes, shorelines, public lands, and property of willing private land owners.

(10) "Tree canopy" means the layer of leaves, branches, and stems of trees that cover the ground when viewed from above and that can be measured as a percentage of a land area shaded by trees.

(11) "Urban forest" has the same definition as provided for the term "community and urban forest" in RCW 76.15.010.

Sec. 3. RCW 76.15.020 and 1991 c 179 s 4 are each amended to read as follows:

(1) The department may establish and maintain a program in community and urban forestry to accomplish the purpose stated in RCW 76.15.007. The department may assist municipalities and counties in establishing and maintaining community and urban forestry programs and encourage persons to engage in appropriate and improved tree management and care.

(2) The department may advise, encourage, and assist municipalities, counties, and other public and private entities in the development and coordination of policies, programs, and activities for the promotion of community and urban forestry.

(3) The department may appoint a committee or council, in addition to the technical advisory committee created in section 5 of this act to advise the department in establishing and carrying out a program in community and urban forestry.

(4) The department may assist municipal and county tree maintenance programs by making surplus equipment available on loan where feasible for community and urban forestry programs and cooperative projects.

NEW SECTION. **Sec. 4.** A new section is added to chapter 76.15 RCW to read as follows:

(1)(a) The department may, in collaboration with educational institutions, municipalities, corporations, the technical advisory committee created in section 5 of this act, state and national service organizations, and environmental organizations, conduct a prioritized statewide inventory of community and urban forests.

(b) For purposes of efficiency, existing data and current inventory technologies must be utilized in the development of the inventory. Statewide data must be maintained and periodically updated by the department and made available to every municipality in the state.

(c) The criteria established for the statewide community and urban forest inventory must support the planning needs of local governments.

(d) The criteria for the statewide community and urban forest inventory may include but not be limited to: Tree size, species, location, site appropriateness, condition and health, contribution to canopy cover and volume, available planting spaces, and ecosystem, economic, social, and monetary value.

(e) In developing the statewide community and urban forest inventory, the department shall strive to enable Washington cities' urban forest managers to access carbon markets by working to ensure the inventory developed under this section is compatible with existing and developing urban forest reporting protocols designed to facilitate access to those carbon markets.

(2) The department may, in collaboration with a statewide organization representing urban and community forestry programs, and with the evergreen communities partnership task force established in section 17 of this act, conduct a community and urban forest assessment and develop recommendations to the appropriate committees of the legislature to improve community and urban forestry in Washington.

(3) The inventory and assessment in this section must be capable of supporting the adoption and implementation of evergreen community management plans and ordinances described in section 10 of this act.

(4) The department may, in collaboration with municipalities, the technical advisory committee created in section 5 of this act, and a statewide organization representing urban and community forestry programs, develop an implementation plan for the inventory and assessment of the community and urban forests in Washington.

(5)(a) The criteria and implementation plan for the statewide community and urban forest inventory and assessment required under this section must be completed by December 1, 2008. Upon the completion of the criteria and implementation plan's development, the department shall report the final product to the appropriate committees of the legislature.

(b) An initial inventory and assessment, consisting of the community and urban forests of the willing municipalities located in one county located east of the crest of the Cascade mountains and the willing municipalities located in one county located west of the crest of the Cascade mountains must be completed by June 1, 2010.

(6) The requirements of this section are subject to the availability of amounts appropriated for the specific purposes of this section.

NEW SECTION. **Sec. 5.** A new section is added to chapter 76.15 RCW to read as follows:

(1) The commissioner of public lands shall appoint a technical advisory committee to provide advice to the department during the development of the criteria and implementation plan for the statewide community and urban forest inventory and assessment required under section 4 of this act.

(2) The technical advisory committee must include, but not be limited to, representatives from the following groups: Arborists; municipal foresters; educators; consultants; researchers; public works and utilities professionals; information technology specialists; and other affiliated professionals.

(3) The technical advisory committee members shall serve without compensation. Advisory committee members who are not state employees may receive reimbursement for travel expenses as provided by RCW 43.03.050 and 43.03.060. Costs associated with the technical advisory committee may be paid from the general fund appropriation made available to the department for community and urban forestry.

(4) The technical advisory committee created in this section must be disbanded by the commissioner upon the completion of the criteria and implementation plan for the statewide community and urban forest inventory and assessment required under section 4 of this act.

NEW SECTION. **Sec. 6.** The department shall, in the implementation of this chapter, coordinate with the department of natural resources. Additionally, in the development of the model evergreen community urban forest management plans and ordinances required by section 10 of this act, the department shall utilize the technical expertise of the department of natural resources regarding arboriculture, tree selection, and maintenance.

NEW SECTION. **Sec. 7.** (1) The department, with the advice of the evergreen communities partnership task force created in section 17 of this act, shall develop the criteria for an evergreen community recognition program whereby the state can recognize cities, towns, and counties, to be designated as an evergreen community, who are developing excellent urban forest management programs that include community and urban forestry inventories, assessments, plans, ordinances, maintenance programs, partnerships, and community involvement.

(2)(a) Designation as an evergreen community must include no fewer than two graduated steps.

(b) The first graduated step of designation as an evergreen community includes satisfaction of the following requirements:

(i) The development and implementation of a tree board or tree department;

(ii) The development of a tree care ordinance;

(iii) The implementation of a community forestry program with an annual budget of at least two dollars for every city resident;

(iv) Official recognition of arbor day; and

(v) The completion of an updated community and urban forest inventory for the city, town, or county or the formal adoption of an inventory developed for the city, town, or county by the department of natural resources pursuant to section 4 of this act.

(c) The second graduated step of designation as an evergreen community includes the adoption of evergreen community management plans and ordinances that exceed the minimum standards in the model evergreen community management plans and ordinances adopted by the department under section 10 of this act.

(d) The department may require additional graduated steps and establish the minimum requirements for each recognized step.

(3) The department shall develop gateway signage and logos for an evergreen community.

(4) The department shall, unless the duty is assumed by the governor, recognize, certify, and designate cities, towns, and counties satisfying the criteria developed under this section as an evergreen community.

(5) Applications for evergreen community status must be submitted to and evaluated by the department of natural resources.

NEW SECTION. **Sec. 8.** A new section is added to chapter 76.15 RCW to read as follows:

The department shall manage the application and evaluation of candidates for evergreen community designation under section 7 of this act, and forward its recommendations to the department of community, trade, and economic development.

NEW SECTION. **Sec. 9.** (1) The department shall, subject to the availability of amounts appropriated for this specific purpose, coordinate with the department of natural resources in the development and implementation of a needs-based evergreen community grant and competitive awards program to provide financial assistance to cities, towns, and counties for the development, adoption, or implementation of evergreen community management plans or ordinances developed under section 14 of this act.

(2) The grant program authorized in this section shall address both the goals of rewarding innovation by a successful evergreen community and of providing resources and assistance to the applicants with the greatest financial need.

(3) The department may only provide grants to cities, towns, or counties under this chapter that:

(a) Are recognized as an evergreen community consistent with section 7 of this act, or are applying for funds that would aid them in their pursuit of evergreen community recognition; and

(b) Have developed, or are developing urban forest management partnerships with local not-for-profit organizations.

NEW SECTION. **Sec. 10.** (1) To the extent that funds are appropriated for this specific purpose, the department shall develop model evergreen community management plans and ordinances pursuant to sections 12 and 13 of this act with measurable goals and timelines to guide plan and ordinance adoption or development consistent with section 14 of this act.

(2) Model plans and ordinances developed under this section must:

(a) Recognize ecoregional differences in the state;

(b) Provide flexibility for the diversity of urban character and relative differences in density and zoning found in Washington's cities, towns, and counties;

(c) Provide an urban forest landowner inventorying his or her own property with the ability to access existing inventories, technology, and other technical assistance available through the department of natural resources;

(d) Recognize and provide for vegetation management practices and programs that prevent vegetation from interfering with or damaging utilities, public facilities, and solar panels or buildings specifically designed to optimize passive solar energy; and

(e) Provide for vegetation management practices and programs that reflect and are consistent with the priorities and goals of the growth management act, chapter 36.70A RCW.

(3) All model plans and ordinances developed by the department must be developed in conjunction with the evergreen communities partnership task force created in section 17 of this act.

(4) After the development of model evergreen community plans and ordinances under this section, the department shall, in conjunction with the department of natural resources, distribute and provide outreach regarding the model plans and ordinances and associated best management practices to cities, towns, and counties to aid the cities, towns, and counties in obtaining evergreen community recognition under section 7 of this act.

(5) By December 1, 2010, the department shall, at a minimum, develop the model evergreen community plans and ordinances required under this section for areas of the state where the department of natural resources has completed community and urban forest inventories pursuant to section 4 of this act.

NEW SECTION. **Sec. 11.** (1) The department shall deliver a report to the appropriate committees of the legislature following the development of the model evergreen community management plans and ordinances under section 10 of this act recommending any next steps and additional incentives to increase voluntary participation by cities, towns, and counties in the evergreen community recognition program established in section 7 of this act.

(2) By the fifteenth day of each consecutive December leading up to the adoption of the model evergreen community plans and ordinances, the department shall deliver a report to the appropriate committees of the legislature outlining progress made towards the development and implementation of the model plans and ordinances.

NEW SECTION. **Sec. 12.** In the development of model evergreen community management plans under section 10 of this act, the department shall consider including, but not be limited to, the following elements:

(1) Inventory and assessment of the jurisdiction's urban and community forests utilized as a dynamic management tool to set goals, implement programs, and monitor outcomes that may be adjusted over time;

(2) Canopy cover goals;

(3) Reforestation and tree canopy expansion goals within the city's, town's, and county's boundaries;

(4) Restoration of public forests;

(5) Achieving forest stand and diversity goals;

(6) Maximizing vegetated storm water management with trees and other vegetation that reduces runoff, increases soil infiltration, and reduces storm water pollution;

(7) Environmental health goals specific to air quality, habitat for wildlife, and energy conservation;

(8) Vegetation management practices and programs to prevent vegetation from interfering with or damaging utilities and public facilities;

(9) Prioritizing planting sites;

(10) Standards for tree selection, siting, planting, and pruning;

(11) Scheduling maintenance and stewardship for new and established trees;

(12) Staff and volunteer training requirements emphasizing appropriate expertise and professionalism;

(13) Guidelines for protecting existing trees from construction-related damage and damage related to preserving territorial views;

(14) Integrating disease and pest management;

(15) Wood waste utilization;

(16) Community outreach, participation, education programs, and partnerships with nongovernment organizations;

(17) Time frames for achieving plan goals, objectives, and tasks;

(18) Monitoring and measuring progress toward those benchmarks and goals;

(19) Consistency with the urban wildland interface codes developed by the state building code council;

(20) Emphasizing landscape and revegetation plans in residential and commercial development areas where tree retention objectives are challenging to achieve; and

(21) Maximizing building heating and cooling energy efficiency through appropriate siting of trees for summer shading, passive solar heating in winter, and for wind breaks.

NEW SECTION. **Sec. 13.** The department shall, in the development of model evergreen community ordinances under section 10 of this act, consider including, but not be limited to, the following policy elements:

(1) Tree canopy cover, density, and spacing;

(2) Tree conservation and retention;

(3) Vegetated storm water runoff management using native trees and appropriate nonnative, nonnaturalized vegetation;

(4) Clearing, grading, protection of soils, reductions in soil compaction, and use of appropriate soils with low runoff potential and high infiltration rates;

(5) Appropriate tree siting and maintenance for vegetation management practices and programs to prevent vegetation from interfering with or damaging utilities and public facilities;

(6) Native species and nonnative, nonnaturalized species diversity selection to reduce disease and pests in urban forests;

(7) Tree maintenance;

(8) Street tree installation and maintenance;

(9) Tree and vegetation buffers for riparian areas, critical areas, transportation and utility corridors, and commercial and residential areas;

(10) Tree assessments for new construction permitting;

(11) Recommended forest conditions for different land use types;

(12) Variances for hardship and safety;

(13) Variances to avoid conflicts with renewable solar energy infrastructure, passive solar building design, and locally grown produce; and

(14) Permits and appeals.

NEW SECTION. **Sec. 14.** (1) A city, town, or county may adopt evergreen community management plans and ordinances, including enforcement mechanisms and civil penalties for violations of its evergreen community ordinances.

(2) Evergreen community ordinances adopted under this section may not prohibit or conflict with vegetation management practices and programs undertaken to prevent vegetation from interfering with or damaging utilities and public facilities.

(3) Management plans developed by cities, towns, or counties must be based on urban forest inventories for the city, town, or county covered by the management plan. The city, town, or county developing the management plan may produce independent inventories themselves or rely solely on inventories developed, commissioned, or approved by the department of natural resources under chapter 76.15 RCW.

(4) Cities, towns, or counties may establish a local evergreen community advisory board or utilize existing citizen boards focused on municipal tree issues to achieve appropriate expert and stakeholder participation in the adoption and development of inventories, assessments, ordinances, and plans consistent with this chapter.

(5) A city, town, or county shall invite the expert advice of utilities serving within its jurisdiction for the purpose of developing and adopting appropriate plans for vegetation management practices and programs to prevent vegetation from interfering with or damaging utilities and public facilities.

NEW SECTION. **Sec. 15.** A new section is added to chapter 36.01 RCW to read as follows:

(1) Any county may adopt evergreen community ordinances, as that term is defined in section 2 of this act, which the county must apply to new building or land development in the unincorporated portions of the county's urban growth areas, as that term is defined in RCW 36.70A.030, and may apply to other areas of the county as deemed appropriate by the county.

(2) As an alternative to subsection (1) of this section, a city or town may request that the county in which it is located apply to any new building or land development permit in the unincorporated portions of the urban growth areas, as defined in RCW 36.70A.030, the evergreen community ordinances standards adopted under section 14 of this act by the city or town in the county located closest to the proposed building or development.

NEW SECTION. **Sec. 16.** (1) A city, town, or county seeking evergreen community recognition under section 7 of this act shall submit its management plans and evergreen community ordinances to the department for review and comment at least sixty days prior to its planned implementation date.

(2) The department shall, together with the department of natural resources, review any evergreen community ordinances or management plans submitted. When reviewing ordinances or plans under this section, the department shall focus its review on the plan's consistency with this chapter and the model evergreen community management plans and ordinances adopted under section 10 of this act. When the following entities submit evergreen community ordinances and management plans for review, they must be considered by the department, together with the department of natural resources, the department of fish and wildlife, and the Puget Sound partnership: A county adjacent to Puget Sound or any city located within any of those counties. The reviewing departments may provide written comments on both plans and ordinances.

(3) Together with the department of natural resources, the department may offer technical assistance in the development of evergreen community ordinances and management plans.

NEW SECTION. **Sec. 17.** (1) The director of the department shall assemble and convene the evergreen communities partnership task force of no more than twenty-five individuals to aid and advise the department in the administration of this chapter.

(2) At the discretion of the department, the task force may be disbanded once the urban and community forests assessments conducted by the department of natural resources under section 4 of this act and the model evergreen community management plans and ordinances developed under section 10 of this act are completed.

(3) Representatives of the department of natural resources and the department of ecology shall participate in the task force.

(4) The department shall invite individuals representing the following entities to serve on the task force:

(a) A statewide council representing urban and community forestry programs authorized under RCW 76.15.020;

(b) A conservation organization with expertise in Puget Sound storm water management;

(c) At least two cities, one from a city east and one from a city west of the crest of the Cascade mountains;

(d) At least two counties, one from a county east and one from a county west of the crest of the Cascade mountains;

(e) Two land development professionals or representative associations representing development professionals affected by tree retention ordinances and storm water management policies;

(f) A national conservation organization with a network of chapter volunteers working to conserve habitat for birds and wildlife;

(g) A land trust conservation organization facilitating urban forest management partnerships;

(h) A national conservation organization with expertise in backyard, schoolyard, and community wildlife habitat development;

(i) A public works professional;

(j) A private utility;

(k) A national forest land trust exclusively dedicated to sustaining America's vast and vital private forests and safeguarding their many public benefits;

(l) Professionals with expertise in local land use planning, housing, or infrastructure; and

(m) The timber industry.

(5) The department is encouraged to recruit task force members who are able to represent two or more of the stakeholder groups listed in subsection (4) of this section.

(6) In assembling the task force, the department shall strive to achieve representation from as many of the state's major ecoregions as possible.

(7) Each member of the task force shall serve without compensation. Task force members that are not state employees may be reimbursed for travel expenses as authorized in RCW 43.03.050 and 43.03.060.

NEW SECTION. **Sec. 18.** Nothing in this chapter may be construed to:

(1) Conflict or supersede with any requirements, duties, or objectives placed on local governments under chapter 36.70A RCW with specific emphasis on allowing cities and unincorporated urban growth areas to achieve their desired residential densities in a manner and character consistent with RCW 36.70A.110; or

(2) Apply to lands designated under chapters 76.09, 79.70, 79.71, 84.33, and 84.34 RCW.

Sec. 19. RCW 35.92.390 and 1993 c 204 s 2 are each amended to read as follows:

(1) Municipal utilities under this chapter are encouraged to provide information to their customers regarding landscaping that includes tree planting for energy conservation.

(2)(a) Municipal utilities under this chapter are encouraged to request voluntary donations from their customers for the purposes of urban forestry. The request may be in the form of a check-off on the billing statement or other form of request for a voluntary donation.

(b) Voluntary donations collected by municipal utilities under this section may be used by the municipal utility to:

(i) Support the development and implementation of evergreen community ordinances, as that term is defined in section 2 of this act, for cities, towns, or counties within their service areas; or

(ii) Complete projects consistent with the model evergreen community management plans and ordinances developed under section 10 of this act.

(c) Donations received under this section do not contribute to the gross income of a light and power business or gas distribution business under chapter 82.16 RCW.

Sec. 20. RCW 35A.80.040 and 1993 c 204 s 3 are each amended to read as follows:

(1) Code cities providing utility services under this chapter are encouraged to provide information to their customers regarding landscaping that includes tree planting for energy conservation.

(2)(a) Code cities providing utility services under this chapter are encouraged to request voluntary donations from their customers for the purposes of urban forestry. The request may be in the form of a check-off on the billing statement or other form of a request for a voluntary donation.

(b) Voluntary donations collected by code cities under this section may be used by the code city to:

(i) Support the development and implementation of evergreen community ordinances, as that term is defined in section 2 of this act, for cities, towns, or counties within their service areas; or

(ii) Complete projects consistent with the model evergreen community management plans and ordinances developed under section 10 of this act.

(c) Donations received under this section do not contribute to the gross income of a light and power business or gas distribution business under chapter 82.16 RCW.

Sec. 21. RCW 80.28.300 and 1993 c 204 s 4 are each amended to read as follows:

(1) Gas companies and electrical companies under this chapter ((~~may~~)) are encouraged to provide information to their customers regarding landscaping that includes tree planting for energy conservation.

(2)(a) Gas companies and electrical companies under this chapter may request voluntary donations from their customers for the purposes of urban forestry. The request may be in the form of a check-off on the billing statement or other form of a request for a voluntary donation.

(b) Voluntary donations collected by gas companies and electrical companies under this section may be used by the gas companies and electrical companies to:

(i) Support the development and implementation of evergreen community ordinances, as that term is defined in section 2 of this act, for cities, towns, or counties within their service areas; or

(ii) Complete projects consistent with the model evergreen community management plans and ordinances developed under section 10 of this act.

(c) Donations received under this section do not contribute to the gross income of a light and power business or gas distribution business under chapter 82.16 RCW.

NEW SECTION. **Sec. 22.** A new section is added to chapter 54.16 RCW to read as follows:

(1) Public utility districts may request voluntary donations from their customers for the purposes of urban forestry. The request may be in the form of a check-off on the billing statement or other form of a request for a voluntary donation.

(2) Voluntary donations collected by public utility districts under this section may be used by the public utility district to:

(a) Support the development and implementation of evergreen community ordinances, as that term is defined in section 2 of this act, for cities, towns, or counties within their service areas; or

(b) Complete projects consistent with the model evergreen community management plans and ordinances developed under section 10 of this act.

(3) Donations received under this section do not contribute to the gross income of a light and power business or gas distribution business under chapter 82.16 RCW.

Sec. 23. RCW 76.15.010 and 2000 c 11 s 15 are each amended to read as follows:

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

(1) "Community and urban forest" is that land in and around human settlements ranging from small communities to metropolitan areas, occupied or potentially occupied by trees and associated vegetation. Community and urban forest land may be planted or unplanted, used or unused, and includes public and private lands, lands along transportation and utility corridors, and forested watershed lands within populated areas.

(2) "Community and urban forest assessment" has the same meaning as defined in section 2 of this act.

(3) "Community and urban forest inventory" has the same meaning as defined in section 2 of this act.

(4) "Community and urban forestry" means the planning, establishment, protection, care, and management of trees and associated plants individually, in small groups, or under forest conditions within municipalities and counties.

(((~~(3)~~))) (5) "Department" means the department of natural resources.

(((~~(4)~~))) (6) "Municipality" means a city, town, port district, public school district, community college district, irrigation district, weed control district, park district, or other political subdivision of the state.

(((~~(5)~~))) (7) "Person" means an individual, partnership, private or public municipal corporation, Indian tribe, state entity, county or local governmental entity, or association of individuals of whatever nature.

NEW SECTION. **Sec. 24.** (1) In an effort to better understand the needs of cities, towns, and counties interested in pursuing designation as an evergreen community under section 7 of this act, the legislature intends to encourage cities, towns, and counties to:

(a) Identify their interests in becoming an evergreen community; and

(b) Identify community and urban forests within their applicable urban growth areas that are appropriately situated for the city, town, or county to assume ownership from willing sellers for urban forest management purposes consistent with this act.

(2) If a city, town, or county opts to provide a list of identified properties under this section, including the estimated value of the properties and documentation on the owner's willingness to participate, the information must be provided to the department by October 31, 2008.

(3) The department must report a summary of the properties reported to it under this section, along with the itemized and summarized estimated costs involved with the purchases, to the appropriate committees of the legislature by December 15, 2008.

(4) This section expires July 31, 2009.

Sec. 25. RCW 43.155.070 and 2007 c 341 s 24 and 2007 c 231 s 2 are each reenacted and amended to read as follows:

(1) To qualify for loans or pledges under this chapter the board must determine that a local government meets all of the following conditions:

(a) The city or county must be imposing a tax under chapter 82.46 RCW at a rate of at least one-quarter of one percent;

(b) The local government must have developed a capital facility plan; and

(c) The local government must be using all local revenue sources which are reasonably available for funding public works, taking into consideration local employment and economic factors.

(2) Except where necessary to address a public health need or substantial environmental degradation, a county, city, or town planning under RCW 36.70A.040 must have adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by RCW 36.70A.040. This subsection does not require any county, city, or town planning under RCW 36.70A.040 to adopt a comprehensive plan or development regulations before requesting or receiving a loan or loan guarantee under this chapter if such request is made before the expiration of the time periods specified in RCW 36.70A.040. A county, city, or town planning under RCW 36.70A.040 which has not adopted a comprehensive plan and development regulations within the time periods specified in RCW 36.70A.040 is not prohibited from receiving a loan or loan guarantee under this chapter if the comprehensive plan and development regulations are adopted as required by RCW 36.70A.040 before submitting a request for a loan or loan guarantee.

(3) In considering awarding loans for public facilities to special districts requesting funding for a proposed facility located in a county, city, or town planning under RCW 36.70A.040, the board shall consider whether the county, city, or town planning under RCW 36.70A.040 in whose planning jurisdiction the proposed facility is located has adopted a comprehensive plan and development regulations as required by RCW 36.70A.040.

(4) The board shall develop a priority process for public works projects as provided in this section. The intent of the priority process is to maximize the value of public works projects accomplished with assistance under this chapter. The board shall attempt to assure a geographical balance in assigning priorities to projects. The board shall consider at least the following factors in assigning a priority to a project:

(a) Whether the local government receiving assistance has experienced severe fiscal distress resulting from natural disaster or emergency public works needs;

(b) Except as otherwise conditioned by RCW 43.155.110, whether the entity receiving assistance is a Puget Sound partner, as defined in RCW 90.71.010;

(c) Whether the project is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310;

(d) Whether the project is critical in nature and would affect the health and safety of a great number of citizens;

(e) Whether the applicant has developed and adhered to guidelines regarding its permitting process for those applying for development permits consistent with section 1(2), chapter 231, Laws of 2007;

(f) The cost of the project compared to the size of the local government and amount of loan money available;

(g) The number of communities served by or funding the project;

(h) Whether the project is located in an area of high unemployment, compared to the average state unemployment;

(i) Whether the project is the acquisition, expansion, improvement, or renovation by a local government of a public water system that is in violation of health and safety standards, including the cost of extending existing service to such a system;

(j) Except as otherwise conditioned by section 30 of this act, and effective one calendar year following the development of model evergreen community management plans and ordinances under section 10 of this act, whether the entity receiving assistance has been recognized, and what gradation of recognition was received, in the evergreen community recognition program created in section 7 of this act;

(k) The relative benefit of the project to the community, considering the present level of economic activity in the community and the existing local capacity to increase local economic activity in communities that have low economic growth; and

(((~~(k)~~))) (l) Other criteria that the board considers advisable.

(5) Existing debt or financial obligations of local governments shall not be refinanced under this chapter. Each local government applicant shall provide documentation of attempts to secure additional local or other sources of funding for each public works project for which financial assistance is sought under this chapter.

(6) Before November 1st of each year, the board shall develop and submit to the appropriate fiscal committees of the senate and house of representatives a description of the loans made under RCW 43.155.065, 43.155.068, and subsection (9) of this section during the preceding fiscal year and a prioritized list of projects which are recommended for funding by the legislature, including one copy to the staff of each of the committees. The list shall include, but not be limited to, a description of each project and recommended financing, the terms and conditions of the loan or financial guarantee, the local government jurisdiction and unemployment rate, demonstration of the jurisdiction's critical need for the project and documentation of local funds being used to finance the public works project. The list shall also include measures of fiscal capacity for each jurisdiction recommended for financial assistance, compared to authorized limits and state averages,

including local government sales taxes; real estate excise taxes; property taxes; and charges for or taxes on sewerage, water, garbage, and other utilities.

(7) The board shall not sign contracts or otherwise financially obligate funds from the public works assistance account before the legislature has appropriated funds for a specific list of public works projects. The legislature may remove projects from the list recommended by the board. The legislature shall not change the order of the priorities recommended for funding by the board.

(8) Subsection (7) of this section does not apply to loans made under RCW 43.155.065, 43.155.068, and subsection (9) of this section.

(9) Loans made for the purpose of capital facilities plans shall be exempted from subsection (7) of this section.

(10) To qualify for loans or pledges for solid waste or recycling facilities under this chapter, a city or county must demonstrate that the solid waste or recycling facility is consistent with and necessary to implement the comprehensive solid waste management plan adopted by the city or county under chapter 70.95 RCW.

(11) After January 1, 2010, any project designed to address the effects of storm water or wastewater on Puget Sound may be funded under this section only if the project is not in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

Sec. 26. RCW 70.146.070 and 2007 c 341 s 60 and 2007 c 341 s 26 are each reenacted and amended to read as follows:

(1) When making grants or loans for water pollution control facilities, the department shall consider the following:

(a) The protection of water quality and public health;

(b) The cost to residential ratepayers if they had to finance water pollution control facilities without state assistance;

(c) Actions required under federal and state permits and compliance orders;

(d) The level of local fiscal effort by residential ratepayers since 1972 in financing water pollution control facilities;

(e) Except as otherwise conditioned by RCW 70.146.110, whether the entity receiving assistance is a Puget Sound partner, as defined in RCW 90.71.010;

(f) Whether the project is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310;

(g) Except as otherwise provided in section 31 of this act, and effective one calendar year following the development and statewide availability of model evergreen community management plans and ordinances under section 10 of this act, whether the project is sponsored by an entity that has been recognized, and what gradation of recognition was received, in the evergreen community recognition program created in section 7 of this act;

(h) The extent to which the applicant county or city, or if the applicant is another public body, the extent to which the county or city in which the applicant public body is located, has established programs to mitigate nonpoint pollution of the surface or subterranean water sought to be protected by the water pollution control facility named in the application for state assistance; and

((~~(h)~~)) (i) The recommendations of the Puget Sound partnership, created in RCW 90.71.210, and any other board, council, commission, or group established by the legislature or a state agency to study water pollution control issues in the state.

(2) Except where necessary to address a public health need or substantial environmental degradation, a county, city, or town planning under RCW 36.70A.040 may not receive a grant or loan for water pollution control facilities unless it has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by RCW 36.70A.040. This subsection does not require any county, city, or town planning under RCW 36.70A.040 to adopt a comprehensive plan or development regulations before requesting or receiving a grant or loan under this chapter if such request is made before the expiration of the time periods specified in RCW 36.70A.040. A county, city, or town planning under RCW 36.70A.040 which has not adopted a comprehensive plan and development regulations within the time periods specified in RCW 36.70A.040 is not prohibited from receiving a grant or loan under this chapter if the comprehensive plan and development regulations are adopted as required by RCW 36.70A.040 before submitting a request for a grant or loan.

(3) Whenever the department is considering awarding grants or loans for public facilities to special districts requesting funding for a proposed facility located in a county, city, or town planning under RCW 36.70A.040, it shall consider whether the county, city, or town planning under RCW 36.70A.040 in whose planning jurisdiction the proposed facility is located has adopted a comprehensive plan and development regulations as required by RCW 36.70A.040.

(4) After January 1, 2010, any project designed to address the effects of water pollution on Puget Sound may be funded under this chapter only if the project is not in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

Sec. 27. RCW 89.08.520 and 2007 c 341 s 28 are each amended to read as follows:

(1) In administering grant programs to improve water quality and protect habitat, the commission shall:

(a) Require grant recipients to incorporate the environmental benefits of the project into their grant applications;

(b) In its grant prioritization and selection process, consider:

(i) The statement of environmental benefits;

(ii) Whether, except as conditioned by RCW 89.08.580, the applicant is a Puget Sound partner, as defined in RCW 90.71.010, and except as otherwise provided in section 32 of this act, and effective one calendar year following the development and statewide availability of model evergreen community management plans and ordinances under section 10 of this act, whether the applicant is an entity that has been recognized, and what gradation of recognition was received, in the evergreen community recognition program created in section 7 of this act; and

(iii) Whether the project is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310; and

(c) Not provide funding, after January 1, 2010, for projects designed to address the restoration of Puget Sound that are in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

(2)(a) The commission shall also develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the grant program.

(b) The commission shall work with the districts to develop uniform performance measures across participating districts and, to the extent possible, the commission should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270. The commission shall consult with affected interest groups in implementing this section.

Sec. 28. RCW 79.105.150 and 2007 c 341 s 32 are each amended to read as follows:

(1) After deduction for management costs as provided in RCW 79.64.040 and payments to towns under RCW 79.115.150(2), all moneys received by the state from the sale or lease of state-owned aquatic lands and from the sale of valuable material from state-owned aquatic lands shall be deposited in the aquatic lands enhancement account which is hereby created in the state treasury. After appropriation, these funds shall be used solely for aquatic lands enhancement projects; for the purchase, improvement, or protection of aquatic lands for public purposes; for providing and improving access to the lands; and for volunteer cooperative fish and game projects.

(2) In providing grants for aquatic lands enhancement projects, the ((~~interagency committee for outdoor~~)) recreation and conservation funding board shall:

(a) Require grant recipients to incorporate the environmental benefits of the project into their grant applications;

(b) Utilize the statement of environmental benefits, consideration, except as provided in RCW 79.105.610, of whether the applicant is a Puget Sound partner, as defined in RCW 90.71.010, ((~~and~~)) whether a project is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310, and except as otherwise provided in section 33 of this act, and effective one calendar year following the development and statewide availability of model evergreen community management plans and ordinances under section 10 of this act, whether the applicant is an entity that has been recognized, and what gradation of recognition was received, in the evergreen community recognition program created in section 7 of this act in its prioritization and selection process; and

(c) Develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the grants.

(3) To the extent possible, the department should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270.

(4) The department shall consult with affected interest groups in implementing this section.

(5) After January 1, 2010, any project designed to address the restoration of Puget Sound may be funded under this chapter only if the project is not in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

Sec. 29. RCW 79A.15.040 and 2007 c 341 s 34 and 2007 c 241 s 29 are each reenacted and amended to read as follows:

(1) Moneys appropriated for this chapter to the habitat conservation account shall be distributed in the following way:

(a) Not less than forty percent through June 30, 2011, at which time the amount shall become forty-five percent, for the acquisition and development of critical habitat;

(b) Not less than thirty percent for the acquisition and development of natural areas;

(c) Not less than twenty percent for the acquisition and development of urban wildlife habitat; and

(d) Not less than ten percent through June 30, 2011, at which time the amount shall become five percent, shall be used by the board to fund restoration and enhancement projects on state lands. Only the department of natural resources and the department of fish and wildlife may apply for these funds to be used on existing habitat and natural area lands.

(2)(a) In distributing these funds, the board retains discretion to meet the most pressing needs for critical habitat, natural areas, and urban wildlife habitat, and is not required to meet the percentages described in subsection (1) of this section in any one biennium.

(b) If not enough project applications are submitted in a category within the habitat conservation account to meet the percentages described in subsection (1) of this section in any biennium, the board retains discretion to distribute any remaining funds to the other categories within the account.

(3) Only state agencies may apply for acquisition and development funds for natural areas projects under subsection (1)(b) of this section.

(4) State and local agencies may apply for acquisition and development funds for critical habitat and urban wildlife habitat projects under subsection (1)(a) and (c) of this section.

(5)(a) Any lands that have been acquired with grants under this section by the department of fish and wildlife are subject to an amount in lieu of real property taxes and an additional amount for control of noxious weeds as determined by RCW 77.12.203.

(b) Any lands that have been acquired with grants under this section by the department of natural resources are subject to payments in the amounts required under the provisions of RCW 79.70.130 and 79.71.130.

(6)((~~(a)~~)) Except as otherwise conditioned by RCW 79A.15.140 or section 34 of this act, the ((~~committee~~)) board in its evaluating process shall consider the following in determining distribution priority:

((~~(i)~~)) (a) Whether the entity applying for funding is a Puget Sound partner, as defined in RCW 90.71.010; ((~~and~~

~~(ii)~~)) (b) Effective one calendar year following the development and statewide availability of model evergreen community management plans and ordinances under section 10 of this act, whether the entity receiving assistance has been recognized, and what gradation of recognition was received, in the evergreen community recognition program created in section 7 of this act; and

(c) Whether the project is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

(7) After January 1, 2010, any project designed to address the restoration of Puget Sound may be funded under this chapter only if the project is not in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

NEW SECTION. **Sec. 30.** A new section is added to chapter 43.155 RCW to read as follows:

When administering funds under this chapter, the board shall give preference only to an evergreen community recognized under section 7 of this act in comparison to other entities that are eligible to receive evergreen community designation. Entities not eligible for designation as an evergreen community shall not be given less preferential treatment than an evergreen community.

NEW SECTION. **Sec. 31.** A new section is added to chapter 70.146 RCW to read as follows:

When administering funds under this chapter, the department shall give preference only to an evergreen community recognized under section 7 of this act in comparison to other entities that are eligible to receive evergreen community designation. Entities not eligible for designation as an evergreen community shall not be given less preferential treatment than an evergreen community.

NEW SECTION. **Sec. 32.** A new section is added to chapter 89.08 RCW to read as follows:

When administering funds under this chapter, the commission shall give preference only to an evergreen community recognized under section 7 of this act in comparison to other entities that are eligible to receive evergreen community designation. Entities not eligible for designation as an evergreen community shall not be given less preferential treatment than an evergreen community.

NEW SECTION. **Sec. 33.** A new section is added to chapter 79.105 RCW to read as follows:

When administering funds under this chapter, the recreation and conservation funding board shall give preference only to an evergreen community recognized under section 7 of this act in comparison to other entities that are eligible to receive evergreen community designation. Entities not eligible for designation as an evergreen community shall not be given less preferential treatment than an evergreen community.

NEW SECTION. **Sec. 34.** A new section is added to chapter 79A.15 RCW to read as follows:

When administering funds under this chapter, the recreation and conservation funding board shall give preference only to an evergreen community recognized under section 7 of this act in comparison to other entities that are eligible to receive evergreen community designation. Entities not eligible for designation as an evergreen community shall not be given less preferential treatment than an evergreen community.

Sec. 35. RCW 80.28.010 and 1995 c 399 s 211 are each amended to read as follows:

(1) All charges made, demanded or received by any gas company, electrical company or water company for gas, electricity or water, or for any service rendered or to be rendered in connection therewith, shall be just, fair, reasonable and sufficient. Reasonable charges necessary to cover the cost of administering the collection of voluntary donations for the purposes of supporting the development and implementation of evergreen community management plans and ordinances under RCW 80.28.300 shall be deemed as prudent and necessary for the operation of a utility.

(2) Every gas company, electrical company and water company shall furnish and supply such service, instrumentalities and facilities as shall be safe, adequate and efficient, and in all respects just and reasonable.

(3) All rules and regulations issued by any gas company, electrical company or water company, affecting or pertaining to the sale or distribution of its product, shall be just and reasonable.

(4) Utility service for residential space heating shall not be terminated between November 15 through March 15 if the customer:

(a) Notifies the utility of the inability to pay the bill, including a security deposit. This notice should be provided within five business days of receiving a payment overdue notice unless there are extenuating circumstances. If the customer fails to notify the utility within five business days and service is terminated, the customer can, by paying reconnection charges, if any, and fulfilling the requirements of this section, receive the protections of this chapter;

(b) Provides self-certification of household income for the prior twelve months to a grantee of the department of community, trade, and economic development which administers federally funded energy assistance programs. The grantee shall determine that the household income does not exceed the maximum allowed for eligibility under the state's plan for low-income energy assistance under 42 U.S.C. 8624 and shall provide a dollar figure that is seven percent of household income. The grantee may verify information provided in the self-certification;

(c) Has applied for home heating assistance from applicable government and private sector organizations and certifies that any assistance received will be applied to the current bill and future utility bills;

(d) Has applied for low-income weatherization assistance to the utility or other appropriate agency if such assistance is available for the dwelling;

(e) Agrees to a payment plan and agrees to maintain the payment plan. The plan will be designed both to pay the past due bill by the following October 15 and to pay for continued utility service. If the past due bill is not paid by the following October 15, the customer shall not be eligible for protections under this chapter until the past due bill is paid. The plan shall not require monthly payments in excess of seven percent of the customer's monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter during November 15 through March 15. A customer may agree to pay a higher percentage during this period, but shall not be in default unless payment during this period is less than seven percent of monthly income plus one-twelfth of any arrearage accrued from the date application is made and thereafter. If assistance payments are received by the customer subsequent to implementation of the plan, the customer shall contact the utility to reformulate the plan; and

(f) Agrees to pay the moneys owed even if he or she moves.

(5) The utility shall:

(a) Include in any notice that an account is delinquent and that service may be subject to termination, a description of the customer's duties in this section;

(b) Assist the customer in fulfilling the requirements under this section;

(c) Be authorized to transfer an account to a new residence when a customer who has established a plan under this section moves from one residence to another within the same utility service area;

(d) Be permitted to disconnect service if the customer fails to honor the payment program. Utilities may continue to disconnect service for those practices authorized by law other than for nonpayment as provided for in this subsection. Customers who qualify for payment plans under this section who default on their payment plans and are disconnected can be reconnected and maintain the protections afforded under this chapter by paying reconnection charges, if any, and by paying all amounts that would have been due and owing under the terms of the applicable payment plan, absent default, on the date on which service is reconnected; and

(e) Advise the customer in writing at the time it disconnects service that it will restore service if the customer contacts the utility and fulfills the other requirements of this section.

(6) A payment plan implemented under this section is consistent with RCW 80.28.080.

(7) Every gas company and electrical company shall offer residential customers the option of a budget billing or equal payment plan. The budget billing or equal payment plan shall be offered low-income customers eligible under the state's plan for low-income energy assistance prepared in accordance with 42 U.S.C. 8624(C)(1) without limiting availability to certain months of the year, without regard to the length of time the customer has occupied the premises, and without regard to whether the customer is the tenant or owner of the premises occupied.

(8) Every gas company, electrical company and water company shall construct and maintain such facilities in connection with the manufacture and distribution of its product as will be efficient and safe to its employees and the public.

(9) An agreement between the customer and the utility, whether oral or written, shall not waive the protections afforded under this chapter.

(10) In establishing rates or charges for water service, water companies as defined in RCW 80.04.010 may consider the achievement of water conservation goals and the discouragement of wasteful water use practices.

NEW SECTION. **Sec. 36.** Sections 1, 2, 6, 7, 9 through 14, 16 through 18, and 24 of this act constitute a new chapter in Title 35 RCW.

NEW SECTION. **Sec. 37.** This act may be known and cited as the evergreen communities act.

NEW SECTION. **Sec. 38.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2008, in the omnibus appropriations act, this act is null and void."

MOTION

Senator Stevens moved that the following amendment by Senator Stevens and others to the committee striking amendment be adopted.

On page 12, after line 8, insert the following:

" NEW SECTION. Sec. 15. If a city, town, or county enacts or implements model evergreen community management plans and ordinances pursuant to sections 12 and 13 of this act which restricts the use of private real property or any interest therein and has the effect of reducing the fair market value of the property, or any interest therein, then the owner of the property shall be paid just compensation by the city, town, or county."

Renumber the sections consecutively and correct any internal references accordingly.

Senators Stevens and Schoesler spoke in favor of adoption of the amendment to the committee striking amendment.

Senator Jacobsen spoke against adoption of the amendment to the committee striking amendment.

Senator Schoesler demanded a roll call.

The President declared that one-sixth of the members supported the demand and the demand was sustained.

The President declared the question before the Senate to be the adoption of the amendment by Senator Stevens and others on page 12, after line 8 to the committee striking amendment to Engrossed Second Substitute House Bill No. 2844.

ROLL CALL

The Secretary called the roll on the adoption of the amendment by Senator Stevens and others to the committee striking amendment and the amendment was not adopted by the following vote: Yeas, 20; Nays, 29; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Carrell, Delvin, Hatfield, Hewitt, Hobbs, Holmquist, Honeyford, Kastama, King, McCaslin, Morton, Parlette, Pflug, Roach, Schoesler, Sheldon, Stevens, Swecker and Zarelli - 20

Voting nay: Senators Berkey, Brandland, Brown, Eide, Fairley, Franklin, Fraser, Hargrove, Haugen, Jacobsen, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Rasmussen, Regala, Rockefeller, Shin, Spanel, Tom and Weinstein - 29

MOTION

Senator Honeyford moved that the following amendment by Senator Honeyford to the committee striking amendment be adopted.

On page 13, after line 8, insert the following:

" NEW SECTION. Sec. 17. If any city, town, or county implements model evergreen community management plans and ordinances pursuant to section 14 of this act, and consistent with sections 12 and 13 of this act, thereby reducing the development potential of land within a community's urban growth area designated for development in its comprehensive plan:

(a) That city, town, or county must determine the acreage and qualitative reduction in land suitable for development within its urban growth area and docket that amount as a deficiency to the planning director of the county in which the land is located;

(b) By December 1, 2010, and at least every five years thereafter, each county, in consultation with its cities as required by RCW 36.70A.110 and 36.70A.210, must increase the total land area within its urban growth areas by the total docketed acreage deficiency, with comparable qualitative land characteristics, through amendment of the county's comprehensive plan; and

(c) The county within which the increased land suitable for urban development is located must review its comprehensive plan elements under RCW 36.70A.070 and its development regulations under RCW 36.70A.060 and adopt any amendments necessary to assure that the comprehensive plan elements and development regulations are consistent with the changes required by (b) of this subsection. This review may be combined with but may not be delayed by the review required by RCW 36.70A.130(3) or the review and evaluation required by RCW 36.70A.215.

(3) For purposes of this section, "docketing" means compiling and maintaining a detailed list, available to the public, of acreage and land use deficiencies in a manner that ensures the deficiencies will be presented for the required periodic county action.

(4) For purposes of this section, "qualitative land characteristics" means the designated use of the land in deficiency, its suitability for development, the general location of that land within the county, its physical characteristics, and the availability of urban governmental services for the land."

Renumber the sections consecutively and correct any internal references accordingly.

Senator Honeyford spoke in favor of adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Honeyford on page 13, after line 8 to the committee striking amendment to Engrossed Second Substitute House Bill No. 2844.

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

MOTION

Senator Morton moved that the following amendment by Senator Morton to the committee striking amendment be adopted.

Beginning on page 1, after line 2 of the amendment, strike all material through "void." on page 30, line 34, and insert the following:

"**Sec. 1.** RCW 76.15.005 and 1991 c 179 s 1 are each amended to read as follows:

(1) Trees and other woody vegetation are a necessary and important part of community and urban environments. Community and urban forests have many values and uses including promoting urban livability, improving public health, sequestering carbon, conserving energy, reducing air and water pollution and soil erosion, contributing to property values, attracting business, reducing glare and noise, providing aesthetic and historical values, providing wood products, and affording comfort and protection for humans and wildlife.

(2) Well-managed and maintained community and urban forests minimize catastrophic losses of life, property, and environmental values due to floods, windstorms, ice storms, wildland fires, and other natural disasters. Natural disasters, pest and disease infestations, and lack of protection from human impacts pose significant threats to the community and urban forests. Urban forests provide multiple benefits and their loss would result in major financial, social, and environmental costs to Washington.

(3) As urban and community areas in Washington state grow, the need to plan for and protect community and urban forests increases. Cities and communities benefit from assistance in developing and maintaining community and urban forestry programs that also address future growth.

(((~~(3)~~))) (4) Assistance and encouragement in establishment, retention, and enhancement of these forests and trees by local governments, citizens, organizations, and professionals are in the interest of the state based on the contributions these forests make in preserving and enhancing the quality of life of Washington's municipalities and counties while providing opportunities for economic development.

(5) An inventory and assessment of community and urban forest conditions enables the department to identify and establish priorities for actions necessary to preserve and enhance the public investment in community and urban forest resources.

Sec. 2. RCW 76.15.010 and 2000 c 11 s 15 are each amended to read as follows:

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

(1) "Community and urban forest" is that land in and around human settlements ranging from small communities to metropolitan areas, occupied or potentially occupied by trees and associated vegetation. Community and urban forest land may be planted or unplanted, used or unused, and includes public and private lands, lands along transportation and utility corridors, and forested watershed lands within populated areas.

(2) "Community and urban forest assessment" means an analysis of the community and urban forest inventory to establish the value of urban forest-related benefits, highlight trends and issues of concern, identify high priority areas to be addressed, outline strategies for addressing critical issues and urban landscapes, and identify opportunities for the planting of additional trees to sustain Washington's urban and community forests.

(3) "Community and urban forest inventory" means a management tool designed to gauge the condition, management status, health, and diversity of a community and urban forest. An inventory may evaluate individual trees, groups of trees, or canopy cover within community and urban forests, and must be periodically updated by the department.

(4) "Community and urban forestry" means the planning, establishment, protection, care, and management of trees and associated plants individually, in small groups, or under forest conditions within municipalities and counties.

((~~(3)~~)) (5) "Department" means the department of natural resources.

((~~(4)~~)) (6) "Municipality" means a city, town, port district, public school district, community college district, irrigation district, weed control district, park district, or other political subdivision of the state.

((~~(5)~~)) (7) "Person" means an individual, partnership, private or public municipal corporation, Indian tribe, state entity, county or local governmental entity, or association of individuals of whatever nature.

Sec. 3. RCW 76.15.020 and 1991 c 179 s 4 are each amended to read as follows:

(1) The department may establish and maintain a program in community and urban forestry to accomplish the purpose stated in RCW 76.15.007. The department may assist municipalities and counties in establishing and maintaining community and urban forestry programs and encourage persons to engage in appropriate and improved tree management and care.

(2) The department may advise, encourage, and assist municipalities, counties, and other public and private entities in the development and coordination of policies, programs, and activities for the promotion and preservation of community and urban forestry.

(3) The department may appoint a committee or council to advise the department in establishing and carrying out a program in community and urban forestry.

(4) The department may assist municipal and county tree maintenance programs by making surplus equipment available on loan where feasible for community and urban forestry programs and cooperative projects.

(5) The commissioner of public lands may appoint a technical advisory committee to advise the department in the development of uniform criteria for a statewide community and urban forest inventory and assessment.

(a) The technical advisory committee may include but is not limited to: Arborists; municipal foresters; educators; consultants; researchers; public works and utilities professionals; information technology specialists; and other affiliated professionals.

(b) The criteria for a statewide community and urban forest inventory may include, but is not limited to: Tree size; species; location; condition; contribution to canopy cover and volume; available planting spaces; and economic, social, and monetary value.

(c) The technical advisory committee members must be compensated as provided in RCW 43.03.250 and must receive reimbursement for travel expenses as provided by RCW 43.03.050 and 43.03.060. Costs associated with the technical advisory committee may be paid from the general fund appropriation made available to the department for community and urban forestry.

(6) The department may, in collaboration with municipalities and a statewide organization representing urban and community forestry programs, develop the implementation plan for the inventory and assessment of the community and urban forests in Washington state.

(7) The department may, in collaboration with educational institutions, municipalities, corporations, state and national service organizations, and environmental organizations, conduct a statewide inventory of community and urban forests. Statewide data must be maintained and periodically updated by the department and made available to every municipality.

(8) The department may, in collaboration with a statewide organization representing urban and community forestry programs, conduct an urban forest assessment and develop recommendations to the legislature to improve community and urban forestry in Washington state. The commissioner of public lands must report progress annually to the legislature, beginning January 1, 2009.

(9) Under the authority provided in this section, the department shall conduct an inventory and assessment consisting of the community and urban forests of the willing municipalities located in one county located east of the crest of the Cascade mountains and the willing municipalities located in one county located west of the crest of the Cascade mountains. The inventory and assessment must be completed by June 1, 2010."

On page 31, line 2 of the title amendment, after "insert" strike the remainder of the title amendment and insert "and amending RCW 76.15.005, 76.15.010, and 76.15.020."

Senator Morton spoke in favor of adoption of the amendment to the committee striking amendment.

Senator Jacobsen spoke against adoption of the amendment to the committee striking amendment.

POINT OF INQUIRY

Senator Morton: "Would the previous speaker yield to a question? Could you give me the date on that letter?"

Senator Jacobsen: "Yes I can. Its March 5, 2008.

Senator Morton: "And is that the letter that was received previous to our last action in committee?"

Senator Jacobsen: "No. I got to look at the calendar. It was yesterday."

Senator Morton: "There must have been two letters then. I was familiar with a letter previously and I felt that the striking amendment corrected that so that's why I'm so concerned about when the letter was written and brought to our attention. Thank you."

POINT OF ORDER

Senator Honeyford: "Point of Order, requesting a scope and object and a ruling on this amendment. It appears to be clearly outside the scope and object of the underlying bill."

REPLY BY THE PRESIDENT

President Owen: "Are you talking about Senator Morton's amendment to the striking amendment?"

Senator Honeyford: "Yes, I am."

MOTION

On motion of Senator Eide, further consideration of Engrossed Second Substitute House Bill No. 2844 was deferred and the bill held its place on the second reading calendar.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2893, by House Committee on Agriculture & Natural Resources (originally sponsored by Representatives VanDeWege, Kessler, Moeller, Sells, Hunt, Takko, McCoy, Liias, Conway, Haigh, Blake, Ormsby, Loomis, O'Brien, Eickmeyer, Hasegawa, Green, Pearson and Nelson)

Modifying the composition of the forest practices board.

The measure was read the second time.

MOTION

On motion of Senator Jacobsen, the rules were suspended, Substitute House Bill No. 2893 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Jacobsen and Morton spoke in favor of passage of the bill.

MOTION

On motion of Senator Regala, Senator Kohl-Welles was excused.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2893.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2893 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 1; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 48

Voting nay: Senator Hewitt - 1

SUBSTITUTE HOUSE BILL NO. 2893, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

On motion of Senator Brandland, Senator Carrell was excused.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 3071, by House Committee on Housing (originally sponsored by Representatives Goodman, Rodne and Williams)

Harmonizing statutes that address the termination of condominiums.

The measure was read the second time.

MOTION

On motion of Senator Weinstein, the rules were suspended, Substitute House Bill No. 3071 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Weinstein spoke in favor of passage of the bill.

Senator Honeyford spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 3071.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 3071 and the bill passed the Senate by the following vote: Yeas, 41; Nays, 8; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hatfield, Haugen, Hewitt, Hobbs, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Sheldon, Shin, Spanel, Stevens, Tom, Weinstein and Zarelli - 41

Voting nay: Senators Hargrove, Holmquist, Honeyford, King, McCaslin, Morton, Schoesler and Swecker - 8

SUBSTITUTE HOUSE BILL NO. 3071, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SECOND SUBSTITUTE HOUSE BILL NO. 3274, by House Committee on Appropriations Subcommittee on General Government & Audit Review (originally sponsored by Representatives Simpson, Hudgins, Upthegrove, Hunter, Santos and Kenney)

Addressing public contracting by public port districts.

The measure was read the second time.

MOTION

Senator Fairley moved that the following committee striking amendment by the Committee on Government Operations & Elections be not adopted.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 53.08.120 and 2000 c 138 s 210 are each amended to read as follows:

(1) All material and work required by a port district not meeting the definition of public work in RCW 39.04.010(4) may be procured in the open market or by contract and all work ordered may be done by contract or day labor.

(2)(a) All such contracts for work meeting the definition of "public work" in RCW 39.04.010(4), the estimated cost of which exceeds two hundred thousand dollars, shall be awarded using a competitive bid process. The contract must be ((~~let~~)) awarded at public bidding upon notice published in a newspaper of general circulation in the district at least thirteen days before the last date upon which bids will be received, calling for ((~~sealed~~)) bids upon the work, plans and specifications for which shall then be on file in the office of the commission for public inspection. The same notice may call for bids on such work or material based upon plans and specifications submitted by the bidder. The competitive bidding requirements for purchases or public works may be waived pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work.

((~~However~~)) (b) For all contracts related to work meeting the definition of "public work" in RCW 39.04.010(4) that are estimated at two hundred thousand dollars or less, a port district may let contracts using the small works roster process under RCW 39.04.155 in lieu of ((~~calling~~)) advertising for ((~~sealed~~)) bids. Whenever possible, the managing official shall invite at least one proposal from a minority contractor who shall otherwise qualify under this section.

When awarding such a contract for work, when utilizing proposals from the small works roster, the managing official shall give weight to the contractor submitting the lowest and best proposal, and whenever it would not violate the public interest, such contracts shall be distributed equally among contractors, including minority contractors, on the small works roster.

Sec. 2. RCW 39.30.020 and 1974 ex.s. c 74 s 1 are each amended to read as follows:

In addition to any other remedies or penalties contained in any law, municipal charter, ordinance, resolution or other enactment, any municipal officer by or through whom or under whose supervision, in whole or in part, any contract is made in ((~~wilful~~)) willful and intentional violation of any law, municipal charter, ordinance, resolution or other enactment requiring competitive bidding, including consulting, architectural, engineering, or other services, upon such contract shall be held liable to a civil penalty of not less than three hundred dollars and may be held liable, jointly and severally with any other such municipal officer, for all consequential damages to the municipal corporation. If, as a result of a criminal action, the violation is found to have been intentional, the municipal officer shall immediately forfeit his or her office. For purposes of this section, "municipal officer" ((~~shall~~)) means an "officer" or "municipal officer" as those terms are defined in RCW 42.23.020(2).

NEW SECTION. **Sec. 3.** A new section is added to chapter 53.08 RCW to read as follows:

By January 1, 2010, each port with more than ten million dollars in annual gross revenues, excluding grant and loan funds, shall maintain a database on a public web site of all contracts, including public works and personal services. At a minimum, the database shall identify the contractor, the purpose of the contract, effective dates and periods of performance, the cost of the contract and funding source, any modifications to the contract, and whether the contract was competitively procured or awarded on a sole source basis.

NEW SECTION. **Sec. 4.** A new section is added to chapter 53.08 RCW to read as follows:

(1) In the procurement of public work consultant planning services relating to a facility outside of the district's jurisdictional boundaries, after the district purchases property for the facility, the port district or districts with responsibility for the future property development and use must prepare and implement a communication plan within sixty days after contracting with a site planning consultant. The communication plan must be reasonably calculated to provide property owners and other affected and interested individuals information for review and comment. The plan shall be made available through the planning and predesign phase. The communication plan shall include information about:

(a) The type and scale of proposed uses on the site;

(b) The type and scale of uses, including business and industrial activities, that the development is likely to later attract to the site and to the nearby area;

(c) The general character and scope of potential impacts on air and water quality, noise, and local and state transportation infrastructure, including state highways, local roads, rail, and shipping.

(2) Information included in the communication plan under subsection (1) of this section may be made available by means of web pages, office inspection and copying, one or more property tours, and public meetings that allow interested citizens to comment to port officials on several occasions over time as the development plans evolve.

(3) Environmental mitigation, habitat restoration, and dredged material disposal projects are exempt from the requirements of this section.

NEW SECTION. **Sec. 5.** The legislature hereby establishes a policy of open competition for all personal service contracts entered into by port districts unless specifically exempted under this chapter. It is further the intent to provide differentiation between the competitive procurement procedures for personal and professional services contracts.

NEW SECTION. **Sec. 6.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commission" means the elected oversight body of an individual port.

(2) "Competitive solicitation" means a documented formal process providing an equal and open opportunity to qualified parties and culminating in a selection based on criteria, in which criteria other than price may be the primary basis for consideration. The criteria may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services.

(3) "Consultant" means an independent individual or firm contracting with a port to perform a service or render an opinion or recommendation according to the consultant's methods and without being subject to the control of the port except as to the result of the work. The port monitors progress under the contract and authorizes payment.

(4) "Emergency" means a set of unforeseen circumstances beyond the control of the port that either:

(a) Present a real, immediate threat to the proper performance of essential functions; or

(b) May result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

(5) "Evidence of competition" means documentation demonstrating that the port has solicited responses from multiple firms in selecting a consultant.

(6) "Personal service" means professional or technical expertise provided by a consultant to accomplish a specific study, project, task, or other work statement which may not reasonably be required in connection with a public works project meeting the definition in RCW 39.04.010(4). "Personal service" does not include purchased services as defined under

subsection (8) of this section or professional services procured using the competitive selection requirements in chapter 39.80 RCW.

(7) "Personal service contract" means an agreement, or any amendment thereto, with a consultant for the rendering of personal services to the port.

(8) "Purchased services" means services provided by a vendor to accomplish routine, continuing, and necessary functions. "Purchased services" includes, but is not limited to, services for equipment maintenance and repair; operation of a physical plant; security; computer hardware and software maintenance; data entry; key punch services; and computer time-sharing, contract programming, and analysis.

(9) "Sole source" means a consultant providing professional or technical expertise of such a unique nature that the consultant is clearly and justifiably the only practicable source to provide the service. The justification shall be based on the uniqueness of the service, sole availability at the location required, or warranty or defect correction service obligations of the consultant.

NEW SECTION. **Sec. 7.** All personal service contracts shall be entered into pursuant to competitive solicitation, except for:

(1) Emergency contracts;

(2) Sole source contracts;

(3) Contract amendments;

(4) Contracts between a consultant and a port of less than fifty thousand dollars. However, contracts of fifty thousand dollars or greater but less than two hundred thousand dollars shall have documented evidence of competition. Ports shall not structure contracts to evade these requirements; and

(5) Other specific contracts or classes or groups of contracts exempted from the competitive solicitation process by the office of financial management when it has been determined that a competitive solicitation process is not appropriate or cost-effective.

NEW SECTION. **Sec. 8.** Emergency contracts shall be filed with the office of financial management and made available for public inspection within seven working days following the commencement of work or execution of the contract, whichever occurs first. Documented justification for emergency contracts shall be provided to the office of financial management when the contract is filed.

NEW SECTION. **Sec. 9.** (1) Sole source contracts shall be filed with the office of financial management and made available for public inspection prior to the proposed starting date of the contract. Documented justification for sole source contracts shall be provided to the office of financial management when the contract is filed. For sole source contracts of fifty thousand dollars or more, documented justification shall include evidence that the port attempted to identify potential consultants.

(2) The office of financial management shall ensure that the costs, fees, or rates negotiated in filed sole source contracts of fifty thousand dollars or more are reasonable.

NEW SECTION. **Sec. 10.** A port commissioner or employee shall not expend any funds for personal service contracts subject to this chapter unless the port has complied with the competitive procurement and other requirements of this chapter. The port commissioner or employee executing the personal service contracts is responsible for compliance with the requirements of this chapter. Willful and intentional failure to comply with the requirements of this chapter subjects the port commissioner or employee to a civil penalty in the amount of three hundred dollars. A consultant who knowingly violates this chapter in seeking or performing work under a personal services contract is subject to a civil penalty of three hundred dollars or twenty-five percent of the amount of the contract, whichever is greater. The state auditor is responsible for auditing violations of this chapter through its regular financial and accountability audits. The attorney general is responsible for prosecuting violations of this chapter.

NEW SECTION. **Sec. 11.** (1) Substantial changes in the scope of work specified in the contract or which are substantial additions to the scope of work specified in the formal solicitation document shall be submitted to the office of financial management for a determination as to whether the change warrants the work to be awarded as a new contract.

(2) An amendment or amendments to personal service contracts, if the value of the amendment or amendments, whether singly or cumulatively, exceeds fifty percent of the value of the original contract must be filed with the office of financial management and made available for public inspection prior to the proposed starting date of services under the amendments.

NEW SECTION. **Sec. 12.** This chapter does not apply to:

(1) Contracts specifying a fee of less than fifty thousand dollars;

(2) Contracts awarded to companies that furnish a service where the tariff is established by the utilities and transportation commission or other public entity;

(3) Intergovernmental agreements awarded to any governmental entity, whether federal, state, or local and any department, division, or subdivision thereof;

(4) Contracts awarded for services to be performed for a standard fee, when the standard fee is established by the contracting agency or any other governmental entity and a like contract is available to all qualified applicants;

(5) Contracts for services that are necessary to the conduct of collaborative research if prior approval is granted by the funding source;

(6) Contracts for professional services which are entered into under chapter 39.80 RCW; and

(7) Contracts for the employment of expert witnesses for the purposes of litigation or legal services to supplement the expertise of port staff.

NEW SECTION. **Sec. 13.** (1) The municipal research services center, in cooperation with the Washington public ports association, shall develop guidelines for the effective and efficient management of personal service contracts by all ports. The guidelines must, at a minimum, include:

(a) Accounting methods, systems, measures, and principles to be used by ports and consultants;

(b) Precontract procedures for selecting potential consultants based on their qualifications and ability to perform;

(c) Incorporation of performance measures and measurable benchmarks in contracts, and the use of performance audits;

(d) Uniform contract terms to ensure contract performance and compliance with port, state, and federal standards;

(e) Proper payment and reimbursement methods to ensure that the port receives full value for taxpayer moneys, including cost settlements and cost allowance;

(f) Postcontract procedures, including methods for recovering improperly spent or overspent moneys for disallowance and adjustment;

(g) Adequate contract remedies and sanctions to ensure compliance;

(h) Monitoring, fund tracking, risk assessment, and auditing procedures and requirements;

(i) Financial reporting, record retention, and record access procedures and requirements;

(j) Procedures and criteria for terminating contracts for cause or otherwise; and

(k) Any other subject related to effective and efficient contract management.

(2) The municipal research services center shall submit a status report on the guidelines required by subsection (1) of this section to the governor and the appropriate standing committees of the legislature no later than December 1, 2008.

(3) The Washington public ports association shall publish a guidebook for use by ports containing the guidelines developed under subsection (1) of this section.

(4) The municipal research services center and the Washington public ports association shall each make the guidelines available on their web sites.

NEW SECTION. **Sec. 14.** (1) A port entering into or amending personal service contracts shall follow the policies adopted by the commission, which shall be based on guidelines developed pursuant to section 13 of this act.

(2) This section applies to ports entering into or renewing contracts after January 1, 2010.

NEW SECTION. **Sec. 15.** The Washington public ports association shall provide a training course for port personnel responsible for executing and managing personal service contracts. The course must contain training on effective and efficient contract management under the guidelines established under section 13 of this act. Port districts shall require port employees responsible for executing or managing personal service contracts to complete the training course to the satisfaction of the commission.

Sec. 16. RCW 39.04.010 and 2007 c 133 s 1 are each amended to read as follows:

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

(1) "Award" means the formal decision by the state or municipality notifying a responsible bidder with the lowest responsive bid of the ((~~state~~)) state's or municipality's acceptance of the bid and intent to enter into a contract with the bidder.

(2) "Contract" means a contract in writing for the execution of public work for a fixed or determinable amount duly awarded after advertisement and competitive bid, or a contract awarded under the small works roster process in RCW 39.04.155.

(3) "Municipality" means every city, county, town, port district, district, or other public agency authorized by law to require the execution of public work, except drainage districts, diking districts, diking and drainage improvement districts, drainage improvement districts, diking improvement districts, consolidated diking and drainage improvement districts, consolidated drainage improvement districts, consolidated diking improvement districts, irrigation districts, or other districts authorized by law for the reclamation or development of waste or undeveloped lands.

(4) "Public work" means all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein. All public works, including maintenance when performed by contract shall comply with chapter 39.12 RCW. "Public work" does not include work, construction, alteration, repair, or improvement performed under contracts entered into under RCW 36.102.060(4) or under development agreements entered into under RCW 36.102.060(7) or leases entered into under RCW 36.102.060(8).

(5) "Responsible bidder" means a contractor who meets the criteria in RCW 39.04.350.

(6) "State" means the state of Washington and all departments, supervisors, commissioners, and agencies of the state.

Sec. 17. RCW 39.04.155 and 2007 c 218 s 87, 2007 c 210 s 1, and 2007 c 133 s 4 are each reenacted and amended to read as follows:

(1) This section provides uniform small works roster provisions to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property that may be used by state agencies and by any local government that is expressly authorized to use these provisions. These provisions may be used in lieu of other procedures to award contracts for such work with an estimated cost of two hundred thousand dollars or less. The small works roster process includes the limited public works process authorized under subsection (3) of this section and any local government authorized to award contracts using the small works roster process under this section may award contracts using the limited public works process under subsection (3) of this section.

(2)(a) A state agency or authorized local government may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work. Where applicable, small works rosters may make distinctions between contractors based upon different geographic areas served by the contractor. The small works roster or rosters shall consist of all responsible contractors who have requested to be on the list, and where required by law are properly licensed or registered to perform such work in this state. A state agency or local government establishing a small works roster or rosters may require eligible contractors desiring to be placed on a roster or rosters to keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the state agency or local government as a condition of being placed on a roster or rosters. At least once a year, the state agency or local government shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. In addition, responsible contractors shall be added to an appropriate roster or rosters at any time they submit a written request and necessary records. Master contracts may be required to be signed that become effective when a specific award is made using a small works roster.

(b) A state agency establishing a small works roster or rosters shall adopt rules implementing this subsection. A local government establishing a small works roster or rosters shall adopt an ordinance or resolution implementing this subsection. Procedures included in rules adopted by the department of general administration in implementing this subsection must be included in any rules providing for a small works roster or rosters that is adopted by another state agency, if the authority for that state agency to engage in these activities has been delegated to it by the department of general administration under chapter 43.19 RCW. An interlocal contract or agreement between two or more state agencies or local governments establishing a small works roster or rosters to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the provisions of this subsection.

(c) Procedures shall be established for securing telephone, written, or electronic quotations from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW 39.04.010. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This subsection does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes. Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster. However, if the estimated cost of the work is from one hundred thousand dollars to two hundred thousand dollars, a state agency or local government((~~, other than a port district,~~)) that chooses to solicit bids from less than all the appropriate contractors on the appropriate small works roster must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The government has the sole option of determining whether this notice to the remaining contractors is made by: (i) Publishing notice in a legal newspaper in general circulation in the area where the work is to be done; (ii) mailing a notice to these contractors; or (iii) sending a notice to these contractors by

facsimile or other electronic means. For purposes of this subsection (2)(c), "equitably distribute" means that a state agency or local government soliciting bids may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services.

(d) A contract awarded from a small works roster under this section need not be advertised.

(e) Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

(3) In lieu of awarding contracts under subsection (2) of this section, a state agency or authorized local government may award a contract for work, construction, alteration, repair, or improvement projects estimated to cost less than thirty-five thousand dollars using the limited public works process provided under this subsection. Public works projects awarded under this subsection are exempt from the other requirements of the small works roster process provided under subsection (2) of this section and are exempt from the requirement that contracts be awarded after advertisement as provided under RCW 39.04.010.

For limited public works projects, a state agency or authorized local government shall solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder as defined under RCW 39.04.010. After an award is made, the quotations shall be open to public inspection and available by electronic request. A state agency or authorized local government shall attempt to distribute opportunities for limited public works projects equitably among contractors willing to perform in the geographic area of the work. A state agency or authorized local government shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract was awarded. For limited public works projects, a state agency or authorized local government may waive the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, materialpersons, suppliers, and taxes imposed under Title 82 RCW that may be due from the contractor for the limited public works project, however the state agency or authorized local government shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

(4) The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process or limited public works process.

(5)(a) A state agency or authorized local government may use the limited public works process of subsection (3) of this section to solicit and award small works roster contracts to small businesses that are registered contractors with gross revenues under one million dollars annually as reported on their federal tax return.

(b) A state agency or authorized local government may adopt additional procedures to encourage small businesses that are registered contractors with gross revenues under two hundred fifty thousand dollars annually as reported on their federal tax returns to submit quotations or bids on small works roster contracts.

(6) As used in this section, "state agency" means the department of general administration, the state parks and recreation commission, the department of natural resources, the department of fish and wildlife, the department of transportation, any institution of higher education as defined under RCW 28B.10.016, and any other state agency delegated authority by the department of general administration to engage in construction, building, renovation, remodeling, alteration, improvement, or repair activities.

Sec. 18. RCW 53.12.270 and 1975 1st ex.s. c 12 s 1 are each amended to read as follows:

(1) The commission may delegate to the managing official of a port district such administerial powers and duties of the commission as it may deem proper for the efficient and proper management of port district operations. Any such delegation shall be authorized by appropriate resolution of the commission, which resolution must also establish guidelines and procedures for the managing official to follow.

(2) The commission shall establish, by resolution, policies to comply with RCW 39.04.280 that set forth the conditions by which competitive bidding requirements for public works contracts may be waived.

NEW SECTION. **Sec. 19.** Sections 5 through 15 of this act constitute a new chapter in Title 53 RCW.

NEW SECTION. **Sec. 20.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2008, in the omnibus appropriations act, this act is null and void."

On page 1, line 2 of the title, after "districts;" strike the remainder of the title and insert "amending RCW 53.08.120, 39.30.020, 39.04.010, and 53.12.270; reenacting and amending RCW 39.04.155; adding new sections to chapter 53.08 RCW; adding a new chapter to Title 53 RCW; creating a new section; and prescribing penalties."

Senator Roach spoke in favor of the motion.

The President declared the question before the Senate to be the motion by Senator Fairley to not adopt the committee striking amendment by the Committee on Government Operations & Elections to Second Substitute House Bill No. 3274.

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

MOTION

Senator Fairley moved that the following striking amendment by Senator Fairley be adopted:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 53.08.120 and 2000 c 138 s 210 are each amended to read as follows:

(1) All material and work required by a port district not meeting the definition of public work in RCW 39.04.010(4) may be procured in the open market or by contract and all work ordered may be done by contract or day labor.

(2)(a) All such contracts for work meeting the definition of "public work" in RCW 39.04.010(4), the estimated cost of which exceeds two hundred thousand dollars, shall be awarded using a competitive bid process. The contract must be ((~~let~~)) awarded at public bidding upon notice published in a newspaper of general circulation in the district at least thirteen days before the last date upon which bids will be received, calling for ((~~sealed~~)) bids upon the work, plans and specifications for which shall then be on file in the office of the commission for public inspection. The same notice may call for bids on such work or material based upon plans and specifications submitted by the bidder. The competitive bidding requirements for purchases or public works may be waived pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work.

((~~However~~)) (b) For all contracts related to work meeting the definition of "public work" in RCW 39.04.010(4) that are estimated at two hundred thousand dollars or less, a port district may let contracts using the small works roster process under RCW 39.04.155 in lieu of ((~~calling~~)) advertising for ((~~sealed~~)) bids. Whenever possible, the managing official shall invite at

least one proposal from a minority contractor who shall otherwise qualify under this section.

When awarding such a contract for work, when utilizing proposals from the small works roster, the managing official shall give weight to the contractor submitting the lowest and best proposal, and whenever it would not violate the public interest, such contracts shall be distributed equally among contractors, including minority contractors, on the small works roster.

Sec. 2. RCW 39.30.020 and 1974 ex.s. c 74 s 1 are each amended to read as follows:

In addition to any other remedies or penalties contained in any law, municipal charter, ordinance, resolution or other enactment, any municipal officer by or through whom or under whose supervision, in whole or in part, any contract is made in ((~~wilful~~)) willful and intentional violation of any law, municipal charter, ordinance, resolution or other enactment requiring competitive bidding or procurement procedures for consulting, architectural, engineering, or other services, upon such contract shall be held liable to a civil penalty of not less than three hundred dollars and may be held liable, jointly and severally with any other such municipal officer, for all consequential damages to the municipal corporation. If, as a result of a criminal action, the violation is found to have been intentional, the municipal officer shall immediately forfeit his or her office. For purposes of this section, "municipal officer" ((~~shall~~)) means an "officer" or "municipal officer" as those terms are defined in RCW 42.23.020(2).

NEW SECTION. **Sec. 3.** A new section is added to chapter 53.08 RCW to read as follows:

By January 1, 2010, each port with more than ten million dollars in annual gross revenues, excluding grant and loan funds, shall maintain a database on a public web site of all contracts, including public works and personal services. At a minimum, the database shall identify the contractor, the purpose of the contract, effective dates and periods of performance, the cost of the contract and funding source, any modifications to the contract, and whether the contract was competitively procured or awarded on a sole source basis.

NEW SECTION. **Sec. 4.** A new section is added to chapter 53.08 RCW to read as follows:

(1) If a port district purchases property for a facility outside the port's jurisdiction, the port district or districts with responsibility for the future property development and use must prepare and implement a communication plan within sixty days after contracting with a site planning consultant. The communication plan must be reasonably calculated to provide property owners and other affected and interested individuals information for review and comment. The plan shall be made available through the planning and predesign phase. The communication plan shall include information about:

(a) The type and scale of proposed uses on the site;

(b) The type and scale of business and industrial activities that the development is likely to later attract to the site and to the nearby area;

(c) The general character and scope of potential impacts on air and water quality, noise, and local and state transportation infrastructure, including state highways, local roads, rail, and shipping.

(2) Information included in the communication plan under subsection (1) of this section may be made available by means of web pages, office inspection and copying of materials, one or more property tours, and public meetings that allow interested citizens to comment to port officials on several occasions over time as the development plans evolve.

(3) Environmental mitigation, habitat restoration, and dredged material disposal projects are exempt from the requirements of this section.

NEW SECTION. **Sec. 5.** The legislature hereby establishes a policy of open competition for all personal service contracts entered into by port districts unless specifically exempted under this chapter. It is further the intent to provide differentiation between the competitive procurement procedures for personal and professional services contracts.

NEW SECTION. **Sec. 6.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commission" means the elected oversight body of an individual port.

(2) "Competitive solicitation" means a documented formal process providing an equal and open opportunity to qualified parties and culminating in a selection based on criteria, in which criteria other than price may be the primary basis for consideration. The criteria may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services.

(3) "Consultant" means an independent individual or firm contracting with a port to perform a service or render an opinion or recommendation according to the consultant's methods and without being subject to the control of the port except as to the result of the work. The port monitors progress under the contract and authorizes payment.

(4) "Emergency" means a set of unforeseen circumstances beyond the control of the port that either:

(a) Present a real, immediate threat to the proper performance of essential functions; or

(b) May result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

(5) "Evidence of competition" means documentation demonstrating that the port has solicited responses from multiple firms in selecting a consultant.

(6) "Personal service" means professional or technical expertise provided by a consultant to accomplish a specific study, project, task, or other work statement which may not reasonably be required in connection with a public works project meeting the definition in RCW 39.04.010(4). "Personal service" does not include purchased services as defined under subsection (8) of this section or professional services procured using the competitive selection requirements in chapter 39.80 RCW.

(7) "Personal service contract" means an agreement, or any amendment thereto, with a consultant for the rendering of personal services to the port.

(8) "Purchased services" means services provided by a vendor to accomplish routine, continuing, and necessary functions. "Purchased services" includes, but is not limited to, services for equipment maintenance and repair; operation of a physical plant; security; computer hardware and software maintenance; data entry; key punch services; and computer time-sharing, contract programming, and analysis.

(9) "Sole source" means a consultant providing professional or technical expertise of such a unique nature that the consultant is clearly and justifiably the only practicable source to provide the service. The justification shall be based on the uniqueness of the service, sole availability at the location required, or warranty or defect correction service obligations of the consultant.

NEW SECTION. **Sec. 7.** All personal service contracts shall be entered into pursuant to competitive solicitation, except for:

(1) Emergency contracts;

(2) Sole source contracts;

(3) Contract amendments;

(4) Contracts between a consultant and a port of less than fifty thousand dollars. However, contracts of fifty thousand dollars or greater but less than two hundred thousand dollars shall have documented evidence of competition. Ports shall not structure contracts to evade these requirements; and

(5) Other specific contracts or classes or groups of contracts exempted from the competitive solicitation process by the commission when it has been determined that a competitive solicitation process is not appropriate or cost-effective.

NEW SECTION. **Sec. 8.** Emergency contracts shall be filed with the commission and made available for public inspection within seven working days following the commencement of work or execution of the contract, whichever occurs first. Documented justification for emergency contracts shall be provided to the commission when the contract is filed.

NEW SECTION. **Sec. 9.** (1) Sole source contracts shall be filed with the commission and made available for public inspection prior to the proposed starting date of the contract. Documented justification for sole source contracts shall be provided to the commission when the contract is filed. For sole source contracts of fifty thousand dollars or more, documented justification shall include evidence that the port attempted to identify potential consultants.

(2) The commission shall ensure that the costs, fees, or rates negotiated in filed sole source contracts of fifty thousand dollars or more are reasonable.

NEW SECTION. **Sec. 10.** A port commissioner or employee shall not expend any funds for personal service contracts subject to this chapter unless the port has complied with the competitive procurement and other requirements of this chapter. The port commissioner or employee executing the personal service contracts is responsible for compliance with the requirements of this chapter. Willful and intentional failure to comply with the requirements of this chapter subjects the port commissioner or employee to a civil penalty in the amount of three hundred dollars. A consultant who knowingly violates this chapter in seeking or performing work under a personal services contract is subject to a civil penalty of three hundred dollars or twenty-five percent of the amount of the contract, whichever is greater. The state auditor is responsible for auditing violations of this chapter through its regular financial and accountability audits. The attorney general is responsible for prosecuting violations of this chapter.

NEW SECTION. **Sec. 11.** (1) Substantial changes in the scope of work specified in the contract or which are substantial additions to the scope of work specified in the formal solicitation document shall be submitted to the commission for a determination as to whether the change warrants the work to be awarded as a new contract.

(2) An amendment or amendments to personal service contracts, if the value of the amendment or amendments, whether singly or cumulatively, exceeds fifty percent of the value of the original contract must be filed with the commission and made available for public inspection prior to the proposed starting date of services under the amendments.

NEW SECTION. **Sec. 12.** This chapter does not apply to:

(1) Contracts specifying a fee of less than fifty thousand dollars;

(2) Contracts awarded to companies that furnish a service where the tariff is established by the utilities and transportation commission or other public entity;

(3) Intergovernmental agreements awarded to any governmental entity, whether federal, state, or local and any department, division, or subdivision thereof;

(4) Contracts awarded for services to be performed for a standard fee, when the standard fee is established by the contracting agency or any other governmental entity and a like contract is available to all qualified applicants;

(5) Contracts for services that are necessary to the conduct of collaborative research if prior approval is granted by the funding source;

(6) Contracts for professional services which are entered into under chapter 39.80 RCW; and

(7) Contracts for the employment of expert witnesses for the purposes of litigation or legal services to supplement the expertise of port staff.

NEW SECTION. **Sec. 13.** (1) The municipal research services center, in cooperation with the Washington public ports association, shall develop guidelines for the effective and efficient management of personal service contracts by all ports. The guidelines must, at a minimum, include:

(a) Accounting methods, systems, measures, and principles to be used by ports and consultants;

(b) Precontract procedures for selecting potential consultants based on their qualifications and ability to perform;

(c) Incorporation of performance measures and measurable benchmarks in contracts, and the use of performance audits;

(d) Uniform contract terms to ensure contract performance and compliance with port, state, and federal standards;

(e) Proper payment and reimbursement methods to ensure that the port receives full value for taxpayer moneys, including cost settlements and cost allowance;

(f) Postcontract procedures, including methods for recovering improperly spent or overspent moneys for disallowance and adjustment;

(g) Adequate contract remedies and sanctions to ensure compliance;

(h) Monitoring, fund tracking, risk assessment, and auditing procedures and requirements;

(i) Financial reporting, record retention, and record access procedures and requirements;

(j) Procedures and criteria for terminating contracts for cause or otherwise; and

(k) Any other subject related to effective and efficient contract management.

(2) The municipal research services center shall submit a status report on the guidelines required by subsection (1) of this section to the governor and the appropriate standing committees of the legislature no later than December 1, 2008.

(3) The Washington public ports association shall publish a guidebook for use by ports containing the guidelines developed under subsection (1) of this section.

(4) The municipal research services center and the Washington public ports association shall each make the guidelines available on their web sites.

NEW SECTION. **Sec. 14.** (1) A port entering into or amending personal service contracts shall follow the policies adopted by the commission, which shall be based on guidelines developed pursuant to section 13 of this act.

(2) This section applies to ports entering into or renewing contracts after January 1, 2010.

NEW SECTION. **Sec. 15.** The Washington public ports association shall provide a training course for port personnel responsible for executing and managing personal service contracts. The course must contain training on effective and efficient contract management under the guidelines established under section 13 of this act. Port districts shall require port employees responsible for executing or managing personal service contracts to complete the training course to the satisfaction of the commission.

Sec. 16. RCW 39.04.010 and 2007 c 133 s 1 are each amended to read as follows:

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

(1) "Award" means the formal decision by the state or municipality notifying a responsible bidder with the lowest responsive bid of the ((~~state~~)) state's or municipality's acceptance of the bid and intent to enter into a contract with the bidder.

(2) "Contract" means a contract in writing for the execution of public work for a fixed or determinable amount duly awarded after advertisement and competitive bid, or a contract awarded under the small works roster process in RCW 39.04.155.

(3) "Municipality" means every city, county, town, port district, district, or other public agency authorized by law to require the execution of public work, except drainage districts, diking districts, diking and drainage improvement districts,

drainage improvement districts, diking improvement districts, consolidated diking and drainage improvement districts, consolidated drainage improvement districts, consolidated diking improvement districts, irrigation districts, or other districts authorized by law for the reclamation or development of waste or undeveloped lands.

(4) "Public work" means all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein. All public works, including maintenance when performed by contract shall comply with chapter 39.12 RCW. "Public work" does not include work, construction, alteration, repair, or improvement performed under contracts entered into under RCW 36.102.060(4) or under development agreements entered into under RCW 36.102.060(7) or leases entered into under RCW 36.102.060(8).

(5) "Responsible bidder" means a contractor who meets the criteria in RCW 39.04.350.

(6) "State" means the state of Washington and all departments, supervisors, commissioners, and agencies of the state.

Sec. 17. RCW 39.04.155 and 2007 c 218 s 87, 2007 c 210 s 1, and 2007 c 133 s 4 are each reenacted and amended to read as follows:

(1) This section provides uniform small works roster provisions to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property that may be used by state agencies and by any local government that is expressly authorized to use these provisions. These provisions may be used in lieu of other procedures to award contracts for such work with an estimated cost of two hundred thousand dollars or less. The small works roster process includes the limited public works process authorized under subsection (3) of this section and any local government authorized to award contracts using the small works roster process under this section may award contracts using the limited public works process under subsection (3) of this section.

(2)(a) A state agency or authorized local government may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work. Where applicable, small works rosters may make distinctions between contractors based upon different geographic areas served by the contractor. The small works roster or rosters shall consist of all responsible contractors who have requested to be on the list, and where required by law are properly licensed or registered to perform such work in this state. A state agency or local government establishing a small works roster or rosters may require eligible contractors desiring to be placed on a roster or rosters to keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the state agency or local government as a condition of being placed on a roster or rosters. At least once a year, the state agency or local government shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. In addition, responsible contractors shall be added to an appropriate roster or rosters at any time they submit a written request and necessary records. Master contracts may be required to be signed that become effective when a specific award is made using a small works roster.

(b) A state agency establishing a small works roster or rosters shall adopt rules implementing this subsection. A local government establishing a small works roster or rosters shall adopt an ordinance or resolution implementing this subsection. Procedures included in rules adopted by the department of general administration in implementing this subsection must be included in any rules providing for a small works roster or rosters that is adopted by another state agency, if the authority for that state agency to engage in these activities has been delegated to it by the department of general administration under chapter 43.19 RCW. An interlocal contract or agreement between two or more state agencies or local governments establishing a small works roster or rosters to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the provisions of this subsection.

(c) Procedures shall be established for securing telephone, written, or electronic quotations from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW 39.04.010. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This subsection does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes. Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster. However, if the estimated cost of the work is from one hundred thousand dollars to two hundred thousand dollars, a state agency or local government((~~, other than a port district,~~)) that chooses to solicit bids from less than all the appropriate contractors on the appropriate small works roster must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The government has the sole option of determining whether this notice to the remaining contractors is made by: (i) Publishing notice in a legal newspaper in general circulation in the area where the work is to be done; (ii) mailing a notice to these contractors; or (iii) sending a notice to these contractors by facsimile or other electronic means. For purposes of this subsection (2)(c), "equitably distribute" means that a state agency or local government soliciting bids may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services.

(d) A contract awarded from a small works roster under this section need not be advertised.

(e) Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

(3) In lieu of awarding contracts under subsection (2) of this section, a state agency or authorized local government may award a contract for work, construction, alteration, repair, or improvement projects estimated to cost less than thirty-five thousand dollars using the limited public works process provided under this subsection. Public works projects awarded under this subsection are exempt from the other requirements of the small works roster process provided under subsection (2) of this section and are exempt from the requirement that contracts be awarded after advertisement as provided under RCW 39.04.010.

For limited public works projects, a state agency or authorized local government shall solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder as defined under RCW 39.04.010. After an award is made, the quotations shall be open to public inspection and available by electronic request. A state agency or authorized local government shall attempt to distribute opportunities for limited public works projects equitably among contractors willing to perform in the geographic area of the work. A state agency or authorized local government shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four months under the

limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract was awarded. For limited public works projects, a state agency or authorized local government may waive the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, materialpersons, suppliers, and taxes imposed under Title 82 RCW that may be due from the contractor for the limited public works project, however the state agency or authorized local government shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

(4) The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process or limited public works process.

(5)(a) A state agency or authorized local government may use the limited public works process of subsection (3) of this section to solicit and award small works roster contracts to small businesses that are registered contractors with gross revenues under one million dollars annually as reported on their federal tax return.

(b) A state agency or authorized local government may adopt additional procedures to encourage small businesses that are registered contractors with gross revenues under two hundred fifty thousand dollars annually as reported on their federal tax returns to submit quotations or bids on small works roster contracts.

(6) As used in this section, "state agency" means the department of general administration, the state parks and recreation commission, the department of natural resources, the department of fish and wildlife, the department of transportation, any institution of higher education as defined under RCW 28B.10.016, and any other state agency delegated authority by the department of general administration to engage in construction, building, renovation, remodeling, alteration, improvement, or repair activities.

Sec. 18. RCW 53.12.270 and 1975 1st ex.s. c 12 s 1 are each amended to read as follows:

(1) The commission may delegate to the managing official of a port district such administerial powers and duties of the commission as it may deem proper for the efficient and proper management of port district operations. Any such delegation shall be authorized by appropriate resolution of the commission, which resolution must also establish guidelines and procedures for the managing official to follow.

(2) The commission shall establish, by resolution, policies to comply with RCW 39.04.280 that set forth the conditions by which competitive bidding requirements for public works contracts may be waived.

NEW SECTION. **Sec. 19.** Sections 5 through 15 of this act constitute a new chapter in Title 53 RCW.

NEW SECTION. **Sec. 20.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2008, in the omnibus appropriations act, this act is null and void.

NEW SECTION. **Sec. 21.** (1) Beginning July 1, 2009, each port with more than fifteen million dollars in annual gross revenue, excluding grant and loan funds, shall report annually to the joint legislative audit and review committee:

(a) A summary of the items identified in section 3 of this act and the current status of each of the contracts; and

(b) The number and status of the personal services contracts entered into that prior year that were exempted from competitive solicitation, including emergency contracts, sole source contracts, contract amendments, and any other specified contracts or classes or groups of contracts that were exempted from the competitive solicitation process by the commission, as defined in section 6 of this act, because it was determined that a competitive solicitation process was not appropriate or cost-effective.

(2) The report shall be presented at one of the joint legislative audit and review committee's regularly scheduled public hearings, and the report may be presented at the hearing by teleconference. The committee may request additional information from a port at its discretion.

(3) This section expires August 1, 2013."

MOTION

Senator Pridemore moved that the following amendment by Senator Pridemore and others to the striking amendment be adopted.

On page 14, beginning on line 9 delete all of section 21.

Senators Pridemore, Zarelli, Kohl-Welles and Rockefeller spoke in favor of adoption of the amendment to the striking amendment.

Senators Fairley, Roach, Keiser and Haugen spoke against adoption of the amendment to the striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Pridemore and others on page 14, line 9 to the striking amendment to Second Substitute House Bill No. 3274.

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

The President declared the question before the Senate to be the adoption of the striking amendment by Senator Fairley as amended to Second Substitute House Bill No. 3274.

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

MOTION

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

On page 1, line 2 of the title, after "districts;" strike the remainder of the title and insert "amending RCW 53.08.120, 39.30.020, 39.04.010, and 53.12.270; reenacting and amending RCW 39.04.155; adding new sections to chapter 53.08 RCW; adding a new chapter to Title 53 RCW; creating new sections; prescribing penalties; and providing an expiration date."

MOTION

On motion of Senator Fairley, the rules were suspended, Second Substitute House Bill No. 3274 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Fairley, Sheldon, Franklin and Haugen spoke in favor of passage of the bill.

Senator Roach spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Second Substitute House Bill No. 3274 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Second Substitute House Bill No. 3274 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown,

Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

SECOND SUBSTITUTE HOUSE BILL NO. 3274 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

RULING BY THE PRESIDENT

President Owen: "In ruling upon the point of order raised by Senator Honeyford, the President finds and rules as follows:.

The three sections in Senator Morton's amendment cover the same material addressed in sections 3, 4 and 5 of the underlying bill, Engrossed Second Substitute House Bill No. 2844 and in sections 4 and 5 of the committee striking amendment. Therefore the amendment is well within the scope and object of the underlying bill and Senator Honeyford's objection is not well taken."

The Senate resumed consideration of Engrossed Second Substitute House Bill No. 2844 which had been deferred earlier in the day.

The President declared the question before the Senate to be the adoption of the amendment by Senator Morton on page 1, after line 2 to Engrossed Second Substitute House Bill No. 2844.

Senator Jacobsen spoke against adoption of the amendment.

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

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means to Engrossed Second Substitute House Bill No. 2844.

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

MOTION

There being no objection, the following title amendment was adopted:
On page 1, line 2 of the title, after "partnerships;" strike the remainder of the title and insert "amending RCW 76.15.020, 35.92.390, 35A.80.040, 80.28.300, 76.15.010, 89.08.520, 79.105.150, and 80.28.010; reenacting and amending RCW 43.155.070, 70.146.070, and 79A.15.040; adding new sections to chapter 76.15 RCW; adding a new section to chapter 36.01 RCW; adding a new section to chapter 54.16 RCW; adding a new section to chapter 43.155 RCW; adding a new section to chapter 70.146 RCW; adding a new section to chapter 89.08 RCW; adding a new section to chapter 79.105 RCW; adding a new section to chapter 79A.15 RCW; adding a new chapter to Title 35 RCW; creating new sections; and providing an expiration date."

MOTION

On motion of Senator Jacobsen, the rules were suspended, Engrossed Second Substitute House Bill No. 2844 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Jacobsen, Pridemore and Rockefeller spoke in favor of passage of the bill.

Senators Morton, Honeyford and Parlette spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Second Substitute House Bill No. 2844 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute House Bill No. 2844 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 31; Nays, 18; Absent, 0; Excused, 0.

Voting yea: Senators Berkey, Brown, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hobbs, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Rasmussen, Regala, Rockefeller, Shin, Spanel, Tom and Weinstein - 31

Voting nay: Senators Benton, Brandland, Carrell, Delvin, Hewitt, Holmquist, Honeyford, King, McCaslin, Morton, Parlette, Pflug, Roach, Schoesler, Sheldon, Stevens, Swecker and Zarelli - 18

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2844 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SIGNED BY THE PRESIDENT

The President signed:
ENGROSSED SUBSTITUTE SENATE BILL NO. 5179,
SUBSTITUTE SENATE BILL NO. 5256,
SUBSTITUTE SENATE BILL NO. 6181,
SENATE BILL NO. 6183,
SENATE BILL NO. 6196,
SENATE BILL NO. 6216,
SUBSTITUTE SENATE BILL NO. 6224,
SENATE BILL NO. 6237,
SUBSTITUTE SENATE BILL NO. 6246,
SENATE BILL NO. 6267,
SENATE BILL NO. 6275,
SUBSTITUTE SENATE BILL NO. 6343,
SENATE BILL NO. 6369,
SENATE BILL NO. 6398,
ENGROSSED SUBSTITUTE SENATE BILL NO. 6437,
SUBSTITUTE SENATE BILL NO. 6572,
ENGROSSED SENATE BILL NO. 6663,
SENATE BILL NO. 6677,
SUBSTITUTE SENATE BILL NO. 6710,
SENATE BILL NO. 6717,
SENATE BILL NO. 6740,
SENATE BILL NO. 6799,
SUBSTITUTE SENATE BILL NO. 6857,
SUBSTITUTE SENATE BILL NO. 6879,
SENATE BILL NO. 6885,
SENATE JOINT MEMORIAL NO. 8024,

SECOND READING

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 3145, by House Committee on Appropriations (originally sponsored by Representatives Kagi, Haler, Roberts, Walsh,

Pettigrew, Dickerson, Conway, Green, Goodman, Kenney, Wood and Ormsby)

Implementing a tiered classification system for foster parent licensing.

The measure was read the second time.

MOTION

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

Strike everything after the enacting clause and insert the following:

NEW SECTION. **Sec. 1.** The legislature recognizes that the work done by the work group convened under chapter 413, Laws of 2007 was an initial step in developing a specialized foster home program. The legislature finds that the department should build upon this initial work and continue to work with stakeholders to put together specific recommendations on the qualifications and training specialized foster parents will need, the criteria by which eligible high/special needs foster children will be selected and the cost of implementing this program statewide. The legislature also finds that the department should consider whether it is more appropriate that this specialized group of providers be designated as something other than foster parents. The legislature intends that the department, in developing this plan, consider that the specialized foster home program is a potential collective bargaining unit.

NEW SECTION. **Sec. 2.** (1) The department shall develop a specific plan to create a specialized foster home program.

(2) In developing this plan, the department shall use the information gathered by the work group convened under chapter 413, Laws of 2007, and shall actively:

(a) Seek recommendations from foster parents and other out-of-home service providers across the state regarding the qualifications and requirements of specialized foster home providers, the needs of the children to be served, and the desired outcomes to be measured or monitored; and

(b) Consult with experts in child welfare, children's mental health, and children's health care to identify the evidence-based or promising practice models to be employed in the program and the appropriate supports to ensure program fidelity, including, but not limited to, the necessary training and clinical consultation and oversight to be provided to specialized foster homes.

(3) The plan developed by the department under this section shall include:

(a) The criteria by which specialized foster home providers shall be chosen. The criteria shall include at a minimum that the foster parent be licensed by the department as a foster parent, and shall meet additional requirements relating to relevant experience, education, training, and professional expertise necessary to meet the high/special needs of children identified as eligible for this program;

(b) The criteria by which children with high/special needs are deemed eligible for placement with a specialized foster home provider. Such criteria shall be based on the best interests of the child and shall include an assessment of the child's past and current level of functioning, including exposure to parental substance abuse, as well as a determination that the child's treatment plan and developmental needs are consistent with the placement plan;

(c) A policy for the placement of children with high/special needs in specialized foster homes, including a process for matching the child's needs with the foster parent's skills and expertise;

(d) A limit on the number and ages of children with high/special needs that may be placed in each specialized foster home;

(e) The identification of one or more approved models of skill building for use by specialized foster home providers;

(f) The specific training and consultation requirements that support the models of skill building;

(g) The development of a system of supports, including clinical consultation and oversight for specialized foster homes;

(h) The development of a level of stipend payments to specialized foster home providers that is not tied to deficits in the child's level of functioning;

(i) The development of clearly defined responsibilities of specialized foster home providers to include responsibilities to promote permanence and connections with birth parents; and

(j) The development of a process for annual performance reviews of specialized foster home providers.

(4) In creating the plan required under subsection (2) of this section, the department shall give consideration to the fact that this group of providers may create a potential future collective bargaining unit, if authorized in the future.

(5) The department shall include in the plan cost estimates for implementation of the specialized foster home program on a statewide basis.

(6) In developing the plan, the department is directed to consider and discuss with stakeholders whether the providers identified in the plan as meeting the requirements for dealing with high/special needs foster children should be referred to or classified as other than foster parents.

NEW SECTION. **Sec. 3.** The department shall submit its plan to the appropriate legislative committees no later than November 15, 2008. Until such time as the legislature approves a specialized foster home program, the department shall not take steps to implement such a program."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Human Services & Corrections to Engrossed Second Substitute House Bill No. 3145.

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

MOTION

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

On page 1, line 2 of the title, after "licensing;" strike the remainder of the title and insert "and creating new sections."

Senators Hargrove and Kauffman spoke on passage of the bill.

Senator Stevens spoke against passage of the bill.

MOTION

On motion of Senator Regala, Senators Brown, McAuliffe and Prentice were excused.

MOTION

On motion of Senator Eide, the rules were suspended, Engrossed Second Substitute House Bill No. 3145 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Zarelli spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Second Substitute House Bill No. 3145 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute House Bill No. 3145 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 46; Nays, 2; Absent, 0; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Swecker, Tom, Weinstein and Zarelli - 46

Voting nay: Senators Morton and Stevens - 2

Excused: Senator Brown - 1

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 3145 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED HOUSE BILL NO. 3142, by Representatives Liias, Chase, Walsh, Ericks, Loomis, Miloscia, Rolfes, Linville, Dickerson, Green, Morrell, Kelley, Wood, Nelson, Santos and Ormsby

Creating the affordable housing and community facilities rapid response loan program.

The measure was read the second time.

MOTION

Senator Kauffman moved that the following committee striking amendment by the Committee on Consumer Protection & Housing be adopted.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 43.185A.110 and 2007 c 428 s 2 are each amended to read as follows:

(1) The affordable housing land acquisition revolving loan fund program is created in the department to assist eligible organizations, described under RCW 43.185A.040, to purchase land for affordable housing development. The department shall contract with the Washington state housing finance commission to administer the affordable housing land acquisition revolving loan fund program. Within this program, the Washington state housing finance commission shall establish and administer the Washington state housing finance commission land acquisition revolving loan fund.

(2) As used in this chapter, "market rate" means the current average market interest rate that is determined at the time any individual loan is closed upon using a widely recognized current market interest rate measurement to be selected for use by the Washington state housing finance commission with the department's approval. This interest rate must be noted in an attachment to the closing documents for each loan.

(3) Under the affordable housing land acquisition revolving loan fund program:

(a) Loans may be made to purchase land on which to develop affordable housing. In addition to affordable housing, facilities intended to provide supportive services to affordable housing residents and low-income households in the nearby community may be developed on the land.

(b) Eligible organizations applying for a loan must include in the loan application a proposed affordable housing development plan indicating the number of affordable housing units planned, a description of any other facilities being considered for the property, and an estimated timeline for completion of the development. The Washington state housing finance commission may require additional information from loan applicants and may consider the efficient use of land, project readiness, organizational capacity, and other factors as criteria in awarding loans.

(c) Forty percent of the loans shall go to eligible applicants operating homeownership programs for low-income households in which the households participate in the construction of their homes. Sixty percent of loans shall go to other eligible organizations. If the entire forty percent for applicants operating self-help homeownership programs cannot be lent to these types of applicants, the remainder shall be lent to other eligible organizations.

(d) Within five years of receiving a loan, a loan recipient must present the Washington state housing finance commission with an updated development plan, including a proposed development design, committed and anticipated additional financial resources to be dedicated to the development, and an estimated development schedule, which indicates completion of the development within eight years of loan receipt. This updated development plan must be substantially consistent with the development plan submitted as part of the original loan application as required in (b) of this subsection.

(e) Within eight years of receiving a loan, a loan recipient must develop affordable housing on the property for which the loan was made and place the affordable housing into service.

(f) A loan recipient must preserve the affordable <u>rental</u> housing developed on the property acquired under this section as affordable housing for a minimum of thirty years.

(4) If a loan recipient does not place affordable housing into service on a property for which a loan has been received under this section within the eight-year period specified in subsection (3)(e) of this section, or if a loan recipient fails to use the property for the intended affordable housing purpose consistent with the loan recipient's original affordable housing development plan, then the loan recipient must pay to the Washington state housing finance commission an amount consisting of the principal of the original loan plus compounded interest calculated at the current market rate. The Washington state housing finance commission shall develop guidelines for the time period in which this repayment must take place, which must be noted in the original loan agreement. The Washington state housing finance commission may grant a partial or total exemption from this repayment requirement if it determines that a development is substantially complete or that the property has been substantially used in keeping with the original affordable housing purpose of the loan. Any repayment funds received as a result of noncompliance with loan requirements shall be deposited into the Washington state housing finance commission land acquisition revolving loan fund for the purposes of the affordable housing land acquisition revolving loan fund program.

(5) The Washington state housing finance commission, with approval from the department, may adopt guidelines and requirements that are necessary to administer the affordable housing land acquisition revolving loan fund program.

(6) Interest rates on property loans granted under this section may not exceed one percent. All loan repayment moneys received shall be deposited into the Washington state housing finance commission affordable housing land acquisition revolving loan fund for the purposes of the affordable housing land acquisition revolving loan fund program.

(7) The Washington state housing finance commission must develop performance measures for the program, which must be

approved by the department, including, at a minimum, measures related to:

(a) The ability of eligible organizations to access land for affordable housing development;

(b) The total number of dwelling units by housing type and the total number of ((~~very~~)) low-income households and persons served; and

(c) The financial efficiency of the program as demonstrated by factors, including the cost per unit developed for affordable housing units in different areas of the state and a measure of the effective use of funds to produce the greatest number of units for low-income households.

(8) By December 1st of each year, beginning in 2007, the Washington state housing finance commission shall report to the department and the appropriate committees of the legislature using, at a minimum, the performance measures developed under subsection (7) of this section.

NEW SECTION. **Sec. 2.** A new section is added to chapter 43.185A RCW to read as follows:

(1) The affordable housing and community facilities rapid response loan program is created in the department to assist eligible organizations, described under RCW 43.185A.040, to purchase land or real property for affordable housing and community facilities preservation or development in rapidly gentrifying neighborhoods or communities with a significant low-income population that is threatened with displacement by such gentrification. The department shall contract with the Washington state housing finance commission to establish and administer the program.

(2) Loans or grants may be made through the affordable housing and community facilities rapid response loan program to purchase land or real property for the preservation or development of affordable housing or community facilities, including reasonable costs and fees.

(3) The Washington state housing finance commission, with approval from the department, may adopt guidelines and requirements that are necessary to administer the affordable housing and community facilities rapid response loan program.

(4) A loan or grant recipient must preserve affordable rental housing acquired or developed under this section as affordable housing for a minimum of thirty years.

(5) Interest rates on loans made under this section may be as low as zero percent but may not exceed three percent. All loan repayment moneys received must be deposited into a program account established by the Washington state housing finance commission for the purpose of making new loans and grants under this section.

(6) By December 1st of each year, beginning in 2008, the Washington state housing finance commission shall report to the department and the appropriate committees of the legislature: The number of loans and grants that were made in the program; for what purposes the loans and grants were made; to whom the loans and grants were made; and when the loans are expected to be paid back."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Consumer Protection & Housing to Engrossed House Bill No. 3142.

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

MOTION

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

On page 1, line 1 of the title, after "programs;" strike the remainder of the title and insert "amending RCW 43.185A.110; and adding a new section to chapter 43.185A RCW."

MOTION

On motion of Senator Kauffman, the rules were suspended, Engrossed House Bill No. 3142 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Kauffman spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed House Bill No. 3142 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed House Bill No. 3142 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 48

Excused: Senator Brown - 1

ENGROSSED HOUSE BILL NO. 3142 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SECOND SUBSTITUTE HOUSE BILL NO. 2598, by House Committee on Appropriations Subcommittee on Education (originally sponsored by Representatives Sullivan, Ormsby, Haigh, Schual-Berke, Green and Simpson)

Directing the office of the superintendent of public instruction to issue a request for proposals for development of an online mathematics curriculum. Revised for 2nd Substitute: Regarding an online mathematics curriculum.

The measure was read the second time.

MOTION

Senator McAuliffe moved that the following committee striking amendment by the Committee on Early Learning & K-12 Education be adopted.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** The office of the superintendent of public instruction shall develop and issue a request for proposals for private vendors or nonprofit organizations to adapt an existing mathematics curriculum to be aligned with Washington's essential academic learning requirements and grade level expectations and make the curriculum available online at no cost to school districts. At a minimum, the proposed curriculum shall cover course content in grades kindergarten through twelve and the state's college readiness standards. Proposals shall address cost and timelines for adaptation and implementation of the curriculum. The office of the superintendent of public instruction shall review the responses, including an analysis of the qualifications of the respondents, and report the results of the request for proposals under this section to the governor and the education and fiscal committees of the legislature by December 1, 2008.

Sec. 2. RCW 28A.305.215 and 2007 c 396 s 1 are each amended to read as follows:

(1) The activities in this section revise and strengthen the state learning standards that implement the goals of RCW 28A.150.210, known as the essential academic learning requirements, and improve alignment of school district curriculum to the standards.

(2) The state board of education shall be assisted in its work under subsections (3) and (5) of this section by: (a) An expert national consultant in each of mathematics and science retained by the state board; and (b) the mathematics and science advisory panels created under RCW 28A.305.219, as appropriate, which shall provide review and formal comment on proposed recommendations to the superintendent of public instruction and the state board of education on new revised standards and curricula.

(3) By September 30, 2007, the state board of education shall recommend to the superintendent of public instruction revised essential academic learning requirements and grade level expectations in mathematics. The recommendations shall be based on:

(a) Considerations of clarity, rigor, content, depth, coherence from grade to grade, specificity, accessibility, and measurability;

(b) Study of:

(i) Standards used in countries whose students demonstrate high performance on the trends in international mathematics and science study and the programme for international student assessment;

(ii) College readiness standards;

(iii) The national council of teachers of mathematics focal points and the national assessment of educational progress content frameworks; and

(iv) Standards used by three to five other states, including California, and the nation of Singapore; and

(c) Consideration of information presented during public comment periods.

(4) By January 31, 2008, the superintendent of public instruction shall revise the essential academic learning requirements and the grade level expectations for mathematics and present the revised standards to the state board of education and the education committees of the senate and the house of representatives as required by RCW 28A.655.070(4). The superintendent shall adopt the revised essential academic learning requirements and grade level expectations unless otherwise directed by the legislature during the 2008 legislative session.

(5) By June 30, 2008, the state board of education shall recommend to the superintendent of public instruction revised essential academic learning requirements and grade level expectations in science. The recommendations shall be based on:

(a) Considerations of clarity, rigor, content, depth, coherence from grade to grade, specificity, accessibility, and measurability;

(b) Study of standards used by three to five other states and in countries whose students demonstrate high performance on the trends in international mathematics and science study and the programme for international student assessment; and

(c) Consideration of information presented during public comment periods.

(6) By December 1, 2008, the superintendent of public instruction shall revise the essential academic learning requirements and the grade level expectations for science and present the revised standards to the state board of education and the education committees of the senate and the house of representatives as required by RCW 28A.655.070(4). The superintendent shall adopt the revised essential academic learning requirements and grade level expectations unless otherwise directed by the legislature during the 2009 legislative session.

(7)(a) ((~~By May 15, 2008~~)) Within six months after the standards under subsection (4) of this section are adopted, the superintendent of public instruction shall present to the state board of education recommendations for no more than three basic mathematics curricula each for elementary, middle, and high school grade spans.

(b) ((~~By June 30, 2008~~)) Within two months after the presentation of the recommended curricula, the state board of education shall provide official comment and recommendations to the superintendent of public instruction regarding the recommended mathematics curricula. The superintendent of public instruction shall make any changes based on the comment and recommendations from the state board of education and adopt the recommended curricula.

(c) By May 15, 2009, the superintendent of public instruction shall present to the state board of education recommendations for no more than three basic science curricula each for elementary, middle, and high school grade spans.

(d) By June 30, 2009, the state board of education shall provide official comment and recommendations to the superintendent of public instruction regarding the recommended science curricula. The superintendent of public instruction shall make any changes based on the comment and recommendations from the state board of education and adopt the recommended curricula.

(e) In selecting the recommended curricula under this subsection (7), the superintendent of public instruction shall provide information to the mathematics and science advisory panels created under RCW 28A.305.219, as appropriate, and seek the advice of the appropriate panel regarding the curricula that shall be included in the recommendations.

(f) The recommended curricula under this subsection (7) shall align with the revised essential academic learning requirements and grade level expectations. In addition to the recommended basic curricula, appropriate diagnostic and supplemental materials shall be identified as necessary to support each curricula.

(g) Subject to funds appropriated for this purpose and availability of the curricula, at least one of the curricula in each grade span and in each of mathematics and science shall be available to schools and parents online at no cost to the school or parent.

(8) By December 1, 2007, the state board of education shall revise the high school graduation requirements under RCW 28A.230.090 to include a minimum of three credits of mathematics, one of which may be a career and technical course equivalent in mathematics, and prescribe the mathematics content in the three required credits.

(9) Nothing in this section requires a school district to use one of the recommended curricula under subsection (7) of this section. However, the statewide accountability plan adopted by the state board of education under RCW 28A.305.130 shall recommend conditions under which school districts should be required to use one of the recommended curricula. The plan shall also describe the conditions for exception to the curriculum requirement, such as the use of integrated academic and career and technical education curriculum. Required use of the recommended curricula as an intervention strategy must be authorized by the legislature as required by RCW 28A.305.130(4)(e) before implementation.

NEW SECTION. **Sec. 3.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2008, in the omnibus appropriations act, this act is null and void."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Early Learning & K-12 Education to Second Substitute House Bill No. 2598.

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

MOTION

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

On page 1, line 1 of the title, after "curriculum;" strike the remainder of the title and insert "amending RCW 28A.305.215; and creating new sections."

MOTION

On motion of Senator McAuliffe, the rules were suspended, Second Substitute House Bill No. 2598 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators McAuliffe and King spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Second Substitute House Bill No. 2598 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Second Substitute House Bill No. 2598 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 47; Nays, 1; Absent, 0; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Tom, Weinstein and Zarelli - 47

Voting nay: Senator Swecker - 1

Excused: Senator Brown - 1

SECOND SUBSTITUTE HOUSE BILL NO. 2598 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 2650, by Representatives Santos, Ericks, Hunter and Wood

Authorizing a cigarette tax agreement between the state of Washington and the Yakama Nation.

The measure was read the second time.

MOTION

On motion of Senator Prentice, the rules were suspended, House Bill No. 2650 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Prentice spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 2650.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2650 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 1; Absent, 0; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 47

Voting nay: Senator Holmquist - 1

Excused: Senator Brown - 1

HOUSE BILL NO. 2650, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 1493, by Representatives Hudgins, Simpson, Jarrett, B. Sullivan, Rodne, McCoy, Sells and Kenney

Clarifying the definition of development activity in respect to construction by a regional transit authority.

The measure was read the second time.

MOTION

On motion of Senator Murray, the rules were suspended, House Bill No. 1493 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Murray spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 1493.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 1493 and the bill passed the Senate by the following vote: Yeas, 39; Nays, 10; Absent, 0; Excused, 0.

Voting yea: Senators Berkey, Brandland, Brown, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Parlette, Prentice, Pridemore, Rasmussen, Regala, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Swecker, Tom and Weinstein - 39

Voting nay: Senators Benton, Carrell, Delvin, Honeyford, McCaslin, Morton, Pflug, Roach, Stevens and Zarelli - 10

HOUSE BILL NO. 1493, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2746, by House Committee on Transportation (originally sponsored by Representatives Jarrett, Morris and McIntire)

Concerning the purchasing of fuel by agencies performing the metropolitan transportation function. Revised for 1st Substitute: Concerning the purchasing of fuel by certain state and local agencies.

The measure was read the second time.

MOTION

Senator Marr moved that the following committee striking amendment by the Committee on Transportation be adopted.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** The legislature finds and declares that units of state and local government purchasing large amounts of fuel in the regular course of performing their function should have substantial flexibility in acquiring fuel to obtain predictability and control of fuel costs, and to maximize the use of renewable fuels. The legislature hereby declares its intent to allow certain units of government that regularly purchase large amounts of fuel to explore and implement strategies that are designed to reduce the overall cost of fuel and mitigate the impact of market fluctuations and pressure on both short-term and long-term fuel costs.

NEW SECTION. **Sec. 2.** A new section is added to chapter 35.58 RCW to read as follows:

(1) In performing the metropolitan transportation function, metropolitan municipal corporations and counties that have assumed the rights, powers, functions, and obligations of metropolitan municipal corporations under chapter 36.56 RCW may explore and implement strategies designed to reduce the overall cost of fuel and mitigate the impact of market fluctuations and pressure on both short-term and long-term fuel costs. These strategies may include, but are not limited to, futures contracts, hedging, swap transactions, option contracts, costless collars, and long-term storage.

(2) Metropolitan municipal corporations and counties that have assumed the rights, powers, functions, and obligations of metropolitan municipal corporations under chapter 36.56 RCW that choose to implement the strategies authorized in this section must submit periodic reports to the transportation committees of the legislature on the status of any such implemented strategies. Each report must include a description of each contract established to mitigate fuel costs, the amounts of fuel covered by the contracts, the cost mitigation results, and any related recommendations. The first report must be submitted within one year of implementation.

NEW SECTION. **Sec. 3.** A new section is added to chapter 35.58 RCW to read as follows:

If metropolitan municipal corporations and counties that have assumed the rights, powers, functions, and obligations of metropolitan municipal corporations under chapter 36.56 RCW choose to implement the strategies authorized in section 2 of this act, the state is not liable for any financial losses that may be incurred as the result of participating in such strategies.

NEW SECTION. **Sec. 4.** A new section is added to chapter 47.60 RCW to read as follows:

In performing the function of operating its ferry system, the department may, subject to the availability of amounts appropriated for this specific purpose and after consultation with the department of general administration's office of state procurement, explore and implement strategies designed to reduce the overall cost of fuel and mitigate the impact of market fluctuations and pressure on both short-term and long-term fuel costs. These strategies may include, but are not limited to, futures contracts, hedging, swap transactions, option contracts, costless collars, and long-term storage. The department shall periodically submit a report to the transportation committees of the legislature and the office of state procurement on the status of any such implemented strategies, including cost mitigation results, a description of each contract established to mitigate fuel costs, the amounts of fuel covered by the contracts, the cost mitigation results, and any related recommendations. The first report must be submitted within one year of implementation."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Transportation to Substitute House Bill No. 2746.

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

MOTION

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

On page 1, line 1 of the title, after "fuel;" strike the remainder of the title and insert "adding new sections to chapter 35.58 RCW; adding a new section to chapter 47.60 RCW; and creating a new section."

MOTION

On motion of Senator Marr, the rules were suspended, Substitute House Bill No. 2746 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

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

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2746 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2746 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 45; Nays, 3; Absent, 1; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom and Weinstein - 45

Voting nay: Senators Honeyford, Pflug and Zarelli - 3

Absent: Senator Kline - 1

SUBSTITUTE HOUSE BILL NO. 2746 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

At 6:29 p.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

EVENING SESSION

The Senate was called to order at 7:17 p.m. by President Owen.

SECOND READING

HOUSE BILL NO. 2699, by Representatives Moeller and Conway

Recodifying RCW 19.48.130 as a section in the minimum wage act.

The measure was read the second time.

MOTION

On motion of Senator Kohl-Welles, the rules were suspended, House Bill No. 2699 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

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

Senator Holmquist spoke against passage of the bill.

MOTION

On motion of Senator Brandland, Senators Benton, Delvin, Hewitt, Parlette and Roach were excused.

The President declared the question before the Senate to be the final passage of House Bill No. 2699.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2699 and the bill passed the Senate by the following vote: Yeas, 32; Nays, 13; Absent, 1; Excused, 3.

Voting yea: Senators Berkey, Brown, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hobbs, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, Kohl-Welles, Marr, McAuliffe, McDermott, Murray, Oemig, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Sheldon, Shin, Spanel, Tom and Weinstein - 32

Voting nay: Senators Brandland, Carrell, Holmquist, Honeyford, King, McCaslin, Morton, Parlette, Pflug, Schoesler, Stevens, Swecker and Zarelli - 13

Absent: Senator Kline - 1

Excused: Senators Benton, Delvin and Hewitt - 3

HOUSE BILL NO. 2699, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2959, by House Committee on Commerce & Labor (originally sponsored by Representatives Wood, Ormsby, Springer, Conway, Linville, Barlow, Walsh and Quall)

Concerning craft distilleries.

The measure was read the second time.

MOTION

On motion of Senator Marr, the rules were suspended, Substitute House Bill No. 2959 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

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

MOTION

On motion of Senator Regala, Senator Kline was excused.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2959.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2959 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 47

Excused: Senators Delvin and Kline - 2

SUBSTITUTE HOUSE BILL NO. 2959, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 2510, by Representatives Simpson, O'Brien and Appleton

Allowing medicare only health insurance benefits for certain employees of political subdivisions under a divided referendum process.

The measure was read the second time.

MOTION

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

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 41.48.030 and 2007 c 218 s 72 are each amended to read as follows:

(1) The governor is hereby authorized to enter on behalf of the state into an agreement with the federal secretary of health((~~, education, and welfare~~)) and human services consistent with the terms and provisions of this chapter, for the purpose of extending the benefits of the federal old-age and survivors insurance system to employees of the state or any political subdivision not members of an existing retirement system, or to members of a retirement system established by the state or by a political subdivision thereof or by an institution of higher learning with respect to services specified in such agreement which constitute "employment" as defined in RCW 41.48.020. Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the governor and secretary of health((~~, education, and welfare~~)) and human services shall agree upon, but, except as may be otherwise required by or under the social security act as to the services to be covered, such agreement shall provide in effect that((~~:~~)):

(a) Benefits will be provided for employees whose services are covered by the agreement (and their dependents and survivors) on the same basis as though such services constituted employment within the meaning of Title II of the social security act;

(b) The state will pay to the secretary of the treasury, at such time or times as may be prescribed under the social security act, contributions with respect to wages (as defined in RCW 41.48.020), equal to the sum of the taxes which would be imposed by the federal insurance contributions act if the services covered by the agreement constituted employment within the meaning of that act;

(c) Such agreement shall be effective with respect to services in employment covered by the agreement or modification thereof performed after a date specified therein but in no event may it be effective with respect to any such services performed prior to the first day of the calendar year immediately preceding the calendar year in which such agreement or modification of the agreement is accepted by the secretary of health((~~, education and welfare~~)) and human services;

(d) All services which constitute employment as defined in RCW 41.48.020 and are performed in the employ of the state by employees of the state, shall be covered by the agreement;

(e) All services which (i) constitute employment as defined in RCW 41.48.020, (ii) are performed in the employ of a political subdivision of the state, and (iii) are covered by a plan which is in conformity with the terms of the agreement and has been approved by the governor under RCW 41.48.050, shall be covered by the agreement; ((~~and~~))

(f) As modified, the agreement shall include all services described in either ((~~paragraph~~)) (d) or ((~~paragraph~~)) (e) of this subsection and performed by individuals to whom section 218(c)(3)(C) of the social security act is applicable, and shall provide that the service of any such individual shall continue to be covered by the agreement in case he or she thereafter becomes eligible to be a member of a retirement system; ((~~and~~))

(g) As modified, the agreement shall include all services described in either ((~~paragraph~~)) (d) or ((~~paragraph~~)) (e) of this subsection and performed by individuals in positions covered by a retirement system with respect to which the governor has issued a certificate to the secretary of health((~~, education, and welfare~~)) and human services pursuant to subsection (5) of this section; and

(h) Law enforcement officers and firefighters of each political subdivision of this state who are covered by the Washington law enforcement officers' and firefighters' retirement system act (((~~chapter 209, Laws of 1969 ex. sess.) as now in existence or hereafter amended~~)), chapter 41.26 RCW, shall constitute a separate "coverage group" for purposes of the agreement entered into under this section and for purposes of section 218 of the social security act. ((~~To the extent that the agreement between this state and the federal secretary of health, education, and welfare in existence on the date of adoption of this subsection is inconsistent with this subsection, the governor shall seek to modify the inconsistency.~~))

(2) Any instrumentality jointly created by this state and any other state or states is hereby authorized, upon the granting of like authority by such other state or states, (a) to enter into an agreement with the secretary of health((~~, education, and welfare~~)) and human services whereby the benefits of the federal old-age and survivors insurance system shall be extended to employees of such instrumentality, (b) to require its employees to pay (and for that purpose to deduct from their wages) contributions equal to the amounts which they would be required to pay under RCW 41.48.040(1) if they were covered by an agreement made pursuant to subsection (1) of this section, and (c) to make payments to the secretary of the treasury in accordance with such agreement, including payments from its own funds, and otherwise to comply with such agreements. Such agreement shall, to the extent practicable, be consistent with the terms and provisions of subsection (1) of this section and other provisions of this chapter.

(3) The governor is empowered to authorize a referendum, and to designate an agency or individual to supervise its conduct, in accordance with the requirements of section 218(d)(3) of the social security act, and subsection (4) of this section on the question of whether service in all positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under an agreement under this chapter. If a retirement system covers positions of employees of the state of Washington, of the institutions of higher learning, and positions of employees of one or more of the political subdivisions of the state, then for the purpose of the referendum as provided ((~~herein~~)) in this section, there may be deemed to be a separate retirement system with respect to employees of the state, or any one or more of the political subdivisions, or institutions of higher learning and the governor shall authorize a referendum upon request of the subdivisions' or institutions' of higher learning governing body: PROVIDED HOWEVER, That if a referendum of state employees generally fails to produce a favorable majority vote then the governor may authorize a referendum covering positions of employees in any state department who are compensated in whole or in part from grants made to this state under Title III of the federal social security act: PROVIDED, That any city or town affiliated with the statewide city employees retirement system organized under chapter 41.44 RCW may at its option agree to a plan submitted by the board of trustees of ((~~said~~)) that statewide city employees retirement system for inclusion under an agreement under this chapter if the referendum to be held as provided ((~~herein~~)) in this section indicates a favorable result: PROVIDED FURTHER, That the teachers' retirement system be considered one system for the purpose of the referendum except as applied to the several colleges of education. The notice of referendum required by section 218(d)(3)(C) of the social security act to be given to employees shall contain or shall be accompanied by a statement, in such form and such detail as the agency or individual designated to supervise the referendum shall deem necessary and sufficient, to inform the employees of the rights which will accrue to them and their dependents and survivors, and the liabilities to which they will be subject, if their services are included under an agreement under this chapter.

(4) The governor, before authorizing a referendum, shall require the following conditions to be met:

(a) The referendum shall be by secret written ballot on the question of whether service in positions covered by such retirement system shall be excluded from or included under the agreement between the governor and the secretary of health((~~, education, and welfare~~)) and human services provided for in ((~~RCW 41.48.030(1)~~)) subsection (1) of this section;

(b) An opportunity to vote in such referendum shall be given and shall be limited to eligible employees;

(c) Not less than ninety days' notice of such referendum shall be given to all such employees;

(d) Such referendum shall be conducted under the supervision ((~~(~~))of the governor or((~~)~~)) of an agency or individual designated by the governor;

(e)(i) The proposal for coverage shall be approved only if a majority of the eligible employees vote in favor of including services in such positions under the agreement;

(ii) Coverage obtained through a divided referendum process shall extend coverage to law enforcement officers, firefighters, and employees of political subdivisions of this state, who have membership in a qualified retirement system, allowing them to obtain medicare coverage only (HI-only). In such a divided referendum process, those members voting in favor of medicare coverage constitute a separate coverage group;

(f) The state legislature, in the case of a referendum affecting the rights and liabilities of state employees covered under the state employees' retirement system and employees under the teachers' retirement system, and in all other cases the local legislative authority or governing body, shall have specifically approved the proposed plan and approved any necessary structural adjustment to the existing system to conform with the proposed plan;

(g) In the case of a referendum authorized under section 218(d)(6) of the social security act and (e)(ii) of this subsection, the retirement system will be divided into two parts or divisions. One part or division of the retirement system shall be composed of positions of those members of the system who desire coverage under the agreement as permitted by this section. The remaining part or division of the retirement system shall be composed of positions of those members who do not desire

coverage under such an agreement. Each part or division is a separate retirement system for the purposes of section 218(d) of the social security act. The positions of individuals who become members of the system after the coverage is extended shall be included in the part or division of the system composed of members desiring the coverage, with the exception of positions that are excluded in the agreement.

(5) Upon receiving satisfactory evidence that with respect to any such referendum the conditions specified in subsection (4) of this section and section 218(d)(3) of the social security act have been met, the governor shall so certify to the secretary of health((~~, education, and welfare~~)) and human services.

(6) If the legislative body of any political subdivision of this state certifies to the governor that a referendum has been held under the terms of RCW 41.48.050(1)(i) and gives notice to the governor of termination of social security for any coverage group of the political subdivision, the governor shall give two years advance notice in writing to the federal department of health((~~, education, and welfare~~)) and human services of ((~~such~~)) the termination of the agreement entered into under this section with respect to ((~~said~~)) that coverage group."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means to House Bill No. 2510.

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

MOTION

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

On page 1, line 3 of the title, after "process;" strike the remainder of the title and insert "and amending RCW 41.48.030."

MOTION

On motion of Senator Prentice, the rules were suspended, House Bill No. 2510 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Prentice spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 2510 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2510 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 48

Excused: Senator Delvin - 1

HOUSE BILL NO. 2510 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 3205, by House Committee on Appropriations (originally sponsored by Representatives Jarrett, Walsh, Kagi, Roberts, Hunter, Sullivan, Green, Kelley, Morrell, Chase, McIntire, Seaquist and Kenney)

Promoting the long-term well-being of children.

The measure was read the second time.

MOTION

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

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** The legislature finds that meeting the needs of vulnerable children who enter the child welfare system includes protecting the child's right to a safe, stable, and permanent home where the child receives basic nurturing. The legislature also finds that according to measures of timely dependency case processing, many children's cases are not meeting the federal and state standards intended to promote child-centered decision making in dependency cases. The legislature intends to encourage a greater focus on children's developmental needs and to promote closer adherence to timeliness standards in the resolution of dependency cases.

Sec. 2. RCW 13.34.136 and 2007 c 413 s 7 are each amended to read as follows:

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

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

The permanency plan shall include:

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

(b) Unless the court has ordered, pursuant to RCW 13.34.130((~~(4)~~)) (5), that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to return the child home, what steps the agency will take to promote existing appropriate sibling relationships and/or facilitate placement together or contact in accordance with the best interests of each child, and what actions the agency will take to maintain parent-child ties. All aspects of the plan shall include the goal of achieving permanence for the child.

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

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

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

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

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

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

(c) If the court has ordered, pursuant to RCW 13.34.130((~~(4)~~)) (5), that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to achieve permanency for the child, services to be offered or provided to the child, and, if visitation would be in the best interests of the child, a recommendation to the court regarding visitation between parent and child pending a fact-finding hearing on the termination petition. The agency shall not be required to develop a plan of services for the parents or provide services to the parents if the court orders a termination petition be filed. However, reasonable efforts to ensure visitation and contact between siblings shall be made unless there is reasonable cause to believe the best interests of the child or siblings would be jeopardized.

(3) Permanency planning goals should be achieved at the earliest possible date, ((~~preferably before~~)). If the child has been in out-of-home care for fifteen of the most recent twenty-two months, the court shall require the department to file a petition seeking termination of parental rights in accordance with RCW 13.34.145(3)(b)(vi). In cases where parental rights have been terminated, the child is legally free for adoption, and adoption has been identified as the primary permanency planning goal, it shall be a goal to complete the adoption within six months following entry of the termination order.

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

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

(6) The court shall consider the child's relationships with the child's siblings in accordance with RCW 13.34.130(3).

(7) For purposes related to permanency planning:

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

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

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

Sec. 3. RCW 13.34.145 and 2007 c 413 s 9 are each amended to read as follows:

(1) The purpose of a permanency planning hearing is to review the permanency plan for the child, inquire into the welfare of the child and progress of the case, and reach decisions regarding the permanent placement of the child.

(a) A permanency planning hearing shall be held in all cases where the child has remained in out-of-home care for at least nine months and an adoption decree, guardianship order, or permanent custody order has not previously been entered. The hearing shall take place no later than twelve months following commencement of the current placement episode.

(b) Whenever a child is removed from the home of a dependency guardian or long-term relative or foster care provider, and the child is not returned to the home of the parent, guardian, or legal custodian but is placed in out-of-home care, a permanency planning hearing shall take place no later than twelve months, as provided in this section, following the date of removal unless, prior to the hearing, the child returns to the home of the dependency guardian or long-term care provider, the child is placed in the home of the parent, guardian, or legal custodian, an adoption decree, guardianship order, or a permanent custody order is entered, or the dependency is dismissed.

(c) Permanency planning goals should be achieved at the earliest possible date, preferably before the child has been in out-of-home care for fifteen months. In cases where parental rights have been terminated, the child is legally free for adoption, and adoption has been identified as the primary permanency planning goal, it shall be a goal to complete the adoption within six months following entry of the termination order.

(2) No later than ten working days prior to the permanency planning hearing, the agency having custody of the child shall submit a written permanency plan to the court and shall mail a copy of the plan to all parties and their legal counsel, if any.

(3) At the permanency planning hearing, the court shall conduct the following inquiry:

(a) If a goal of long-term foster or relative care has been achieved prior to the permanency planning hearing, the court shall review the child's status to determine whether the placement and the plan for the child's care remain appropriate.

(b) In cases where the primary permanency planning goal has not been achieved, the court shall inquire regarding the reasons why the primary goal has not been achieved and determine what needs to be done to make it possible to achieve the primary goal. The court shall review the permanency plan prepared by the agency and make explicit findings regarding each of the following:

(i) The continuing necessity for, and the safety and appropriateness of, the placement;

(ii) The extent of compliance with the permanency plan by the agency and any other service providers, the child's parents, the child, and the child's guardian, if any;

(iii) The extent of any efforts to involve appropriate service providers in addition to agency staff in planning to meet the special needs of the child and the child's parents;

(iv) The progress toward eliminating the causes for the child's placement outside of his or her home and toward returning the child safely to his or her home or obtaining a permanent placement for the child;

(v) The date by which it is likely that the child will be returned to his or her home or placed for adoption, with a guardian or in some other alternative permanent placement; and

(vi) If the child has been placed outside of his or her home for fifteen of the most recent twenty-two months, not including any period during which the child was a runaway from the out-of-home placement or the first six months of any period during which the child was returned to his or her home for a trial home visit, the appropriateness of the permanency plan, whether reasonable efforts were made by the agency to achieve the goal of the permanency plan, and the circumstances which prevent the child from any of the following:

(A) Being returned safely to his or her home;

(B) Having a petition for the involuntary termination of parental rights filed on behalf of the child;

(C) Being placed for adoption;

(D) Being placed with a guardian;

(E) Being placed in the home of a fit and willing relative of the child; or

(F) Being placed in some other alternative permanent placement, including independent living or long-term foster care.

At this hearing, the court shall order the department to file a petition seeking termination of parental rights if the child has been in out-of-home care for fifteen of the last twenty-two months since the date the dependency petition was filed unless the court makes a good cause exception as to why the filing of a termination of parental rights petition is not appropriate. Any good cause finding shall be reviewed at all subsequent hearings pertaining to the child. For purposes of this section, "good cause exception" includes but is not limited to the following: The child is being cared for by a relative; the department has not provided to the child's family such services as the court and the department have deemed necessary for the child's safe return home; or the department has documented in the case plan a compelling reason for determining that filing a petition to terminate parental rights would not be in the child's best interests.

(c)(i) If the permanency plan identifies independent living as a goal, the court shall make a finding that the provision of services to assist the child in making a transition from foster care to independent living will allow the child to manage his or her financial, personal, social, educational, and nonfinancial affairs prior to approving independent living as a permanency plan of care.

(ii) The permanency plan shall also specifically identify the services that will be provided to assist the child to make a successful transition from foster care to independent living.

(iii) The department shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW.

(d) If the child has resided in the home of a foster parent or relative for more than six months prior to the permanency planning hearing, the court shall also enter a finding regarding whether the foster parent or relative was informed of the hearing as required in RCW 74.13.280 ((~~and 13.34.138~~)), 13.34.215(5), and 13.34.096.

(4) In all cases, at the permanency planning hearing, the court shall:

(a)(i) Order the permanency plan prepared by the agency to be implemented; or

(ii) Modify the permanency plan, and order implementation of the modified plan; and

(b)(i) Order the child returned home only if the court finds that a reason for removal as set forth in RCW 13.34.130 no longer exists; or

(ii) Order the child to remain in out-of-home care for a limited specified time period while efforts are made to implement the permanency plan.

(5) Following the first permanency planning hearing, the court shall hold a further permanency planning hearing in accordance with this section at least once every twelve months until a permanency planning goal is achieved or the dependency is dismissed, whichever occurs first.

(6) Prior to the second permanency planning hearing, the agency that has custody of the child shall consider whether to file a petition for termination of parental rights.

(7) If the court orders the child returned home, casework supervision shall continue for at least six months, at which time a review hearing shall be held pursuant to RCW 13.34.138, and the court shall determine the need for continued intervention.

(8) The juvenile court may hear a petition for permanent legal custody when: (a) The court has ordered implementation of a permanency plan that includes permanent legal custody; and (b) the party pursuing the permanent legal custody is the party identified in the permanency plan as the prospective legal custodian. During the pendency of such proceeding, the court shall conduct review hearings and further permanency planning hearings as provided in this chapter. At the conclusion of the legal guardianship or permanent legal custody proceeding, a juvenile court hearing shall be held for the purpose of determining whether dependency should be dismissed. If a guardianship or permanent custody order has been entered, the dependency shall be dismissed.

(9) Continued juvenile court jurisdiction under this chapter shall not be a barrier to the entry of an order establishing a legal guardianship or permanent legal custody when the requirements of subsection (8) of this section are met.

(10) Nothing in this chapter may be construed to limit the ability of the agency that has custody of the child to file a petition for termination of parental rights or a guardianship petition at any time following the establishment of dependency. Upon the filing of such a petition, a fact-finding hearing shall be scheduled and held in accordance with this chapter unless the agency requests dismissal of the petition prior to the hearing or unless the parties enter an agreed order terminating parental rights, establishing guardianship, or otherwise resolving the matter.

(11) The approval of a permanency plan that does not contemplate return of the child to the parent does not relieve the supervising agency of its obligation to provide reasonable services, under this chapter, intended to effectuate the return of the child to the parent, including but not limited to, visitation rights. The court shall consider the child's relationships with siblings in accordance with RCW 13.34.130.

(12) Nothing in this chapter may be construed to limit the procedural due process rights of any party in a termination or guardianship proceeding filed under this chapter.

NEW SECTION. **Sec. 4.** If specific funding for the purposes of sections 2 and 3 of this act, referencing sections 2 and 3 of this act by bill or chapter number and section number, is not provided by June 30, 2008, in the omnibus appropriations act, sections 2 and 3 of this act are null and void."

MOTION

Senator Hargrove moved that the following amendment by Senator Hargrove and others to the committee striking amendment be adopted.

On page 9, line 5 after "void.", insert the following:

"Sec. 5 RCW 43.121.185 and 2007 c 466 s 4 are each amended to read as follows:

To recognize the focus on home visitation services, ((the Washington council for the prevention of child abuse and neglect is hereby renamed)) the children's trust of Washington is hereby renamed the council for children and families. ((All

references to the Washington council for the prevention of child abuse and neglect in the Revised Code of Washington shall be construed to mean the children's trust of Washington.))

Sec. 6 RCW 43.121.180 and 2007 c 466 s 3 are each amended to read as follows:

(1) Within available funds, the ((children's trust of Washington)) council for children and families shall fund evidence-based and research-based home visitation programs for improving parenting skills and outcomes for children. Home visitation programs must be voluntary and must address the needs of families to alleviate the effect on child development of factors such as poverty, single parenthood, parental unemployment or underemployment, parental disability, or parental lack of high school diploma, which research shows are risk factors for child abuse and neglect and poor educational outcomes.

(2) The ((children's trust of Washington)) council for children and families shall develop a plan with the department of social and health services, the department of health, the department of early learning, and the family policy council to coordinate or consolidate home visitation services for children and families and report to the appropriate committees of the legislature by December 1, 2007, with their recommendations for implementation of the plan.

Sec. 7 RCW 43.121.020 and 2007 c 144 s 1 are each amended to read as follows:

(1) There is established in the executive office of the governor a ((Washington council for the prevention of child abuse and neglect)) council for children and families subject to the jurisdiction of the governor.

(2) The council shall be composed of the chairperson and fourteen other members as follows:

(a) The chairperson and six other members shall be appointed by the governor and shall be selected for their interest and expertise in the prevention of child abuse. A minimum of four designees by the governor shall not be affiliated with governmental agencies. The appointments shall be made on a geographic basis to assure statewide representation. Members appointed by the governor shall serve for three-year terms. Vacancies shall be filled for any unexpired term by appointment in the same manner as the original appointments were made.

(b) The secretary of social and health services or the secretary's designee, the superintendent of public instruction or the superintendent's designee, the director of the department of early learning or the director's designee, and the secretary of the department of health or the secretary's designee shall serve as voting members of the council.

(c) In addition to the members of the council, four members of the legislature shall serve as nonvoting, ex officio members of the council, one from each political caucus of the house of representatives to be appointed by the speaker of the house of representatives and one from each political caucus of the senate to be appointed by the president of the senate.

Sec. 8 RCW 43.121.015 and 1988 c 278 s 4 are each amended to read as follows:

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

(1) "Child" means an unmarried person who is under eighteen years of age.

(2) "Council" means the ((Washington council for the prevention of child abuse and neglect)) council for children and families.

(3) "Primary prevention" of child abuse and neglect means any effort designed to inhibit or preclude the initial occurrence of child abuse and neglect, both by the promotion of positive parenting and family interaction, and the remediation of factors linked to causes of child maltreatment.

(4) "Secondary prevention" means services and programs that identify and assist families under such stress that abuse or neglect is likely or families display symptoms associated with child abuse or neglect.

Sec. 9 RCW 43.15.020 and 2006 c 317 s 4 are each amended to read as follows:

The lieutenant governor serves as president of the senate and is responsible for making appointments to, and serving on, the committees and boards as set forth in this section.

(1) The lieutenant governor serves on the following boards and committees:

(a) Capitol furnishings preservation committee, RCW 27.48.040;

(b) Washington higher education facilities authority, RCW 28B.07.030;

(c) Productivity board, also known as the employee involvement and recognition board, RCW 41.60.015;

(d) State finance committee, RCW 43.33.010;

(e) State capitol committee, RCW 43.34.010;

(f) Washington health care facilities authority, RCW 70.37.030;

(g) State medal of merit nominating committee, RCW 1.40.020;

(h) Medal of valor committee, RCW 1.60.020; and

(i) Association of Washington generals, RCW 43.15.030.

(2) The lieutenant governor, and when serving as president of the senate, appoints members to the following boards and committees:

(a) Organized crime advisory board, RCW 43.43.858;

(b) Civil legal aid oversight committee, RCW 2.53.010;

(c) Office of public defense advisory committee, RCW 2.70.030;

(d) Washington state gambling commission, RCW 9.46.040;

(e) Sentencing guidelines commission, RCW 9.94A.860;

(f) State building code council, RCW 19.27.070;

(g) Women's history consortium board of advisors, RCW 27.34.365;

(h) Financial literacy public-private partnership, RCW 28A.300.450;

(i) Joint administrative rules review committee, RCW 34.05.610;

(j) Capital projects advisory review board, RCW ((~~39.10.800~~)) 39.10.220;

(k) Select committee on pension policy, RCW 41.04.276;

(l) Legislative ethics board, RCW 42.52.310;

(m) Washington citizens' commission on salaries, RCW 43.03.305;

(n) Oral history advisory committee, RCW 43.07.230;

(o) State council on aging, RCW 43.20A.685;

(p) State investment board, RCW 43.33A.020;

(q) Capitol campus design advisory committee, RCW 43.34.080;

(r) Washington state arts commission, RCW 43.46.015;

(s) Information services board, RCW 43.105.032;

(t) K-20 educational network board, RCW 43.105.800;

(u) Municipal research council, RCW 43.110.010;

(v) ((Washington council for the prevention of child abuse and neglect)) Council for children and families, RCW 43.121.020;

(w) PNWER-Net working subgroup under chapter 43.147 RCW;

(x) Community economic revitalization board, RCW 43.160.030;

(y) Washington economic development finance authority, RCW 43.163.020;

(z) Tourism development advisory committee, RCW 43.330.095;

(aa) Life sciences discovery fund authority, RCW 43.350.020;

(bb) Legislative children's oversight committee, RCW 44.04.220;

(cc) Joint legislative audit and review committee, RCW 44.28.010;

(dd) Joint committee on energy supply and energy conservation, RCW 44.39.015;

(ee) Legislative evaluation and accountability program committee, RCW 44.48.010;

(ff) Agency council on coordinated transportation, RCW 47.06B.020;

(gg) Manufactured housing task force, RCW 59.22.090;ine

(hh) Washington horse racing commission, RCW 67.16.014;

(ii) Correctional industries board of directors, RCW 72.09.080;

(jj) Joint committee on veterans' and military affairs, RCW 73.04.150;

(kk) Washington state parks centennial advisory committee, RCW 79A.75.010;

(ll) Puget Sound council, RCW 90.71.030;

(mm) Joint legislative committee on water supply during drought, RCW 90.86.020;

(nn) Statute law committee, RCW 1.08.001; and

(oo) Joint legislative oversight committee on trade policy, RCW 44.55.020."

On page 9, line 8, strike everything after "13.34.136"

and insert the following:

"13.34.145, 43.121.185, 43.121.180, 43.121.020, 43.121.015, and 43.15.020;and creating new sections."

Senator Hargrove spoke in favor of adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Hargrove, Regala and Stevens to the committee striking amendment to Engrossed Second Substitute House Bill No. 3205.

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

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means as amended to Engrossed Second Substitute House Bill No. 3205.

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

MOTION

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

On page 1, line 1 of the title, after "children;" strike the remainder of the title and insert "amending RCW 13.34.136 and 13.34.145; and creating new sections."

MOTION

On motion of Senator Hargrove, the rules were suspended, Engrossed Second Substitute House Bill No. 3205 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Hargrove spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Second Substitute House Bill No. 3205 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Second Substitute House Bill No. 3205 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 3205 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

HOUSE BILL NO. 2283, by Representatives Hunter, Alexander, Schual-Berke, Cody, Kenney and Kelley

Concerning the joint legislative audit and review committee performance reviews of the home care quality authority.

The measure was read the second time.

MOTION

On motion of Senator Keiser, the rules were suspended, House Bill No. 2283 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Keiser spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of House Bill No. 2283.

ROLL CALL

The Secretary called the roll on the final passage of House Bill No. 2283 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

HOUSE BILL NO. 2283, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2902, by House Committee on Commerce & Labor (originally sponsored by Representative Wood)

Conditioning the collection of the lemon law arbitration fee upon initial registration of new motor vehicles in Washington state. Revised for 1st Substitute: Conditioning the collection of the lemon law arbitration fee upon registration of new motor vehicles in Washington state.

The measure was read the second time.

MOTION

On motion of Senator Weinstein, the rules were suspended, Substitute House Bill No. 2902 was advanced to third reading,

the second reading considered the third and the bill was placed on final passage.

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

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2902.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2902 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

SUBSTITUTE HOUSE BILL NO. 2902, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2693, by House Committee on Appropriations (originally sponsored by Representatives Morrell, Darneille, Moeller, Hudgins, Eddy, Upthegrove, Campbell, McIntire, Conway, O'Brien, Simpson, Kenney, Wood and Sells)

Regarding training and certification of long-term care workers.

The measure was read the second time.

MOTION

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

Strike everything after the enacting clause and insert the following:

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

(a) An underlying premise of Washington's long-term care system is the value of consumer choice across a full continuum of care with the right to accessible, quality care;

(b) An appropriately trained and motivated long-term care workforce contributes to the quality of long-term care services;

(c) The level and content of basic training should be focused upon the client with respect to client care needs, health status, choice, and flexibility;

(d) There is a need for increased workforce diversity throughout the long-term care system;

(e) Long-term care worker training should acknowledge cultural diversity and strive to achieve a greater understanding of the relationships between culture and health;

(f) The long-term care workforce has diverse work-life expectations such as career advancement and quality job performance;

(g) The long-term care workforce has variable learning styles, and can benefit from flexibility in training settings, modalities, accessibility, and methods;

(h) Long-term care training should prepare workers and caregivers to perform in as many long-term care settings as possible with economic security and safety, but also should accommodate the interests of those workers who intend to care exclusively for their family members;

(i) The care and support provided by unpaid long-term caregivers should not be disrupted, but enhanced and stabilized by any changes to long-term care training and credentialing; and

(j) The long-term care workforce should be increased and enhanced to meet current and future needs. New policies and requirements should not result in decreasing the available workforce or the services available to consumers.

(2) The legislature intends to establish long-term care worker training standards that are consistent with the findings of subsection (1) of this section and to establish a credentialing program that will allow for career advancement in the long-term care work force.

Sec. 2. RCW 74.39A.009 and 2007 c 361 s 2 are each amended to read as follows:

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

(1) "Adult family home" means a home licensed under chapter 70.128 RCW.

(2) "Adult residential care" means services provided by a boarding home that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.020 to provide personal care services.

(3) "Assisted living services" means services provided by a boarding home that has a contract with the department under RCW 74.39A.010 to provide personal care services, intermittent nursing services, and medication administration services, and the resident is housed in a private apartment-like unit.

(4) "Boarding home" means a facility licensed under chapter 18.20 RCW.

(5) "Cost-effective care" means care provided in a setting of an individual's choice that is necessary to promote the most appropriate level of physical, mental, and psychosocial well-being consistent with client choice, in an environment that is appropriate to the care and safety needs of the individual, and such care cannot be provided at a lower cost in any other setting. But this in no way precludes an individual from choosing a different residential setting to achieve his or her desired quality of life.

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

(7) "Enhanced adult residential care" means services provided by a boarding home that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.010 to provide personal care services, intermittent nursing services, and medication administration services.

(8) "Functionally disabled person" or "person who is functionally disabled" is synonymous with chronic functionally disabled and means a person who because of a recognized chronic physical or mental condition or disease, including chemical dependency, is impaired to the extent of being dependent upon others for direct care, support, supervision, or monitoring to perform activities of daily living. "Activities of daily living", in this context, means self-care abilities related to personal care such as bathing, eating, using the toilet, dressing, and transfer. Instrumental activities of daily living may also be used to assess a person's functional abilities as they are related to the mental capacity to perform activities in the home and the community such as cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

(9) "Home and community services" means adult family homes, in-home services, and other services administered or provided by contract by the department directly or through contract with area agencies on aging or similar services provided by facilities and agencies licensed by the department.

(10) "Long-term care" is synonymous with chronic care and means care and supports delivered indefinitely, intermittently, or over a sustained time to persons of any age disabled by chronic mental or physical illness, disease, chemical dependency, or a medical condition that is permanent, not reversible or curable, or

is long-lasting and severely limits their mental or physical capacity for self-care. The use of this definition is not intended to expand the scope of services, care, or assistance by any individuals, groups, residential care settings, or professions unless otherwise expressed by law.

(11)(a) "Long-term care workers" includes all persons who are ((~~long-term care workers for the elderly or~~)) paid to provide personal care services to persons with functional disabilities, including but not limited to individual providers of home care services, direct care employees of home care agencies, providers of home care services to persons with developmental disabilities under Title 71 RCW, all direct care workers in state-licensed boarding homes, assisted living facilities, and adult family homes, respite care providers, community residential service providers, and any other direct care worker providing home or community-based services to ((~~the elderly or~~)) persons with functional disabilities or developmental disabilities.

(b) "Long-term care workers" do not include persons employed in nursing homes subject to chapter 18.51 RCW, hospitals or other acute care settings, hospice agencies subject to chapter 70.127 RCW, adult day care centers, and adult day health care centers.

(12) "Nursing home" means a facility licensed under chapter 18.51 RCW.

(13) "Personal care services" means physical or verbal assistance with activities of daily living and instrumental activities of daily living provided because of a person's functional limitations.

(14) "Secretary" means the secretary of social and health services.

((~~(14)~~)) (15) "Training partnership" means a joint partnership or trust established and maintained jointly by the office of the governor and the exclusive bargaining representative of individual providers under RCW 74.39A.270 to provide training((~~,~~)) and peer mentoring((~~, and examinations~~)) required under this chapter, and educational, career development, or other related services to individual providers.

((~~(15)~~)) (16) "Tribally licensed boarding home" means a boarding home licensed by a federally recognized Indian tribe which home provides services similar to boarding homes licensed under chapter 18.20 RCW.

NEW SECTION. **Sec. 3.** A new section is added to chapter 74.39A RCW to read as follows:

(1)(a) This section establishes the basic training requirements for long-term care workers initially contracted or employed on or after January 1, 2010. Except as provided otherwise in this section, these long-term care workers must complete:

(i) Worker orientation under (b)(i) of this subsection before the worker has routine interaction with the person or persons the worker will be caring for; and

(ii) The remaining hours of basic training required in this section within one hundred twenty days after the date of the long-term care worker's initial contracting or employment as a long-term care worker unless the department, for good cause, extends the time period by up to sixty days.

(b) Basic training:

(i) Consists of thirty-five hours of classroom training on a set of modules covering the core knowledge and competencies that caregivers need to learn and understand to meet the needs of and to provide care effectively and safely to persons with functional disabilities. Basic training must include a worker orientation consisting of introductory information on residents' rights, communication skills, fire and life safety, and universal precautions; and

(ii) Must be outcome-based, and the effectiveness of the training must be measured through the use of a competency test.

(2) Training standards and the delivery system for basic training must be relevant to the varied needs of persons served by long-term care workers and be sufficient to ensure that long-term care workers have the skills and knowledge necessary to provide high quality, appropriate care in a manner that respects the preferences of each person served. In an effort to improve the quality of training, increase access to training, and reduce costs, especially for rural communities, the classroom training provided in a coordinated system of long-term care training and education should include:

(a) The use of innovative learning strategies such as internet resources, videotapes, and distance learning using satellite technology coordinated through community colleges or other entities, as defined by the department; and

(b) The use of varied adult learner strategies, such as opportunities to practice or demonstrate skills, role playing, and group discussions.

(3) As specified in this section, the following persons are fully or partially exempt from the basic training requirements of this section:

(a) As specified by the department in rule, registered nurses, licensed practical nurses, certified nursing assistants, medicare certified home health aides, or persons who hold a similar health certification or license. However, these persons must complete worker orientation training as described in subsection (1)(b)(i) of this section;

(b) Persons who successfully challenge the competency test for basic training. Such persons shall be deemed to have completed the relevant hours of basic training. However, these persons must complete worker orientation training as described in subsection (1)(b)(i) of this section;

(c) Long-term care workers employed by supportive living providers regulated under chapter 388-101 WAC who are subject to the training required in WAC 388-101-1680;

(d) Biological, step, or adoptive parents who are the individual provider for only their son or daughter who is developmentally disabled or functionally disabled, and persons who provide respite care on an intermittent basis to such son or daughter of a biological, step, or adoptive parent who is either an individual provider or an unpaid caregiver. However, these workers must complete: (i) Six hours of training relevant to the needs of adults with developmental disabilities and related functional disabilities, as appropriate; and (ii) safety training, which may be completed using distance learning or other alternative methods of training. As used in this subsection, "intermittent basis" means care provided exclusively to one individual for not more than an average of twenty-four hours per month; and

(e) Long-term care workers who were initially contracted or employed as long-term care workers before January 1, 2010. However, these long-term care workers must complete all training requirements in effect before that date.

NEW SECTION. **Sec. 4.** A new section is added to chapter 74.39A RCW to read as follows:

(1)(a) The department shall develop qualification requirements for trainers and criteria for the approval of basic training programs under section 3 of this act. Only training curricula approved by the department may be used to fulfill the requirements of section 3 of this act.

(b)(i) The department shall develop criteria for reviewing and approving trainers and training materials that are substantially similar to or better than the materials developed by the department. The department may approve a curriculum based upon attestation by a boarding home administrator, an adult family home provider or resident manager, a home care agency administrator, or the administrator of the training partnership designated in RCW 74.39A.360 that the facility's, agency's, or training partnership's training curriculum addresses required training competencies identified by the department, and shall review a curriculum to verify that it meets these requirements. The department, or the department of health, as applicable, may conduct the review as part of the regularly scheduled inspection and investigation required under RCW 18.20.110, 70.128.090, or 70.127.100. The department shall

rescind approval of any curriculum if it determines that the curriculum does not meet these requirements.

(ii) A facility, agency, or the training partnership with an approved curriculum must provide reports as required by the department on the long-term care workers who began training and those who completed training, and verifying that all long-term care workers required to do so have complied with all training requirements.

(c) Boarding homes, adult family homes, home care agencies, or other entities employing long-term care workers that desire to deliver facility or agency-based required basic training with facility or agency designated trainers, or facilities and agencies that desire to pool their resources to create shared training systems, must be encouraged by the department in their efforts.

(d) The department shall consult with the state board for community and technical colleges, the superintendent of public instruction, and the training partnership to ensure, to the extent possible, that long-term care worker training programs approved by the department assist with opportunities to articulate to relevant degree or skills programs offered in community colleges, vocational-technical institutes, skill centers, and secondary schools, as defined in chapter 28B.50 RCW.

(2) The department shall adopt rules by September 1, 2009, necessary to implement the training provisions of section 3 of this act. The department shall also adopt rules to implement peer mentorship under RCW 74.39A.330, advanced training under RCW 74.39A.350, and on-the-job training provided by the worker's employer, and may adopt rules for specialty endorsements. In developing rules, the department shall consult with the department of health, the nursing care quality assurance commission, adult family home providers, boarding home providers, in-home personal care providers, affected labor organizations, community and technical colleges, and long-term care consumers and other interested organizations.

Sec. 5. RCW 74.39A.340 and 2007 c 361 s 4 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, beginning January 1, 2010, long-term care workers shall complete twelve hours of continuing education training in advanced training topics each year. ((~~This requirement applies beginning on January 1, 2010.~~))

(2) This section does not apply to persons described in section 3(3)(d) of this act. However, this subsection does not prohibit requiring continuing education for such persons who elect to become registered or certified under chapter 18.-- RCW (the chapter created in section 33 of this act).

Sec. 6. RCW 74.39A.360 and 2007 c 361 s 6 are each amended to read as follows:

(1) Beginning January 1, 2010, for individual providers represented by an exclusive bargaining representative under RCW 74.39A.270, all training and peer mentoring required under this chapter shall be provided by a training partnership. Contributions to the partnership pursuant to a collective bargaining agreement negotiated under this chapter shall be made beginning July 1, 2009. The training partnership shall provide reports as required by the department on the individual providers who began training and those who completed training, and verifying that all individual providers required to do so have complied with all training requirements. The exclusive bargaining representative shall designate the training partnership.

(2) The training partnership shall offer persons who are acting as unpaid informal caregivers for family members or friends the opportunity to attend training offered through the partnership at no cost to the individual caregiver or the state. Attendance opportunities may be limited to the extent that:

(a) There is fixed maximum seating or participation capacity for a training module that satisfies long-term care worker basic training or continuing education requirements under this chapter; and

(b) The maximum capacity for a particular training module is fully reserved twenty-four hours in advance of the scheduled date and time of the module.

NEW SECTION. **Sec. 7.** (1) The legislature finds that:

(a) It is in the public interest to promote quality long-term care services through registration for long-term care workers; and

(b) An additional level of credentialing for those long-term care workers who seek to increase their skills and knowledge or enter a health care professional career track will increase, stabilize, and enhance the long-term care workforce and further promote quality long- term care services.

(2) The legislature, therefore, intends to provide opportunities to increase skills and knowledge or to pursue a career track through certification and specialty endorsements, and potential articulation from long-term care worker certification to other health care credentialing or degrees.

NEW SECTION. **Sec. 8.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Secretary" means the secretary of health.

(3) "Long-term care worker" has the same meaning as in RCW 74.39A.009. There are two levels of credentialed long-term care workers:

(a) "Registered long-term care worker" is an individual registered under this chapter; and

(b) "Certified long-term care worker" is an individual certified under this chapter.

(4) "Individual provider" has the same meaning as in RCW 74.39A.240.

(5) "Personal care services" has the same meaning as in RCW 74.39A.009.

(6) "Approved training program" means a program of not less than eighty-five hours of training that is approved by the secretary in consultation with the department of social and health services, the state board for community and technical colleges, and the superintendent of public instruction. The department shall ensure, to the extent possible, that long-term care worker training programs approved by the department assist with opportunities to articulate to relevant degree or skill programs offered in community colleges, vocational-technical institutes, skill centers, and secondary schools as defined in chapter 28B.50 RCW. A training program approved under this section may include, but is not limited to, the following elements:

(a) Basic training under section 3 of this act, which is a required element of an approved training program. For purposes of this subsection, a person who successfully challenges the competency test for basic training shall be deemed to have completed the relevant hours of basic training other than worker orientation training;

(b) Hours that individual providers spend with peer mentors under RCW 74.39A.330;

(c) Advanced training offered under RCW 74.39A.350;

(d) Up to ten hours spent being trained by the person to whom a worker is providing care regarding the person's caregiving preferences and needs;

(e) On-the-job training provided by the worker's employer, including specialty training required under RCW 18.20.270(5) and 70.128.230(5);

(f) Structured training in population or setting specific competencies that allow long-term care workers to acquire competencies unique to the persons they will be serving or the care setting in which they will be working;

(g) Attendance at relevant conferences sponsored by national or state professional associations, governmental agencies, or institutions of higher education; and

(h) Other structured or documented training approved by the secretary. For the purposes of this subsection, "documented training" means a written training program that describes the

subject covered by the training, the methods by which the training is conducted, and the qualifications of the instructor.

(7) "Certification examination" means the measurement of an individual's knowledge and skills as related to safe, competent performance as a long-term care worker.

NEW SECTION. **Sec. 9.** (1)(a) Registration under this chapter commences January 1, 2010. If the department determines that administrative capacities essential to implementation of long-term care worker registration under this chapter will not be fully functional by January 1, 2010, the department may defer the implementation date to no later than July 1, 2010.

(b) Except as provided otherwise in this chapter, long-term care workers contracted or employed on or after January 1, 2010, must register within one hundred twenty days after the date of the long-term care worker's initial contracting or employment as a long-term care worker, except that workers initially contracted or employed before January 1, 2010, must register within one hundred twenty days after January 1, 2010. However, the department, for good cause, may extend the one hundred twenty day time period by up to sixty days.

(2) Beginning January 1, 2012, long-term care workers may elect to be certified, with or without a specialty endorsement under section 14 of this act.

NEW SECTION. **Sec. 10.** (1) A registered or certified long-term care worker may provide direct, hands-on personal care services to persons with functional disabilities requiring long-term care services.

(2) No person may practice or, by use of any title or description, represent himself or herself as:

(a) A registered long-term care worker without being registered pursuant to this chapter; or

(b) A certified long-term care worker without applying for certification, meeting the qualifications, and being certified pursuant to this chapter.

NEW SECTION. **Sec. 11.** In addition to any other authority provided by law, the secretary has the authority to:

(1) Set all certification, registration, and renewal fees in accordance with RCW 43.70.250 and to collect and deposit all such fees in the health professions account established under RCW 43.70.320;

(2) Establish forms, procedures, and examinations necessary to administer this chapter;

(3) Hire clerical, administrative, and investigative staff as needed to implement this chapter;

(4) Issue a registration to any applicant who has met the requirements for registration;

(5) Issue a certificate to any applicant who has met the education, training, and conduct requirements for certification;

(6) Maintain the official record for the department of all applicants and persons with registrations and certificates;

(7) Exercise disciplinary authority as authorized in chapter 18.130 RCW;

(8) Deny registration to any applicant who fails to meet requirement for registration; and

(9) Deny certification to applicants who do not meet the education, training, competency evaluation, and conduct requirements for certification.

NEW SECTION. **Sec. 12.** The secretary shall issue a registration to any applicant who:

(1) Pays any applicable fees;

(2) Submits, on forms provided by the secretary, the applicant's name, address, and other information as determined by the secretary; and

(3) Establishes, to the secretary's satisfaction, that:

(a) The applicant has successfully completed the basic training required under section 3 of this act. For purposes of this subsection, a person who successfully challenges the competency test for basic training shall be deemed to have completed the relevant hours of basic training other than worker orientation training;

(b) The applicant has completed any required background check; and

(c) There are no grounds for denial of registration or issuance of a conditional registration under this chapter or chapter 18.130 RCW.

NEW SECTION. **Sec. 13.** (1) The secretary shall issue a certificate to any applicant who:

(a) Pays any applicable fees;

(b) Submits, on forms provided by the secretary, the applicant's name, address, and other information as determined by the secretary;

(c) Establishes to the secretary's satisfaction that:

(i) The applicant has successfully completed an approved training program;

(ii) The applicant has successfully completed a certification examination;

(iii) The applicant has completed any required background check; and

(iv) There exist no grounds for denial of certification under chapter 18.130 RCW.

(2) The date and location of examinations shall be established by the secretary. Applicants who have been found by the secretary to meet the requirements for certification shall be scheduled for the next examination following the filing of the application. The secretary shall establish by rule the examination application deadline.

(3) The examination must include both a skills demonstration and a written or oral knowledge test. Examinations shall be limited to the purpose of determining whether the applicant possesses the minimum skill and knowledge necessary to practice competently.

(4) The examination papers, all grading of the papers, and the grading of skills demonstration shall be preserved for a period of not less than one year after the secretary has made and published the decisions. All examinations shall be conducted under fair and wholly impartial methods.

(5) Any applicant failing to make the required grade in the first examination may take up to three subsequent examinations as the applicant desires upon prepaying a fee determined by the secretary under RCW 43.70.250 for each subsequent examination. Upon failing four examinations, the secretary may invalidate the original application and require such remedial education before the person may take future examinations.

(6) The certification examination must be administered and evaluated by the department or by a contractor to the department that is neither an employer of long-term care workers, a private contractor providing training services under this chapter or section 3 of this act, or the training partnership defined in RCW 74.39A.009.

NEW SECTION. **Sec. 14.** (1) A long-term care worker certified under this chapter may apply for a specialty endorsement in the specialty areas identified by the secretary in consultation with the department of social and health services. The secretary shall issue an endorsement to an applicant who:

(a) Completes the hours of training and practical experience required in rules adopted by the secretary for the relevant specialty endorsement;

(b) Pays any applicable fee; and

(c) Submits any other information as determined by the secretary.

(2) A certified long-term care worker who has been granted a specialty endorsement under this section may include the specialty in his or her title, as permitted under rules adopted by the secretary.

NEW SECTION. **Sec. 15.** An applicant holding a credential in another state may be certified in this state without examination if the secretary determines that the other state's credentialing standards for long-term care workers are substantially equivalent to the standards in this state.

NEW SECTION. **Sec. 16.** (1) Registrations and certifications shall be renewed according to administrative

procedures, administrative requirements, and fees determined by the secretary under RCW 43.70.250 and 43.70.280.

(2) Completion of continuing education as required in RCW 74.39A.340 is a prerequisite to renewing a registration or certification under this chapter.

NEW SECTION. **Sec. 17.** (1) This chapter does not apply to:

(a) Registered nurses, licensed practical nurses, certified nursing assistants, medicare certified home health aides, or other persons who hold a similar health credential, as determined by the secretary, or persons with special education training and an endorsement granted by the superintendent of public instruction that is recognized by the secretary as appropriate to specified personal care services circumstances;

(b) Biological, step, or adoptive parents who are the individual provider for only their son or daughter who is developmentally disabled or functionally disabled, and persons who provide respite care on an intermittent basis to such son or daughter of a biological, step, or adoptive parent who is either an individual provider or an unpaid caregiver. As used in this subsection, "intermittent basis" means the same as the definition in section 3(3)(d) of this act.

(2) Nothing in this chapter may be construed to prohibit or restrict:

(a) The practice by an individual licensed, certified, or registered under the laws of this state and performing services within their authorized scope of practice;

(b) The practice by an individual employed by the government of the United States while engaged in the performance of duties prescribed by the laws of the United States;

(c) The practice by a person who is a regular student in an educational program approved by the secretary, and whose performance of services is pursuant to a regular course of instruction or assignments from an instructor and under the general supervision of the instructor;

(d) A registered or certified long-term care worker from accepting direction from a person who is self-directing his or her care; or

(e) A long-term care worker exempt under subsection (1) of this section from applying for registration or certification, subject to meeting the requirements for such application.

NEW SECTION. **Sec. 18.** (1) The uniform disciplinary act, chapter 18.130 RCW, governs unregistered or uncertified practice, issuance of certificates and registrations, and the discipline of persons registered or with certificates under this chapter. The secretary shall be the disciplinary authority under this chapter.

(2)(a) The secretary may take action to immediately suspend the registration or certification of a long-term care worker upon finding that conduct of the long-term care worker has caused or presents an imminent threat of harm to a functionally disabled person in his or her care.

(b) If the secretary imposes suspension or conditions for continuation of a registration or certification, the suspension or conditions for continuation are effective immediately upon notice and shall continue in effect pending the outcome of any hearing.

NEW SECTION. **Sec. 19.** (1) The department shall adopt rules by September 1, 2009, necessary to implement the registration provisions of this chapter. In developing rules, the department shall consult with the department of social and health services, the nursing care quality assurance commission, adult family home providers, boarding home providers, in-home personal care providers, the training partnership defined in RCW 74.39A.009, affected labor organizations, community and technical colleges, and long-term care consumers and other interested organizations.

(2)(a) The department shall also consult with these parties on a plan to implement the voluntary certification program under this chapter by January 1, 2012, in a cost-effective manner considering the following:

(i) The certification program should assist a long-term care worker to enter, if desired, a career path to other health care or allied health professions, including articulation, to the maximum extent possible under federal law, from long-term care worker certification to nursing assistant certification under chapter 18.88A RCW;

(ii) The department should consider the relative merits of certification and/or specialty endorsement examinations and of practical work experience for certification and/or specialty endorsements. If recommendations are made for practical work experience requirements, the department's plan should include recommendations on the hours and type of practical work experience that would be appropriate for the credential sought.

(b) The department shall report on the certification plan to the appropriate committees of the legislature by December 1, 2009.

Sec. 20. RCW 18.130.040 and 2007 c 269 s 17 and 2007 c 70 s 11 are each reenacted and amended to read as follows:

(1) This chapter applies only to the secretary and the boards and commissions having jurisdiction in relation to the professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The secretary has authority under this chapter in relation to the following professions:

(i) Dispensing opticians licensed and designated apprentices under chapter 18.34 RCW;

(ii) Naturopaths licensed under chapter 18.36A RCW;

(iii) Midwives licensed under chapter 18.50 RCW;

(iv) Ocularists licensed under chapter 18.55 RCW;

(v) Massage operators and businesses licensed under chapter 18.108 RCW;

(vi) Dental hygienists licensed under chapter 18.29 RCW;

(vii) Acupuncturists licensed under chapter 18.06 RCW;

(viii) Radiologic technologists certified and X-ray technicians registered under chapter 18.84 RCW;

(ix) Respiratory care practitioners licensed under chapter 18.89 RCW;

(x) Persons registered under chapter 18.19 RCW;

(xi) Persons licensed as mental health counselors, marriage and family therapists, and social workers under chapter 18.225 RCW;

(xii) Persons registered as nursing pool operators under chapter 18.52C RCW;

(xiii) Nursing assistants registered or certified under chapter 18.88A RCW;

(xiv) Health care assistants certified under chapter 18.135 RCW;

(xv) Dietitians and nutritionists certified under chapter 18.138 RCW;

(xvi) Chemical dependency professionals certified under chapter 18.205 RCW;

(xvii) Sex offender treatment providers and certified affiliate sex offender treatment providers certified under chapter 18.155 RCW;

(xviii) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;

(xix) Denturists licensed under chapter 18.30 RCW;

(xx) Orthotists and prosthetists licensed under chapter 18.200 RCW;

(xxi) Surgical technologists registered under chapter 18.215 RCW;

(xxii) Recreational therapists; ((~~and~~))

(xxiii) Animal massage practitioners certified under chapter 18.240 RCW; and

(xxiv) Long-term care workers registered or certified under chapter 18.-- RCW (the new chapter created in section 33 of this act).

(b) The boards and commissions having authority under this chapter are as follows:

(i) The podiatric medical board as established in chapter 18.22 RCW;

(ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;

(iii) The dental quality assurance commission as established in chapter 18.32 RCW governing licenses issued under chapter 18.32 RCW and licenses and registrations issued under chapter 18.260 RCW;

(iv) The board of hearing and speech as established in chapter 18.35 RCW;

(v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;

(vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;

(vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;

(viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;

(ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;

(x) The board of physical therapy as established in chapter 18.74 RCW;

(xi) The board of occupational therapy practice as established in chapter 18.59 RCW;

(xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses and registrations issued under that chapter;

(xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW; and

(xiv) The veterinary board of governors as established in chapter 18.92 RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses based on the conditions and criteria established in this chapter and the chapters specified in subsection (2) of this section. This chapter also governs any investigation, hearing, or proceeding relating to denial of licensure or issuance of a license conditioned on the applicant's compliance with an order entered pursuant to RCW 18.130.160 by the disciplining authority.

(4) All disciplining authorities shall adopt procedures to ensure substantially consistent application of this chapter, the Uniform Disciplinary Act, among the disciplining authorities listed in subsection (2) of this section.

Sec. 21. RCW 18.130.040 and 2007 c 269 s 17, 2007 c 253 s 13, and 2007 c 70 s 11 are each reenacted and amended to read as follows:

(1) This chapter applies only to the secretary and the boards and commissions having jurisdiction in relation to the professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The secretary has authority under this chapter in relation to the following professions:

(i) Dispensing opticians licensed and designated apprentices under chapter 18.34 RCW;

(ii) Naturopaths licensed under chapter 18.36A RCW;

(iii) Midwives licensed under chapter 18.50 RCW;

(iv) Ocularists licensed under chapter 18.55 RCW;

(v) Massage operators and businesses licensed under chapter 18.108 RCW;

(vi) Dental hygienists licensed under chapter 18.29 RCW;

(vii) Acupuncturists licensed under chapter 18.06 RCW;

(viii) Radiologic technologists certified and X-ray technicians registered under chapter 18.84 RCW;

(ix) Respiratory care practitioners licensed under chapter 18.89 RCW;

(x) Persons registered under chapter 18.19 RCW;

(xi) Persons licensed as mental health counselors, marriage and family therapists, and social workers under chapter 18.225 RCW;

(xii) Persons registered as nursing pool operators under chapter 18.52C RCW;

(xiii) Nursing assistants registered or certified under chapter 18.88A RCW;

(xiv) Health care assistants certified under chapter 18.135 RCW;

(xv) Dietitians and nutritionists certified under chapter 18.138 RCW;

(xvi) Chemical dependency professionals certified under chapter 18.205 RCW;

(xvii) Sex offender treatment providers and certified affiliate sex offender treatment providers certified under chapter 18.155 RCW;

(xviii) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;

(xix) Denturists licensed under chapter 18.30 RCW;

(xx) Orthotists and prosthetists licensed under chapter 18.200 RCW;

(xxi) Surgical technologists registered under chapter 18.215 RCW;

(xxii) Recreational therapists;

(xxiii) Animal massage practitioners certified under chapter 18.240 RCW; ((~~and~~))

(xxiv) Athletic trainers licensed under chapter 18.250 RCW; and

(xxv) Long-term care workers registered or certified under chapter 18.-- RCW (the new chapter created in section 33 of this act).

(b) The boards and commissions having authority under this chapter are as follows:

(i) The podiatric medical board as established in chapter 18.22 RCW;

(ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;

(iii) The dental quality assurance commission as established in chapter 18.32 RCW governing licenses issued under chapter 18.32 RCW and licenses and registrations issued under chapter 18.260 RCW;

(iv) The board of hearing and speech as established in chapter 18.35 RCW;

(v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;

(vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;

(vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;

(viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;

(ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;

(x) The board of physical therapy as established in chapter 18.74 RCW;

(xi) The board of occupational therapy practice as established in chapter 18.59 RCW;

(xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses and registrations issued under that chapter;

(xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW; and

(xiv) The veterinary board of governors as established in chapter 18.92 RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses based on the conditions and criteria established in this chapter and the chapters specified in subsection (2) of this section. This chapter also governs any investigation, hearing, or proceeding relating to denial of licensure or issuance of a license conditioned on the applicant's compliance with an order entered pursuant to RCW 18.130.160 by the disciplining authority.

(4) All disciplining authorities shall adopt procedures to ensure substantially consistent application of this chapter, the Uniform Disciplinary Act, among the disciplining authorities listed in subsection (2) of this section.

Sec. 22. RCW 74.39A.240 and 2002 c 3 s 3 are each amended to read as follows:

The definitions in this section apply throughout RCW 74.39A.030 and 74.39A.095 and 74.39A.220 through 74.39A.300, sections 3 and 23 of this act, 41.56.026, 70.127.041, and 74.09.740 unless the context clearly requires otherwise.

(1) "Authority" means the home care quality authority.

(2) "Board" means the board created under RCW 74.39A.230.

(3) "Consumer" means a person to whom an individual provider provides any such services.

(4) "Individual provider" means a person, including a personal aide, who has contracted with the department to provide personal care or respite care services to ((~~functionally disabled persons~~)) persons with functional disabilities under the medicaid personal care, community options program entry system, chore services program, or respite care program, or to provide respite care or residential services and support to persons with developmental disabilities under chapter 71A.12 RCW, or to provide respite care as defined in RCW 74.13.270.

NEW SECTION. **Sec. 23.** A new section is added to chapter 74.39A RCW to read as follows:

(1) The department shall deny payment to any individual provider of home care services who does not complete the training requirements of section 3 of this act or obtain registration as a long-term care worker as specified in chapter 18.-- RCW (the new chapter created in section 33 of this act).

(2) The department may terminate the contract of any individual provider of home care services, or take any other enforcement measure deemed appropriate by the department if the individual provider's registration or certification is revoked under chapter 18.-- RCW (the new chapter created in section 33 of this act).

(3) The department may take action to immediately terminate the contract of an individual provider of home care services upon finding that conduct of the individual provider has caused or presents an imminent threat of harm to a functionally disabled person in their care.

(4) The department shall take appropriate enforcement action related to the contract or licensure of a provider of home and community-based services, other than an individual provider, who knowingly employs a long-term care worker who has failed to complete the training requirements of section 3 of this act or obtain registration as a long-term care worker as specified in chapter 18.-- RCW (the new chapter created in section 33 of this act).

(5) Chapter 34.05 RCW shall govern department actions under this section.

Sec. 24. RCW 74.39A.050 and 2004 c 140 s 6 are each amended to read as follows:

The department's system of quality improvement for long-term care services shall use the following principles, consistent with applicable federal laws and regulations:

(1) The system shall be client-centered and promote privacy, independence, dignity, choice, and a home or home-like environment for consumers consistent with chapter 392, Laws of 1997.

(2) The goal of the system is continuous quality improvement with the focus on consumer satisfaction and outcomes for consumers. This includes that when conducting licensing or contract inspections, the department shall interview an appropriate percentage of residents, family members, resident case managers, and advocates in addition to interviewing providers and staff.

(3) Providers should be supported in their efforts to improve quality and address identified problems initially through training, consultation, technical assistance, and case management.

(4) The emphasis should be on problem prevention both in monitoring and in screening potential providers of service.

(5) Monitoring should be outcome based and responsive to consumer complaints and based on a clear set of health, quality of care, and safety standards that are easily understandable and have been made available to providers, residents, and other interested parties.

(6) Prompt and specific enforcement remedies shall also be implemented without delay, pursuant to RCW 74.39A.080, RCW 70.128.160, chapter 18.51 RCW, or chapter 74.42 RCW, for providers found to have delivered care or failed to deliver care resulting in problems that are serious, recurring, or uncorrected, or that create a hazard that is causing or likely to cause death or serious harm to one or more residents. These enforcement remedies may also include, when appropriate, reasonable conditions on a contract or license. In the selection of remedies, the safety, health, and well-being of residents shall be of paramount importance.

(7) To the extent funding is available, all long-term care staff directly responsible for the care, supervision, or treatment of vulnerable persons should be screened through background checks in a uniform and timely manner to ensure that they do not have a criminal history that would disqualify them from working with vulnerable persons. Whenever a state conviction record check is required by state law, persons may be employed or engaged as volunteers or independent contractors on a conditional basis according to law and rules adopted by the department.

(8) No provider or staff, or prospective provider or staff, with a stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority, a court of law, or entered into a state registry finding him or her guilty of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW shall be employed in the care of and have unsupervised access to vulnerable adults.

(9) The department shall establish, by rule, a state registry which contains identifying information about personal care aides identified under this chapter who have substantiated findings of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult as defined in RCW 74.34.020. The rule must include disclosure, disposition of findings, notification, findings of fact, appeal rights, and fair hearing requirements. The department shall disclose, upon request, substantiated findings of abuse, neglect, financial exploitation, or abandonment to any person so requesting this information.

(10) ((~~The department shall by rule develop training requirements for individual providers and home care agency providers. Effective March 1, 2002, individual providers and home care agency providers must satisfactorily complete department-approved orientation, basic training, and continuing education within the time period specified by the department in rule. The department shall adopt rules by March 1, 2002, for the implementation of this section based on the recommendations of the community long-term care training and education steering committee established in RCW 74.39A.190. The department shall deny payment to an individual provider or a home care provider who does not complete the training requirements within the time limit specified by the department by rule.~~

~~(11) In an effort to improve access to training and education and reduce costs, especially for rural communities, the coordinated system of long-term care training and education must include the use of innovative types of learning strategies such as internet resources, videotapes, and distance learning using satellite technology coordinated through community colleges or other entities, as defined by the department.~~

~~(12) The department shall create an approval system by March 1, 2002, for those seeking to conduct department-approved training. In the rule-making process, the department shall adopt rules based on the recommendations of the community long-term care training and education steering committee established in RCW 74.39A.190.~~

~~(13)~~)) The department shall establish, by rule, ((~~training,~~)) background checks((~~,~~)) and other quality assurance requirements for personal aides who provide in-home services funded by medicaid personal care as described in RCW 74.09.520, community options program entry system waiver services as described in RCW 74.39A.030, or chore services as described in RCW 74.39A.110 that are equivalent to requirements for individual providers.

(((~~(14)~~))) (11) Under existing funds the department shall establish internally a quality improvement standards committee to monitor the development of standards and to suggest modifications.

(~~(15) Within existing funds, the department shall design, develop, and implement a long-term care training program that is flexible, relevant, and qualifies towards the requirements for a nursing assistant certificate as established under chapter 18.88A RCW. This subsection does not require completion of the nursing assistant certificate training program by providers or their staff. The long- term care teaching curriculum must consist of a fundamental module, or modules, and a range of other available relevant training modules that provide the caregiver with appropriate options that assist in meeting the resident's care needs. Some of the training modules may include, but are not limited to, specific training on the special care needs of persons with developmental disabilities, dementia, mental illness, and the care needs of the elderly. No less than one training module must be dedicated to workplace violence prevention. The nursing care quality assurance commission shall work together with the department to develop the curriculum modules. The nursing care quality assurance commission shall direct the nursing assistant training programs to accept some or all of the skills and competencies from the curriculum modules towards meeting the requirements for a nursing assistant certificate as defined in chapter 18.88A RCW. A process may be developed to test persons completing modules from a caregiver's class to verify that they have the transferable skills and competencies for entry into a nursing assistant training program. The department may review whether facilities can develop their own related long-term care training programs. The department may develop a review process for determining what previous experience and training may be used to waive some or all of the mandatory training. The department of social and health services and the nursing care quality assurance commission shall work together to develop an implementation plan by December 12, 1998.~~))

Sec. 25. RCW 70.127.100 and 2000 c 175 s 9 are each amended to read as follows:

Upon receipt of an application under RCW 70.127.080 for a license and the license fee, the department shall issue a license if the applicant meets the requirements established under this chapter. A license issued under this chapter shall not be transferred or assigned without thirty days prior notice to the department and the department's approval. A license, unless suspended or revoked, is effective for a period of two years, however an initial license is only effective for twelve months. The department shall conduct a survey within each licensure period, and may conduct a licensure survey after ownership transfer, to assure compliance with this chapter and the rules adopted under this chapter and under section 3 of this act, and to enforce section 23(4) of this act.

Sec. 26. RCW 18.20.110 and 2004 c 144 s 3 are each amended to read as follows:

(1) The department shall make or cause to be made, at least every eighteen months with an annual average of fifteen months, an inspection and investigation of all boarding homes. However, the department may delay an inspection to twenty-four months if the boarding home has had three consecutive inspections with no written notice of violations and has received no written notice of violations resulting from complaint investigation during that same time period. The department may at anytime make an unannounced inspection of a licensed home to assure that the licensee is in compliance with this chapter and the rules adopted under this chapter and section 3 of this act, and to enforce section 23(4) of this act. Every inspection shall focus primarily on actual or potential resident outcomes, and may include an inspection of every part of the premises and an examination of all records, methods of administration, the general and special dietary, and the stores and methods of supply; however, the department shall not have access to financial records or to other records or reports described in RCW 18.20.390. Financial records of the boarding home may be examined when the department has reasonable cause to believe that a financial obligation related to resident care or services will not be met, such as a complaint that staff wages or utility costs have not been paid, or when necessary for the department to investigate alleged financial exploitation of a resident.

(2) Following such an inspection or inspections, written notice of any violation of this law or the rules adopted hereunder shall be given to the applicant or licensee and the department.

(3) The department may prescribe by rule that any licensee or applicant desiring to make specified types of alterations or additions to its facilities or to construct new facilities shall, before commencing such alteration, addition, or new construction, submit plans and specifications therefor to the agencies responsible for plan reviews for preliminary inspection and approval or recommendations with respect to compliance with the rules and standards herein authorized.

Sec. 27. RCW 18.20.270 and 2002 c 233 s 1 are each amended to read as follows:

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Caregiver" includes any ((~~person~~)) long-term care worker who provides residents with hands-on personal care on behalf of a boarding home, except volunteers who are directly supervised.

(b) "Direct supervision" means oversight by a person who has demonstrated competency in the core areas or has been fully exempted from the training requirements pursuant to this section, is on the premises, and is quickly and easily available to the caregiver.

(c) "Long-term care worker" has the same meaning as defined in RCW 74.39A.009(11).

(2) Training must have the following components: Orientation, basic training, specialty training as appropriate, and continuing education. All boarding home employees or volunteers who routinely interact with residents shall complete orientation. Boarding home administrators, or their designees, and caregivers shall complete orientation, basic training, specialty training as appropriate, and continuing education. Training of caregivers employed by boarding homes is governed by chapter 74.39A RCW. Any caregiver who has satisfied the training and competency testing requirements of section 3 of this act or the continuing education requirements of RCW 74.39A.340 shall be deemed to have satisfied, as applicable, the orientation, basic training, and continuing education requirements of this section.

(3) Orientation consists of introductory information on residents' rights, communication skills, fire and life safety, and

universal precautions. Orientation must be provided at the facility by appropriate boarding home staff to all boarding home employees before the employees have routine interaction with residents.

(4) Basic training consists of modules on the core knowledge and skills that caregivers need to learn and understand to effectively and safely provide care to residents. Basic training must be outcome- based, and the effectiveness of the basic training must be measured by demonstrated competency in the core areas through the use of a competency test. ((~~Basic training must be completed by caregivers within one hundred twenty days of the date on which they begin to provide hands-on care or within one hundred twenty days of September 1, 2002, whichever is later.~~)) Until ((~~competency in the core areas has been demonstrated, caregivers~~)) a caregiver provides verification that he or she has met the basic training requirements under section 3 of this act, a caregiver shall not provide hands-on personal care to residents without direct supervision. Boarding home administrators, or their designees, must complete basic training and demonstrate competency within one hundred twenty days of employment or within one hundred twenty days of September 1, 2002, whichever is later.

(5)(a) For boarding homes that serve residents with special needs such as dementia, developmental disabilities, or mental illness, specialty training is required of administrators, or designees, and caregivers. Specialty training consists of modules on the core knowledge and skills that caregivers need to effectively and safely provide care to residents with special needs. Specialty training should be integrated into basic training wherever appropriate. Specialty training must be outcome-based, and the effectiveness of the specialty training measured by demonstrated competency in the core specialty areas through the use of a competency test.

(b) Specialty training must be completed by caregivers within one hundred twenty days of the date on which they begin to provide hands-on care to a resident having special needs or within one hundred twenty days of September 1, 2002, whichever is later. However, if specialty training is not integrated with basic training, the specialty training must be completed within ninety days of completion of basic training. Until competency in the core specialty areas has been demonstrated, caregivers shall not provide hands-on personal care to residents with special needs without direct supervision. If training received by a caregiver under section 3 of this act involves core knowledge and skills to effectively and safely provide care to residents of the boarding home with special needs, the hours of training received by the caregiver shall apply toward meeting the specialty training requirements under this section. Boarding home administrators, or their designees, must complete specialty training and demonstrate competency within one hundred twenty days of September 1, 2002, or one hundred twenty days from the date on which the administrator or his or her designee is hired, whichever is later, if the boarding home serves one or more residents with special needs.

(((~~(6) Continuing education consists of ongoing delivery of information to caregivers on various topics relevant to the care setting and care needs of residents. Competency testing is not required for continuing education. Continuing education is not required in the same calendar year in which basic or modified basic training is successfully completed. Continuing education is required in each calendar year thereafter.~~)) (c) If specialty training is completed, the specialty training applies toward any continuing education requirement for up to two years following the completion of the specialty training.

(((~~(7)~~))) (6) Persons who successfully challenge the competency test for basic training are fully exempt from the basic training requirements of this section. Persons who successfully challenge the specialty training competency test are fully exempt from the specialty training requirements of this section.

(((~~(8)~~))) (7) Licensed persons who perform the tasks for which they are licensed are fully or partially exempt from the training requirements of this section, as specified by the department in rule.

(((~~(9)~~))) (8) In an effort to improve access to training and education and reduce costs, especially for rural communities, the coordinated system of long-term care training and education must include the use of innovative types of learning strategies such as internet resources, videotapes, and distance learning using satellite technology coordinated through community colleges or other entities, as defined by the department.

(((~~(10)~~))) (9) The department shall develop criteria for the approval of orientation, basic training, and specialty training programs.

(((~~(11) Boarding homes that desire to deliver facility-based training with facility designated trainers, or boarding homes that desire to pool their resources to create shared training systems, must be encouraged by the department in their efforts. The department shall develop criteria for reviewing and approving trainers and training materials that are substantially similar to or better than the materials developed by the department. The department may approve a curriculum based upon attestation by a boarding home administrator that the boarding home's training curriculum addresses basic and specialty training competencies identified by the department, and shall review a curriculum to verify that it meets these requirements. The department may conduct the review as part of the next regularly scheduled yearly inspection and investigation required under RCW 18.20.110. The department shall rescind approval of any curriculum if it determines that the curriculum does not meet these requirements.~~

~~(12) The department shall adopt rules by September 1, 2002, for the implementation of this section.~~

~~(13)~~))) (10) The orientation, basic training, specialty training, and continuing education requirements of this section commence September 1, 2002, or one hundred twenty days from the date of employment, whichever is later, and shall be applied to (a) employees hired subsequent to September 1, 2002; and (b) existing employees that on September 1, 2002, have not successfully completed the training requirements under RCW 74.39A.010 or 74.39A.020 and this section. Existing employees who have not successfully completed the training requirements under RCW 74.39A.010 or 74.39A.020 shall be subject to all applicable requirements of this section. ((~~However, prior to September 1, 2002, nothing in this section affects the current training requirements under RCW 74.39A.010.~~))

Sec. 28. RCW 70.128.090 and 2001 c 319 s 7 are each amended to read as follows:

(1) During inspections of an adult family home, the department shall have access and authority to examine areas and articles in the home used to provide care or support to residents, including residents' records, accounts, and the physical premises, including the buildings, grounds, and equipment. The personal records of the provider are not subject to department inspection nor is the separate bedroom of the provider, not used in direct care of a client, subject to review. The department may inspect all rooms during the initial licensing of the home. However, during a complaint investigation, the department shall have access to the entire premises and all pertinent records when necessary to conduct official business. The department also shall have the authority to interview the provider and residents of an adult family home.

(2) Whenever an inspection is conducted, the department shall prepare a written report that summarizes all information obtained during the inspection, and if the home is in violation of this chapter or the rules adopted under this chapter or under section 3 of this act, or the department is enforcing section 23(4) of this act, serve a copy of the inspection report upon the provider at the same time as a notice of violation. This notice shall be mailed to the provider within ten working days of the completion of the inspection process. If the home is not in

violation of this chapter, a copy of the inspection report shall be mailed to the provider within ten calendar days of the inspection of the home. All inspection reports shall be made available to the public at the department during business hours.

(3) The provider shall develop corrective measures for any violations found by the department's inspection. The department shall upon request provide consultation and technical assistance to assist the provider in developing effective corrective measures. The department shall include a statement of the provider's corrective measures in the department's inspection report.

NEW SECTION. **Sec. 29.** A new section is added to chapter 70.128 RCW to read as follows:

(1) Adult family homes may participate in a voluntary adult family home certification program through the University of Washington geriatric education center. In addition to the minimum qualifications required under RCW 70.128.120, individuals participating in the voluntary adult family home certification program must complete fifty-two hours of class requirements as established by the University of Washington geriatric education center. Subjects covered by the class requirements must include: Specific age-related physical or mental health conditions that can be prevented, postponed, or alleviated by a health promotion intervention, how to establish health promotion programs in residential settings and communities, preventing falls, addressing health issues of aging families, and issues and health concerns of ethnic older adults and those with developmental disabilities.

(2) Individuals completing the requirements of RCW 70.128.120 and the voluntary adult family home certification program shall be issued a certified adult family home license by the department.

(3) The department shall adopt rules implementing this section.

Sec. 30. RCW 70.128.120 and 2006 c 249 s 1 are each amended to read as follows:

Each adult family home provider and each resident manager shall have the following minimum qualifications, except that only providers are required to meet the provisions of subsection (10) of this section:

(1) Twenty-one years of age or older;

(2) For those applying after September 1, 2001, to be licensed as providers, and for resident managers whose employment begins after September 1, 2001, a United States high school diploma or general educational development (GED) certificate or any English or translated government documentation of the following:

(a) Successful completion of government-approved public or private school education in a foreign country that includes an annual average of one thousand hours of instruction over twelve years or no less than twelve thousand hours of instruction;

(b) A foreign college, foreign university, or United States community college two-year diploma;

(c) Admission to, or completion of coursework at, a foreign university or college for which credit was granted;

(d) Admission to, or completion of coursework at, a United States college or university for which credits were awarded;

(e) Admission to, or completion of postgraduate coursework at, a United States college or university for which credits were awarded; or

(f) Successful passage of the United States board examination for registered nursing, or any professional medical occupation for which college or university education preparation was required;

(3) Good moral and responsible character and reputation;

(4) Literacy in the English language((~~,~~)). However, a person not literate in the English language may meet the requirements of this subsection by assuring that there is a person on staff and available who is able to communicate or make provisions for communicating with the resident in his or her primary language and capable of understanding and speaking English well enough to be able to respond appropriately to emergency situations and be able to read and understand resident care plans;

(5) Management and administrative ability to carry out the requirements of this chapter;

(6) Satisfactory completion of department-approved basic training and continuing education training as specified by the department in rule, based on recommendations of the community long-term care training and education steering committee and working in collaboration with providers, consumers, caregivers, advocates, family members, educators, and other interested parties in the rule-making process;

(7) Satisfactory completion of department-approved, or equivalent, special care training before a provider may provide special care services to a resident;

(8) Not been convicted of any crime listed in RCW 43.43.830 and 43.43.842;

(9) For those applying after September 1, 2001, to be licensed as providers, and for resident managers whose employment begins after September 1, 2001, at least three hundred twenty hours of successful, direct caregiving experience obtained after age eighteen to vulnerable adults in a licensed or contracted setting prior to operating or managing an adult family home; and

(10) Prior to being granted a license, providers applying after January 1, 2007, must complete a department-approved forty-eight hour adult family home administration and business planning class. The department shall promote and prioritize bilingual capabilities within available resources and when materials are available for this purpose.

Sec. 31. RCW 70.128.230 and 2002 c 233 s 3 are each amended to read as follows:

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Caregiver" includes all adult family home resident managers and any ((~~person~~)) long-term care worker who provides residents with hands-on personal care on behalf of an adult family home, except volunteers who are directly supervised.

(b) "Indirect supervision" means oversight by a person who has demonstrated competency in the core areas or has been fully exempted from the training requirements pursuant to this section and is quickly and easily available to the caregiver, but not necessarily on-site.

(c) "Long-term care worker" has the same meaning as defined in RCW 74.39A.009(11).

(2) Training must have three components: Orientation, basic training, and continuing education. All adult family home providers, resident managers, and employees, or volunteers who routinely interact with residents shall complete orientation. Caregivers shall complete orientation, basic training, and continuing education. Training of caregivers employed by adult family homes is governed by chapter 74.39A RCW. Any caregiver who has satisfied the training and competency testing requirements of section 3 of this act or the continuing education requirements of RCW 74.39A.340 shall be deemed to have satisfied, as applicable, the orientation, basic training, and continuing education requirements of this section.

(3) Orientation consists of introductory information on residents' rights, communication skills, fire and life safety, and universal precautions. Orientation must be provided at the facility by appropriate adult family home staff to all adult family home employees before the employees have routine interaction with residents.

(4) Basic training consists of modules on the core knowledge and skills that caregivers need to learn and understand to effectively and safely provide care to residents. Basic training must be outcome- based, and the effectiveness of the basic training must be measured by demonstrated competency in the core areas through the use of a competency test. ((~~Basic training must be completed by caregivers within one hundred twenty days of the date on which they begin to~~

~~provide hands-on care or within one hundred twenty days of September 1, 2002, whichever is later.~~)) Until ((~~competency in the core areas has been demonstrated, caregivers~~)) a caregiver provides verification that he or she has satisfied the basic training requirements under section 3 of this act, a caregiver shall not provide hands-on personal care to residents without indirect supervision.

(5)(a) For adult family homes that serve residents with special needs such as dementia, developmental disabilities, or mental illness, specialty training is required of providers and resident managers. Specialty training consists of modules on the core knowledge and skills that providers and resident managers need to effectively and safely provide care to residents with special needs. Specialty training should be integrated into basic training wherever appropriate. Specialty training must be outcome-based, and the effectiveness of the specialty training measured by demonstrated competency in the core specialty areas through the use of a competency test.

(b) Specialty training must be completed by providers and resident managers before admitting and serving residents who have been determined to have special needs related to mental illness, dementia, or a developmental disability. Should a resident develop special needs while living in a home without specialty designation, the provider and resident manager have one hundred twenty days to complete specialty training.

((~~(6) Continuing education consists of ongoing delivery of information to caregivers on various topics relevant to the care setting and care needs of residents. Competency testing is not required for continuing education. Continuing education is not required in the same calendar year in which basic or modified basic training is successfully completed. Continuing education is required in each calendar year thereafter.~~)) If training received by a caregiver under section 3 of this act involves core knowledge and skills to effectively and safely provide care to residents of the adult family home with special needs, the hours of training received by the caregiver shall apply toward meeting the specialty training requirements under this section.

(c) If specialty training is completed, the specialty training applies toward any continuing education requirement for up to two years following the completion of the specialty training.

((~~(7)~~)) (6) Persons who successfully challenge the competency test for basic training are fully exempt from the basic training requirements of this section. Persons who successfully challenge the specialty training competency test are fully exempt from the specialty training requirements of this section.

((~~(8)~~)) (7) Licensed persons who perform the tasks for which they are licensed are fully or partially exempt from the training requirements of this section, as specified by the department in rule.

((~~(9)~~)) (8) In an effort to improve access to training and education and reduce costs, especially for rural communities, the coordinated system of long-term care training and education must include the use of innovative types of learning strategies such as internet resources, videotapes, and distance learning using satellite technology coordinated through community colleges, private associations, or other entities, as defined by the department.

((~~(10) Adult family homes that desire to deliver facility-based training with facility designated trainers, or adult family homes that desire to pool their resources to create shared training systems, must be encouraged by the department in their efforts. The department shall develop criteria for reviewing and approving trainers and training materials. The department may approve a curriculum based upon attestation by an adult family home administrator that the adult family home's training curriculum addresses basic and specialty training competencies identified by the department, and shall review a curriculum to verify that it meets these requirements. The department may conduct the review as part of the next regularly scheduled inspection authorized under RCW 70.128.070. The department shall rescind approval of any curriculum if it determines that the curriculum does not meet these requirements.~~

~~(11)~~)) (9) The department shall adopt rules by September 1, 2002, for the implementation of this section.

((~~(12)~~)) (10) The orientation, basic training, specialty training, and continuing education requirements of this section commence September 1, 2002, and shall be applied to (a) employees hired subsequent to September 1, 2002; or (b) existing employees that on September 1, 2002, have not successfully completed the training requirements under RCW 70.128.120 or 70.128.130 and this section. Existing employees who have not successfully completed the training requirements under RCW 70.128.120 or 70.128.130 shall be subject to all applicable requirements of this section. ((~~However, until September 1, 2002, nothing in this section affects the current training requirements under RCW 70.128.120 and 70.128.130.~~))

NEW SECTION. **Sec. 32.** The following acts or parts of acts are each repealed:

(1) RCW 18.20.230 (Training standards review--Proposed enhancements) and 1999 c 372 s 3 & 1998 c 272 s 2; and

(2) RCW 70.128.210 (Training standards review--Delivery system--Issues reviewed--Report to the legislature) and 1998 c 272 s 3.

NEW SECTION. **Sec. 33.** Sections 7 through 19 of this act constitute a new chapter in Title 18 RCW.

NEW SECTION. **Sec. 34.** Section 20 of this act expires July 1, 2008.

NEW SECTION. **Sec. 35.** Section 21 of this act takes effect July 1, 2008.

NEW SECTION. **Sec. 36.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2008, in the omnibus appropriations act, this act is null and void."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means to Engrossed Substitute House Bill No. 2693.

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

MOTION

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

On page 1, line 2 of the title, after "workers;" strike the remainder of the title and insert "amending RCW 74.39A.009, 74.39A.340, 74.39A.360, 74.39A.240, 74.39A.050, 70.127.100, 18.20.110, 18.20.270, 70.128.090, 70.128.120, and 70.128.230; reenacting and amending RCW 18.130.040 and 18.130.040; adding new sections to chapter 74.39A RCW; adding a new section to chapter 70.128 RCW; adding a new chapter to Title 18 RCW; creating new sections; repealing RCW 18.20.230 and 70.128.210; providing an effective date; and providing an expiration date."

MOTION

On motion of Senator Keiser, the rules were suspended, Engrossed Substitute House Bill No. 2693 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Keiser, Pflug, Parlette and Kastama spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 2693 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 2693 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 47; Nays, 2; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 47

Voting nay: Senators Holmquist and Morton - 2

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2693 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SECOND ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2176, by House Committee on Appropriations (originally sponsored by Representatives Lantz, Warnick, Pedersen, Ross, Hasegawa, Kenney, Santos and Goodman)

Revising provisions involving court interpreters.

The measure was read the second time.

MOTION

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

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** A new section is added to chapter 2.43 RCW to read as follows:

(1) Each trial court organized under this title and Titles 3 and 35 RCW must develop a written language assistance plan to provide a framework for the provision of interpreter services for non-English-speaking persons accessing the court system in both civil and criminal legal matters. The language assistance plan must include, at a minimum, provisions addressing the following:

(a) Procedures to identify and assess the language needs of non-English-speaking persons using the court system;

(b) Procedures for the appointment of interpreters as required under RCW 2.43.030. Such procedures shall not require the non-English-speaking person to make the arrangements for the interpreter to appear in court;

(c) Procedures for notifying court users of the right to and availability of interpreter services. Such information shall be prominently displayed in the courthouse in the five foreign languages that census data indicates are predominate in the jurisdiction;

(d) A process for providing timely communication with non-English speakers by all court employees who have regular contact with the public and meaningful access to court services, including access to services provided by the clerk's office;

(e) Procedures for evaluating the need for translation of written materials, prioritizing those translation needs, and translating the highest priority materials. These procedures should take into account the frequency of use of forms by the language group, and the cost of orally interpreting the forms;

(f) A process for requiring and providing training to judges, court clerks, and other court staff on the requirements of the language assistance plan and how to effectively access and work with interpreters; and

(g) A process for ongoing evaluation of the language assistance plan and monitoring of the implementation of the language assistance plan.

(2) Each court, when developing its language assistance plan, must consult with judges, court administrators and court clerks, interpreters, and members of the community, such as domestic violence organizations, pro bono programs, courthouse facilitators, legal services programs, and/or other community groups whose members speak a language other than English.

(3) Each court must provide a copy of its language assistance plan to the interpreter commission established by supreme court rule for approval prior to receiving state reimbursement for interpreter costs under this chapter.

(4) Each court receiving reimbursement for interpreter costs under RCW 2.42.120 or 2.43.040 must provide to the administrative office of the courts by November 15, 2009, a report detailing an assessment of the need for interpreter services for non-English speakers in court-mandated classes or programs, the extent to which interpreter services are currently available for court-mandated classes or programs, and the resources that would be required to ensure that interpreters are provided to non-English speakers in court-mandated classes or programs. The report shall also include the amounts spent annually on interpreter services for fiscal years 2005, 2006, 2007, 2008, and 2009. The administrative office of the courts shall compile these reports and provide them along with the specific reimbursements provided, by court and fiscal year, to the appropriate committees of the legislature by December 15, 2009.

Sec. 2. RCW 2.42.120 and 1985 c 389 s 12 are each amended to read as follows:

(1) If a hearing impaired person is a party or witness at any stage of a judicial or quasi-judicial proceeding in the state or in a political subdivision, including but not limited to civil and criminal court proceedings, grand jury proceedings, proceedings before a magistrate, juvenile proceedings, adoption proceedings, mental health commitment proceedings, and any proceeding in which a hearing impaired person may be subject to confinement or criminal sanction, the appointing authority shall appoint and pay for a qualified interpreter to interpret the proceedings.

(2) If the parent, guardian, or custodian of a juvenile brought before a court is hearing impaired, the appointing authority shall appoint and pay for a qualified interpreter to interpret the proceedings.

(3) If a hearing impaired person participates in a program or activity ordered by a court as part of the sentence or order of disposition, required as part of a diversion agreement or deferred prosecution program, or required as a condition of probation or parole, the appointing authority shall appoint and pay for a qualified interpreter to interpret exchange of information during the program or activity.

(4) If a law enforcement agency conducts a criminal investigation involving the interviewing of a hearing impaired person, whether as a victim, witness, or suspect, the appointing authority shall appoint and pay for a qualified interpreter throughout the investigation. Whenever a law enforcement agency conducts a criminal investigation involving the interviewing of a minor child whose parent, guardian, or custodian is hearing impaired, whether as a victim, witness, or suspect, the appointing authority shall appoint and pay for a qualified interpreter throughout the investigation. No employee of the law enforcement agency who has responsibilities other than interpreting may be appointed as the qualified interpreter.

(5) If a hearing impaired person is arrested for an alleged violation of a criminal law the arresting officer or the officer's supervisor shall, at the earliest possible time, procure and arrange payment for a qualified interpreter for any notification of rights, warning, interrogation, or taking of a statement. No employee of the law enforcement agency who has responsibilities other than interpreting may be appointed as the qualified interpreter.

(6) Where it is the policy and practice of a court of this state or of a political subdivision to appoint and pay counsel for persons who are indigent, the appointing authority shall appoint and pay for a qualified interpreter for hearing impaired persons to facilitate communication with counsel in all phases of the preparation and presentation of the case.

(7) Subject to the availability of funds specifically appropriated therefor, the administrative office of the courts shall reimburse the appointing authority for up to one-half of the payment to the interpreter where a qualified interpreter is appointed for a hearing impaired person by a judicial officer in a proceeding before a court under subsection (1), (2), or (3) of this section in compliance with the provisions of RCW 2.42.130 and 2.42.170.

Sec. 3. RCW 2.43.040 and 1989 c 358 s 4 are each amended to read as follows:

(1) Interpreters appointed according to this chapter are entitled to a reasonable fee for their services and shall be reimbursed for actual expenses which are reasonable as provided in this section.

(2) In all legal proceedings in which the non-English-speaking person is a party, or is subpoenaed or summoned by the appointing authority or is otherwise compelled by the appointing authority to appear, including criminal proceedings, grand jury proceedings, coroner's inquests, mental health commitment proceedings, and other legal proceedings initiated by agencies of government, the cost of providing the interpreter shall be borne by the governmental body initiating the legal proceedings.

(3) In other legal proceedings, the cost of providing the interpreter shall be borne by the non-English-speaking person unless such person is indigent according to adopted standards of the body. In such a case the cost shall be an administrative cost of the governmental body under the authority of which the legal proceeding is conducted.

(4) The cost of providing the interpreter is a taxable cost of any proceeding in which costs ordinarily are taxed.

(5) Subject to the availability of funds specifically appropriated therefor, the administrative office of the courts shall reimburse the appointing authority for up to one-half of the payment to the interpreter where an interpreter is appointed by a judicial officer in a proceeding before a court at public expense and:

(a) The interpreter appointed is an interpreter certified by the administrative office of the courts or is a qualified interpreter registered by the administrative office of the courts in a noncertified language, or where the necessary language is not certified or registered, the interpreter has been qualified by the judicial officer pursuant to this chapter;

(b) The court conducting the legal proceeding has an approved language assistance plan that complies with section 1 of this act; and

(c) The fee paid to the interpreter for services is in accordance with standards established by the administrative office of the courts.

Sec. 4. RCW 2.56.030 and 2007 c 496 s 302 are each amended to read as follows:

The administrator for the courts shall, under the supervision and direction of the chief justice:

(1) Examine the administrative methods and systems employed in the offices of the judges, clerks, stenographers, and employees of the courts and make recommendations, through the chief justice, for the improvement of the same;

(2) Examine the state of the dockets of the courts and determine the need for assistance by any court;

(3) Make recommendations to the chief justice relating to the assignment of judges where courts are in need of assistance and carry out the direction of the chief justice as to the assignments of judges to counties and districts where the courts are in need of assistance;

(4) Collect and compile statistical and other data and make reports of the business transacted by the courts and transmit the same to the chief justice to the end that proper action may be taken in respect thereto;

(5) Prepare and submit budget estimates of state appropriations necessary for the maintenance and operation of the judicial system and make recommendations in respect thereto;

(6) Collect statistical and other data and make reports relating to the expenditure of public moneys, state and local, for the maintenance and operation of the judicial system and the offices connected therewith;

(7) Obtain reports from clerks of courts in accordance with law or rules adopted by the supreme court of this state on cases and other judicial business in which action has been delayed beyond periods of time specified by law or rules of court and make report thereof to supreme court of this state;

(8) Act as secretary of the judicial conference referred to in RCW 2.56.060;

(9) Submit annually, as of February 1st, to the chief justice, a report of the activities of the administrator's office for the preceding calendar year including activities related to courthouse security;

(10) Administer programs and standards for the training and education of judicial personnel;

(11) Examine the need for new superior court and district court judge positions under an objective workload analysis. The results of the objective workload analysis shall be reviewed by the board for judicial administration which shall make recommendations to the legislature. It is the intent of the legislature that an objective workload analysis become the basis for creating additional district and superior court positions, and recommendations should address that objective;

(12) Provide staff to the judicial retirement account plan under chapter 2.14 RCW;

(13) Attend to such other matters as may be assigned by the supreme court of this state;

(14) Within available funds, develop a curriculum for a general understanding of child development, placement, and treatment resources, as well as specific legal skills and knowledge of relevant statutes including chapters 13.32A, 13.34, and 13.40 RCW, cases, court rules, interviewing skills, and special needs of the abused or neglected child. This curriculum shall be completed and made available to all juvenile court judges, court personnel, and service providers and be updated yearly to reflect changes in statutes, court rules, or case law;

(15) Develop, in consultation with the entities set forth in RCW 2.56.150(3), a comprehensive statewide curriculum for persons who act as guardians ad litem under Title 13 or 26 RCW. The curriculum shall be made available July 1, 2008, and include specialty sections on child development, child sexual abuse, child physical abuse, child neglect, domestic violence, clinical and forensic investigative and interviewing techniques, family reconciliation and mediation services, and relevant statutory and legal requirements. The curriculum shall be made available to all superior court judges, court personnel, and all persons who act as guardians ad litem;

(16) Develop a curriculum for a general understanding of crimes of malicious harassment, as well as specific legal skills and knowledge of RCW 9A.36.080, relevant cases, court rules, and the special needs of malicious harassment victims. This curriculum shall be made available to all superior court and court of appeals judges and to all justices of the supreme court;

(17) Develop, in consultation with the criminal justice training commission and the commissions established under chapters 43.113, 43.115, and 43.117 RCW, a curriculum for a general understanding of ethnic and cultural diversity and its implications for working with youth of color and their families. The curriculum shall be available to all superior court judges and court commissioners assigned to juvenile court, and other

court personnel. Ethnic and cultural diversity training shall be provided annually so as to incorporate cultural sensitivity and awareness into the daily operation of juvenile courts statewide;

(18) Authorize the use of closed circuit television and other electronic equipment in judicial proceedings. The administrator shall promulgate necessary standards and procedures and shall provide technical assistance to courts as required;

(19) Develop a Washington family law handbook in accordance with RCW 2.56.180;

(20) Administer state funds for improving the operation of the courts and provide support for court coordinating councils, under the direction of the board for judicial administration;

(21)(a) Administer and distribute amounts appropriated from the equal justice subaccount under RCW 43.08.250(2) for district court judges' and qualifying elected municipal court judges' salary contributions. The administrator for the courts shall develop a distribution formula for these amounts that does not differentiate between district and elected municipal court judges.

(b) A city qualifies for state contribution of elected municipal court judges' salaries under (a) of this subsection if:

(i) The judge is serving in an elected position;

(ii) The city has established by ordinance that a full-time judge is compensated at a rate equivalent to at least ninety-five percent, but not more than one hundred percent, of a district court judge salary or for a part-time judge on a pro rata basis the same equivalent; and

(iii) The city has certified to the office of the administrator for the courts that the conditions in (b)(i) and (ii) of this subsection have been met;

(22) Subject to the availability of funds specifically appropriated therefor, assist courts in the development and implementation of language assistance plans required under section 1 of this act."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Ways & Means to Second Engrossed Second Substitute House Bill No. 2176.

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

MOTION

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

On page 1, line 1 of the title, after "services;" strike the remainder of the title and insert "amending RCW 2.42.120, 2.43.040, and 2.56.030; and adding a new section to chapter 2.43 RCW."

MOTION

On motion of Senator Kline, the rules were suspended, Second Engrossed Second Substitute House Bill No. 2176 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Kline spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Second Engrossed Second Substitute House Bill No. 2176 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Second Engrossed Second Substitute House Bill No. 2176 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 47; Nays, 2; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 47

Voting nay: Senators Honeyford and Schoesler - 2

SECOND ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2176 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED THIRD SUBSTITUTE HOUSE BILL NO. 1873, by House Committee on Appropriations (originally sponsored by Representatives Ormsby, Haler, Pedersen, Wood, VanDeWege, Campbell, Flannigan, Kessler, Williams and Lantz)

Changing the requirements for, and recoveries under, a wrongful injury or death cause of action. Revised for 3rd Substitute: Changing the requirements for, and recoveries under, a wrongful injury or death cause of action, or a survival action.

The measure was read the second time.

MOTION

Senator Fairley moved that the following committee striking amendment by the Committee on Ways & Means be not adopted.

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 4.20.020 and 2007 c 156 s 29 are each amended to read as follows:

(1) Every ((~~such~~)) action under RCW 4.20.010 shall be for the benefit of the ((~~wife, husband~~)) spouse, state registered domestic partner, ((~~child~~)) or children, including stepchildren, of the person whose death shall have been so caused. If there ((~~be~~)) is no ((~~wife, husband~~)) spouse, state registered domestic partner, or ((~~such~~)) child ((~~or children, such~~)), the action may be maintained for the benefit of: (a) The parents((~~,~~)) of a deceased adult child if the parents are financially dependent upon the adult child for support or if the parents have had significant involvement in the adult child's life; or (b) an individual who is the sole beneficiary of the decedent's life insurance and has had significant involvement in the decedent's life. If there is no spouse, state registered domestic partner, child, parent, or such life insurance beneficiary, the action may be maintained for the benefit of sisters((~~,~~)) or brothers((~~,~~)) who ((~~may be~~)) are financially dependent upon the deceased person for support((~~, and who are resident within the United States at the time of his death~~)).

In every such action the jury may ((~~give such~~)) award economic and noneconomic damages as((~~,~~)) under all circumstances of the case((~~,~~)) may to them seem just.

In any action under (a) or (b) of this subsection against the state or a political subdivision thereof, the liability of the state or political subdivision shall be several and not joint.

(2) For the purposes of this section:

(a) "Financially dependent for support" means substantial dependence based on the receipt of services that have an economic or monetary value, or substantial dependence based on actual monetary payments or contributions; and

(b) "Significant involvement" means demonstrated support of an emotional, psychological, or financial nature within the relationship, at or reasonably near the time of death, or at or reasonably near the time of the incident causing death.

Sec. 2. RCW 4.20.046 and 1993 c 44 s 1 are each amended to read as follows:

(1) All causes of action by a person or persons against another person or persons shall survive to the personal representatives of the former and against the personal representatives of the latter, whether such actions arise on contract or otherwise, and whether or not such actions would have survived at the common law or prior to the date of enactment of this section((~~: PROVIDED, HOWEVER, That~~)).

(2) In addition to recovering economic losses, the personal representative ((~~shall only be~~)) is entitled to recover on behalf of those beneficiaries identified under RCW 4.20.020 any noneconomic damages for pain and suffering, anxiety, emotional distress, or humiliation, personal to and suffered by ((~~a~~)) the deceased ((~~on behalf of those beneficiaries enumerated in RCW 4.20.020, and such~~)) in such amounts as determined by a jury to be just under all the circumstances of the case. Damages under this section are recoverable regardless of whether or not the death was occasioned by the injury that is the basis for the action.

(3) The liability of property of a husband and wife held by them as community property and subject to execution in satisfaction of a claim enforceable against such property so held shall not be affected by the death of either or both spouses; and a cause of action shall remain an asset as though both claiming spouses continued to live despite the death of either or both claiming spouses.

((~~(2)~~)) (4) Where death or an injury to person or property, resulting from a wrongful act, neglect or default, occurs simultaneously with or after the death of a person who would have been liable therefor if his death had not occurred simultaneously with such death or injury or had not intervened between the wrongful act, neglect or default and the resulting death or injury, an action to recover damages for such death or injury may be maintained against the personal representative of such person.

Sec. 3. RCW 4.20.060 and 2007 c 156 s 30 are each amended to read as follows:

(1) No action for a personal injury to any person occasioning death shall abate, nor shall such right of action ((~~determine~~)) terminate, by reason of ((~~such~~)) the death((~~,~~)) if ((~~such~~)) the person has a surviving ((~~spouse, state registered domestic partner, or child living, including stepchildren, or leaving no surviving spouse, state registered domestic partner, or such children, if there is dependent upon the deceased for support and resident within the United States at the time of decedent's death, parents, sisters, or brothers; but such action may be prosecuted, or commenced and prosecuted, by the executor or administrator~~)) beneficiary in whose favor the action may be brought under subsection (2) of this section.

(2) An action under this section shall be brought by the personal representative of the deceased((~~,~~)) in favor of ((~~such~~)) the surviving spouse or state registered domestic partner, ((~~or in favor of the surviving spouse or state registered domestic partner~~)) and ((~~such~~)) children((~~, or if~~)). If there is no surviving spouse ((~~or~~)), state registered domestic partner, ((~~in favor of such child~~)) or children, ((~~or if no surviving spouse, state registered domestic partner, or such child or children, then~~)) the action shall be brought in favor of the decedent's: (a) Parents((~~,~~)) if the parents are financially dependent upon the decedent for support or if the parents have had significant involvement in the decedent's life; or (b) sole beneficiary under a life insurance policy, if the beneficiary is an individual who had a significant involvement in the decedent's life. If there is no surviving spouse, state registered domestic partner, child, parent, or such life insurance beneficiary, the action shall be brought in favor of the decedent's sisters((~~,~~)) or brothers who ((~~may be~~)) are financially dependent upon ((~~such person~~)) the decedent for support((~~, and resident in the United States at the time of decedent's death~~)).

(3) In addition to recovering economic losses, the persons identified in subsection (2) of this section are entitled to recover any noneconomic damages personal to and suffered by the decedent including, but not limited to, damages for the decedent's pain and suffering, anxiety, emotional distress, or humiliation, in such amounts as determined by a jury to be just under all the circumstances of the case.

(4) For the purposes of this section:

(a) "Financially dependent for support" means substantial dependence based on the receipt of services that have an economic or monetary value, or substantial dependence based on actual monetary payments or contributions; and

(b) "Significant involvement" means demonstrated support of an emotional, psychological, or financial nature within the relationship, at or reasonably near the time of death, or at or reasonably near the time of the incident causing death.

(5) In any action under subsection (2)(a) or (b) of this section against the state or a political subdivision thereof, the liability of the state or political subdivision shall be several and not joint.

Sec. 4. RCW 4.24.010 and 1998 c 237 s 2 are each amended to read as follows:

(1) A ((~~mother or father, or both,~~)) parent who has regularly contributed to the support of his or her minor child, ((~~and the mother or father, or both, of a child on whom either, or both, are~~)) or a parent who is financially dependent on a child for support or who has had significant involvement in a child's life, may maintain or join ((~~as a party~~)) an action as plaintiff for the injury or death of the child.

(2) Each parent, separately from the other parent, is entitled to recover for his or her own loss regardless of marital status, even though this section creates only one cause of action((~~, but if the parents of the child are not married, are separated, or not married to each other damages may be awarded to each plaintiff separately, as the trier of fact finds just and equitable~~)).

(3) If one parent brings an action under this section and the other parent is not named as a plaintiff, notice of the institution of the suit, together with a copy of the complaint, shall be served upon the other parent: PROVIDED, That notice shall be required only if parentage has been duly established.

Such notice shall be in compliance with the statutory requirements for a summons. Such notice shall state that the other parent must join as a party to the suit within twenty days or the right to recover damages under this section shall be barred. Failure of the other parent to timely appear shall bar such parent's action to recover any part of an award made to the party instituting the suit.

(4) In ((~~such~~)) an action under this section, in addition to damages for medical, hospital, medication expenses, and loss of services and support, damages may be recovered for the loss of love and companionship of the child and for injury to or destruction of the parent-child relationship in such amount as, under all the circumstances of the case, may be just.

(5) For the purposes of this section:

(a) "Financially dependent for support" means substantial dependence based on the receipt of services that have an economic or monetary value, or substantial dependence based on actual monetary payments or contributions; and

(b) "Significant involvement" means demonstrated support of an emotional, psychological, or financial nature within the relationship, at or reasonably near the time of death, or at or reasonably near the time of the incident causing death.

Sec. 5. RCW 4.22.030 and 1986 c 305 s 402 are each amended to read as follows:

Except as otherwise provided in RCW 4.22.070, 4.20.020, and 4.20.060, if more than one person is liable to a claimant on an indivisible claim for the same injury, death or harm, the liability of such persons shall be joint and several.

NEW SECTION. **Sec. 6.** This act applies to all causes of action filed on or after the effective date of this act.

NEW SECTION. **Sec. 7.** (1) On December 1, 2009, and every December 1st thereafter, the risk management division within the office of financial management shall report to the house appropriations committee, the house state government and tribal affairs committee, the senate ways and means committee, and the senate government operations and elections committee, or successor committees, on the incidents covered by this act that involve state agencies.

(2) On December 1, 2009, and every December 1st thereafter, each local government risk pool or local government risk management division, or the equivalent in local governments, shall report to the legislative body of the local government on the incidents covered by this act that involve the local government.

(3) This section expires December 2, 2014."

On page 1, line 1 of the title, after "death;" strike the remainder of the title and insert "amending RCW 4.20.020, 4.20.046, 4.20.060, 4.24.010, and 4.22.030; creating new sections; and providing an expiration date."

MOTION

Senator Brandland moved that the committee striking amendment by the Committee on Ways & Means be adopted.

WITHDRAWAL OF AMENDMENT

On motion of Senator Brandland, the committee striking amendment by the Committee on Ways and Means was withdrawn.

MOTION

On motion of Senator Eide, further consideration of Engrossed Third Substitute House Bill No. 1873 was deferred and the bill held its place on the second reading calendar.

SECOND READING

SECOND SUBSTITUTE HOUSE BILL NO. 2870, by House Committee on Appropriations (originally sponsored by Representatives Liias, Sullivan, Ericks, Williams, Loomis, Simpson, Ormsby, Miloscia, Hasegawa, Roberts, Santos, Quall and Nelson)

Providing opportunities for professional development for instructional assistants.

The measure was read the second time.

MOTION

On motion of Senator McAuliffe, the rules were suspended, Second Substitute House Bill No. 2870 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator McAuliffe spoke in favor of passage of the bill.

Senator Tom spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Second Substitute House Bill No. 2870.

ROLL CALL

The Secretary called the roll on the final passage of Second Substitute House Bill No. 2870 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 2; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Weinstein and Zarelli - 47

Voting nay: Senators Oemig and Tom - 2

SECOND SUBSTITUTE HOUSE BILL NO. 2870, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED HOUSE BILL NO. 1283, by Representatives Roach, McDonald, Morrell, Rolfes, Kelley, Skinner, Orcutt, Priest, Takko, Conway, Appleton, Newhouse, Haler, Moeller, VanDeWege, McCune, Roberts and Springer

Authorizing high school diplomas to be issued to persons who left high school before graduation to serve in the United States armed forces.

The measure was read the second time.

MOTION

On motion of Senator McAuliffe, the rules were suspended, Engrossed House Bill No. 1283 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators McAuliffe and King spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed House Bill No. 1283.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed House Bill No. 1283 and the bill passed the Senate by the following vote: Yeas, 49; Nays, 0; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 49

ENGROSSED HOUSE BILL NO. 1283, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1623, by House Committee on Technology, Energy & Communications (originally sponsored by Representative Morris)

Concerning fees for easements on state-owned aquatic lands.

The measure was read the second time.

MOTION

On motion of Senator Jacobsen, the rules were suspended, Engrossed Substitute House Bill No. 1623 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Jacobsen and Morton spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Substitute House Bill No. 1623.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute House Bill No. 1623 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 1; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 48

Voting nay: Senator Carrell - 1

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1623, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

ENGROSSED HOUSE BILL NO. 2641, by Representatives Jarrett, Priest, Wallace, Ormsby, McIntire, Sells, Morrell, Upthegrove, Sullivan and Haler

Creating a pilot program to test performance agreements at institutions of higher education.

The measure was read the second time.

MOTION

Senator Shin moved that the following committee striking amendment by the Committee on Higher Education be adopted.

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** (1) The legislature finds that in the last ten years, significant progress has been made to identify and monitor accountability and performance measures in higher education, both internally in institutions and externally in the legislative and state policymaking environment.

(2) However, the legislature further finds that opportunities exist to promote greater visibility of performance measures among policymakers and among the public consumers of higher education. Policy decisions, including decisions about resource allocation, should be made with greater knowledge and a shared understanding about the tradeoffs between resources, flexibility, and desired outcomes. A forum should be created to allow discussion among policymakers and institution leaders about setting outcome-oriented priorities, targeting of investments, linking operating and capital planning, and creating a longer-term view than the biennial budget cycle typically permits.

(3) Therefore, the legislature intends to implement a process for such discussions, agreements, and planning to occur. The process of crafting higher education performance agreements will be pilot-tested over a six-year period with the public four-year institutions of higher education beginning in 2008.

NEW SECTION. **Sec. 2.** A new section is added to chapter 28B.10 RCW to read as follows:

(1) As used in this section and sections 3 and 4 of this act, a performance agreement is an agreement reached between the state and the governing board of an institution of higher education and approved by the legislature using the process provided in section 4 of this act.

(2) The purpose of a performance agreement is to develop and communicate a six-year plan developed jointly by state policymakers and an institution of higher education that aligns goals, priorities, desired outcomes, flexibility, institutional mission, accountability, and levels of resources.

(3) Beginning in 2008, performance agreements shall be pilot-tested with the public four-year institutions of higher education.

NEW SECTION. **Sec. 3.** A new section is added to chapter 28B.10 RCW to read as follows:

(1) Performance agreements shall address but not be limited to the following issues:

(a) Indicators that measure outcomes concerning cost, quality, timeliness of student progress toward degrees and certifications, and articulation between and within the K-12 and higher education systems;

(b) Benchmarks and goals for long-term degree production, including discrete benchmarks and goals in particular fields of study;

(c) The level of resources necessary to meet the performance outcomes, benchmarks, and goals, subject to legislative appropriation;

(d) The prioritization of four-year institution capital budget projects by the office of financial management; and

(e) Indicators that measure outcomes concerning recruitment, retention, and success of students, faculty, and staff from diverse, underrepresented communities.

(2) The goals and outcomes identified in a performance agreement shall be linked to the role, mission, and strategic plan of the institution of higher education and aligned with the statewide strategic master plan for higher education.

(3) Performance agreements may also include grants to an institution, under the terms of the agreement, of flexibility or waivers from state controls or rules. The agreement may identify areas where statutory change is necessary to grant an institution flexibility or waivers of state agency rules.

(4) The following areas may not be included in a performance agreement:

(a) Flexibility or waivers of requirements in a collective bargaining agreement negotiated under chapter 28B.52, 41.56, 41.59, 41.76, or 41.80 RCW;

(b) Flexibility or waivers of administrative rules or processes governed by chapter 28B.52, 41.56, 41.59, 41.76, or 41.80 RCW;

(c) Rules, processes, duties, rights, and responsibilities of the academic faculty as contained in the faculty codes of the four-year institution;

(d) Flexibility or waivers of requirements under chapter 39.12 RCW;

(e) Flexibility or waivers of administrative rules or other regulations that address health and safety, civil rights, and nondiscrimination laws that apply to institutions of higher education; and

(f) State laws covering terms and conditions of employment, including but not limited to salaries, job security, and health, retirement, unemployment, or any other employment benefits.

NEW SECTION. **Sec. 4.** A new section is added to chapter 28B.10 RCW to read as follows:

(1) A state performance agreement committee is created to represent the state in developing performance agreements under this section and sections 2 and 3 of this act. The committee is composed of representatives from the governor's office, the

office of financial management, the higher education coordinating board, the office of the superintendent of public instruction, two members of the senate appointed by the secretary of the senate, and two members of the house of representatives appointed by the speaker of the house of representatives. The state performance agreement committee shall be staffed by personnel from the higher education coordinating board.

(2) Each of the participating institutions shall develop a preliminary draft of a performance agreement with input from students and faculty. The governing boards of the public four-year institutions of higher education shall designate performance agreement representatives for each institution respectively that shall include two faculty members at those institutions bargaining under chapter 41.76 RCW, at least one of whom shall be appointed by the exclusive collective bargaining agent and the other appointed by the faculty governance organization of that institution. If the participating pilot institution does not bargain under chapter 41.76 RCW, then two faculty members shall be appointed by the faculty governance organization of that institution. The associated student governments or their equivalents shall designate two performance agreement representatives at those institutions. Starting with the preliminary drafts, the state performance agreement committee and representatives of each institution shall develop revised draft performance agreements for each institution and submit the revised drafts to the governor and the fiscal and higher education committees of the legislature no later than September 1, 2008.

(3) After receiving informal input on the revised draft performance agreements, particularly regarding the levels of resources assumed in the agreements, the state committee and institution representatives shall develop final proposed performance agreements and submit the agreements to the governor and the office of financial management by November 1, 2008, for consideration in development of the governor's 2009-2011 operating and capital budget recommendations.

(4) The state committee shall submit any legislation necessary to implement a performance agreement to the higher education committees of the senate and house of representatives.

(5) All cost items contained within a performance agreement are subject to legislative appropriation.

(6) If the legislature affirms, through a proviso in the 2009-2011 omnibus appropriations act, that the omnibus appropriations act and the 2009 capital budget act enacted by the legislature align with the proposed performance agreements, the performance agreements shall take effect beginning July 1, 2009, through June 30, 2015. If the legislature affirms, through a proviso in the 2009-2011 omnibus appropriations act or through inaction, that the omnibus appropriations act and/or the 2009 capital budget act are not aligned with the proposed performance agreements, the state committee and institution representatives shall redraft the agreements to align with the enacted budgets, and the redrafted agreements shall take effect beginning September 1, 2009, through June 30, 2015.

(7) The legislature, the state committee, and the institution representatives shall repeat the process described in subsection (6) of this section for each subsequent omnibus appropriations and capital budget act enacted between the 2010 and 2014 legislative sessions to ensure that the performance agreements are updated as necessary to align with enacted omnibus appropriations and capital budget acts.

NEW SECTION. **Sec. 5.** A new section is added to chapter 44.28 RCW to read as follows:

The joint committee shall conduct an evaluation of the higher education performance agreement pilot test under sections 2 through 4 of this act and make recommendations regarding changes to the substance or process of creating the agreements, including whether the performance agreement process should be continued and expanded to include additional higher education institutions. The evaluation shall be submitted to the governor and the higher education committees of the senate and house of representatives by November 1, 2014."

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Higher Education to Engrossed House Bill No. 2641.

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

MOTION

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

On page 1, line 1 of the title, after "agreements;" strike the remainder of the title and insert "adding new sections to chapter 28B.10 RCW; adding a new section to chapter 44.28 RCW; and creating a new section."

MOTION

On motion of Senator Shin, the rules were suspended, Engrossed House Bill No. 2641 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Shin spoke in favor of passage of the bill.

POINT OF INQUIRY

Senator Hobbs: "Would Senator Shin yield to a question? Senator Shin, could a performance agreement give an institution increased local authority to raise tuition?"

Senator Shin: "No, absolutely not. The institution of tuition setting authority will continue to be governed by the provision of RCW 26B.15.067. Performance agreement can not change the law so that the legislature can only accept that increasing authority not the institution."

Senator Hobbs: "So a performance agreement can not authorize an institution to raise tuition by more than it would be raised under current law?"

Senator Shin: "That's right."

The President declared the question before the Senate to be the final passage of Engrossed House Bill No. 2641 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed House Bill No. 2641 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 1; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 48

Absent: Senator Kline - 1

ENGROSSED HOUSE BILL NO. 2641 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SUBSTITUTE HOUSE BILL NO. 2770, by House Committee on Insurance, Financial Services & Consumer Protection (originally sponsored by Representatives Kenney, Lantz, Upthegrove, Conway, Morrell, Schual-Berke, McIntire, Hudgins, Simpson and Rolfes)

Enacting the governor's homeownership security task force recommendations regarding responsible mortgage lending and homeownership.

The measure was read the second time.

MOTION

On motion of Senator Berkey, the rules were suspended, Substitute House Bill No. 2770 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Berkey spoke in favor of passage of the bill.

MOTION

On motion of Senator Regala, Senator Kline was excused.

The President declared the question before the Senate to be the final passage of Substitute House Bill No. 2770.

ROLL CALL

The Secretary called the roll on the final passage of Substitute House Bill No. 2770 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 1; Excused, 1.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Haugen, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kohl-Welles, Marr, McAuliffe, McCaslin, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 47

Absent: Senator Hatfield - 1

Excused: Senator Kline - 1

SUBSTITUTE HOUSE BILL NO. 2770, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

The Senate resumed consideration of Engrossed Third Substitute House Bill No. 1873 which had been deferred earlier in the day.

The President declared the question before the Senate to be the motion by Senator Fairley to not adopt the committee striking amendment by the Committee on Ways & Means to Engrossed Third Substitute House Bill No. 1873.

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

MOTION

Senator Brandland moved that the following amendment by Senators Brandland and Hargrove be adopted.

On page 2, after line 7, insert the following:

"In any action under subsections (1)(a) or (b) of this section against the state or a political subdivision thereof, the liability of the state or political subdivision shall be several and not joint."

On page 4, after line 21, insert the following:

"(5) In any action under subsections (2)(a) or (b) of this section against the state or a political subdivision thereof, the liability of the state or political subdivision shall be several and not joint."

On page 5, after line 26, insert the following:

"In any action under this section against the state or a political subdivision thereof, where the claim is based on subsection (5)(b) of this section, the liability of the state or political subdivision shall be several and not joint."

On page 5, after line 26, insert the following:

"Sec. 5. RCW 4.22.030 and 1986 c 305 s 402 are each amended to read as follows:

Except as otherwise provided in RCW 4.22.070, 4.20.020, 4.20.060, and 4.24.010, if more than one person is liable to a claimant on an indivisible claim for the same injury, death or harm, the liability of such persons shall be joint and several."

Renumber the sections consecutively and correct internal references accordingly.

Senators Brandland, Hargrove and Pflug spoke in favor of adoption of the amendment.

Senators Weinstein and Kline spoke against adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Brandland and Hargrove on page 2, after line 7 to Engrossed Third Substitute House Bill No. 1873.

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

MOTION

Senator Haugen moved that the following amendment by Senator Haugen and others be adopted.

On page 4, beginning on line 25, after "her" strike all material through "~~are~~))" on line 26, and insert "((~~minor~~)) child ((, ~~and the mother or father, or both, of a child on whom either, or both, are~~)) under the age of twenty-six"

On page 4, beginning on line 27, strike "or who has had significant involvement in a child's life, "

Senators Haugen and Hargrove spoke in favor of adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Haugen and others on page 4, line 25 to Engrossed Third Substitute House Bill No. 1873.

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

MOTION

On motion of Senator Fairley, the rules were suspended, Engrossed Third Substitute House Bill No. 1873 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Fairley and Hargrove spoke in favor of passage of

the bill.

The President declared the question before the Senate to be the final passage of Engrossed Third Substitute House Bill No. 1873 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Third Substitute House Bill No. 1873 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 47; Nays, 2; Absent, 0; Excused, 0.

Voting yea: Senators Benton, Berkey, Brandland, Brown, Carrell, Delvin, Eide, Fairley, Franklin, Fraser, Hargrove, Hatfield, Hewitt, Hobbs, Holmquist, Honeyford, Jacobsen, Kastama, Kauffman, Keiser, Kilmer, King, Kline, Kohl-Welles, Marr, McAuliffe, McDermott, Morton, Murray, Oemig, Parlette, Pflug, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Tom, Weinstein and Zarelli - 47

Voting nay: Senators Haugen and McCaslin - 2

ENGROSSED THIRD SUBSTITUTE HOUSE BILL NO. 1873 as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

At 9:22 p.m., on motion of Senator Eide, the Senate adjourned until 9:00 a.m. Friday, March 7, 2008.

BRAD OWEN, President of the Senate

THOMAS HOEMANN, Secretary of the Senate